



VOICE OF REASON

The Newsletter of Americans for Religious Liberty

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The Cleveland Voucher Case: The Last Round

On February 20 the US Supreme Court heard oral argument in the Cleveland voucher case (*Zelman v. Simmons-Harris*). By all accounts the decision probably hinges on Justice Sandra Day O'Connor, the Court's leading swing vote on most church-state issues.

O'Connor's questions seemed to indicate that she might approve the voucher program, because it appeared to her to offer theoretical alternatives to participants, even though 99% of Cleveland voucher students attend parochial schools. O'Connor did question whether the funds sent to the schools were or could be spent on solely non-religious studies. In the past, O'Connor has been critical of programs that appear to endorse religion or that can be construed by the average citizen as promoting religion. But she sees no problem with facially neutral legislation, even though it might ultimately benefit a wholly religious community.

Under current Ohio law, the state pays \$14.9 million a year for 4,202 students in Cleveland's poor inner-city neighborhoods to attend 49 participating schools, almost all of them Roman Catholic parochial schools. The state allows \$2,250 per year per student, and parents are expected to contribute from 10% to 25% of the school's tuition, depending on family income.

The Court's ruling will end a seven-year battle that began in 1995 when the Ohio legislature enacted the program to encourage low-income children to attend private and religious schools. The following year a state judge in Columbus upheld the program, and 1,700 students entered private schools that fall.

In 1997 a state appeals court in Columbus struck down the program on state and federal constitutional grounds, but the Ohio Supreme Court allowed the program to continue while it considered the state's appeal.

In 1999 the state supreme court invalidated the program on technical grounds but said that participation of religious schools did not violate the ban on religious establishment. The legislature reauthorized the program under a new law, which was promptly challenged by voucher foes. Once again, the program was allowed to continue until legal appeals could be heard. Later that year a federal judge in Cleveland concluded that the program was "skewed towards religion" and was therefore unconstitutional under the Bill of Rights.

In 2000 the federal appeals court for the Sixth Circuit ruled that Ohio's program violated the First Amendment's clear and unequivocal ban on "acts respecting an establishment of religion." In 2001 the US Supreme Court accepted the case for review.

The stakes could not be higher. Massive public funding of private, mostly religious, schools would likely be the result, though the most immediate action would certainly be renewed political and religious divisiveness in state legislatures throughout the land.

Whether the Court regards it as relevant or not, the program as implemented has benefited parochial schools almost exclusively. A

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Opponents Urge Court to Reject Vouchers

Organizations supporting church-state separation and public education have asked the US Supreme Court to reject the Cleveland voucher program that aids mostly parochial schools.

The National Committee for Public Education & Religious Liberty (PEARL), of which Americans for Religious Liberty is a member, filed its *amicus* brief before the nation's highest court on December 14. The PEARL brief makes three major arguments.

The first is that Ohio's voucher program crosses the line between constitutionally permissible and impermissible aid to religious schools. The PEARL brief notes, "Direct government funding of religious schools without any limitations on the use of the funds, such as that provided by the Ohio voucher program, inevitably associates the government with the institution's religious message." Furthermore, "the religious schools are the actual, direct and primary recipient of government funds under the program."

Ohio's religious schools have received carte blanche from the government to use these funds as they wish. Continues the brief, "Religious schools may use Ohio's voucher funds to support their general curricula no matter how much the curricula may inculcate religious doctrines or other teachings." The PEARL brief asserts that "this aspect of the Ohio voucher program, government funds being provided to the religious schools to use without restriction in their general curriculum, distinguishes this case from every other church school aid case since *Everson* in 1947."

Secondly, "Ohio's voucher program results in unlawful government indoctrination of religion." Since only those schools which do not "advocate or foster unlawful behavior or teach hatred" are eligible for the voucher program, the Ohio voucher program "contains a straight forward form of viewpoint discrimination." The PEARL brief notes that court rulings have long held that the law may bar schools from engaging in discriminatory conduct, but may not censor ideas.

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Faith-Based Program Stopped by Federal Court

The first federal court challenge to government funding of a faith-based social program resulted in a major defeat for a pet campaign program of President George W. Bush.

On January 7 the US District Court for the Western District of Wisconsin ordered the state to cease funding a drug and alcohol rehabilitation program that is suffused with Christianity. Judge Barbara B. Crabb ruled that giving “unrestricted, direct state funding” to the Faith Works program amounted to government-sponsored religious coercion. She noted, “The Faith Works program indoctrinates its participants in religion, primarily through its counselors. Religion is so integral to the Faith Works program that it is not possible to isolate it from the program as a whole.”

Faith Works opened in 1999 with two grants totaling \$600,000 from the state’s Workforce and Corrections Department. Today, about two-thirds of its budget is financed by the Wisconsin state government. It also operates a halfway house providing residential care and provides job training and placement services.

The founding statement of Faith Works described itself as a “ministry” employing an explicitly Christian approach to social problems. The case was brought by the Freedom from Religion Foundation, a national organization based in Madison, Wisconsin.

Faith Works had contended that the government grants, now amounting to \$880,000 per year, had been used only for the non-religious aspects of the program, and maintained that counselors spent only 20 percent of their time discussing spiritual issues with their clients.

The Bush administration had filed an *amicus* brief on behalf of Faith Works. President Bush has repeatedly singled out faith-based programs as his preferred method of solving the nation’s critical social challenges. Bush made a campaign appearance in August, 2000 at the Faith Works headquarters in Milwaukee.

In its decision the court declared the Department of Workforce Development’s funding of Faith Works violates the Establishment Clause, but ordered a trial on whether the Department of Corrections funding is also unconstitutional. Judge Crabb said, “There are no adequate safeguards in place to prevent Department of Corrections funds from being used in religious activities.” That finding points up the necessity of passing legislation to prevent unconstitutional expenditures in the future. The court also said it could not rule on the constitutionality of the Charitable Choice law (42 USC 604a) passed by Congress in 1996.

But the decision in *Freedom From Religion Foundation, Inc. v. McCallum* (00-C-617C), W.D. Wisconsin is a major victory for church-state separation.

Faith Works: An Inside Look

Faith Works opened its treatment program on December 6, 1999 in Milwaukee. It provides long-term residential treatment to male drug addicts and alcoholics. It emphasizes “recovery, employment, family services and spiritual enrichment.” It sends its participants to Alcoholics Anonymous (AA) and in fact bases its program on AA.

Faith Works employs counselors who are expected to attend church regularly and to “develop a personal relationship with God.” The Faith Works Standard of Practice says of its staff, “We are serving the Lord in evangelistic outreach and will respect the Holy Spirit’s ability to work in each person’s life whether staff or resident.” Bible studies, prayer and daily chapel services are available and encouraged. Staff meetings begin with prayer.

The program’s effectiveness is linked to religion. In its grant proposals, the group claims spirituality as the basis of its success. Recovery cannot be accomplished, it says, until the clients “address their spirituality.” Attendance at meetings where religious discussions are central is mandatory. The majority of graduates are said to have become active participants in churches. Other goals of the program are “discipleship, membership in an organized church, attendance at Bible studies, finding a spiritual adviser and participation in Christian counseling services.” Counselors are encouraged to “facilitate a transformation of the heart and soul as a part of the healing process.” About half of its graduates have “a spiritual mentor.” Faith Works counselors are expected to encourage participants to “find a relationship with God through the person of Jesus Christ.”

The “Statement of Faith” is quite explicit: “The addict learns that he has a deep ‘soul sickness,’ and it is only by connecting to God through profession, confession, prayer and involvement in a worshipping community that he has any hope of sustaining a life in recovery. AA teaches this but stops short of recommending Christ to all. However, at Faith Works we do.”

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The state thus picks and chooses from the applying schools, even if its reason for doing so is an admirable one, i.e., refusing to fund schools advocating intolerance. The brief argues, "Ohio has expressly involved itself in the message of schools deemed eligible to accept vouchers through the qualifications provision in the voucher statute. This creates an inference, impermissible under the Establishment Clause, that the State has also endorsed the religious message of the schools."

Finally, the Ohio voucher program fails a basic constitutional test: It results in massive entanglement between government and religious organizations. The Ohio program's "administrative enforcement of the viewpoint discrimination provisions requires the state to evaluate and interfere with religious doctrines."

The enforcement of this provision against intolerance or illegality "requires entanglement in a sensitive area." The brief argues, "Ohio must do more than determine whether teaching is religious. It must determine whether the educational message – including an educational message dictated by the school's religious orientation – constitutes the teaching of hatred or advocacy of violations of law." This "intrusion into doctrinal matters distinguishes this program from the limited neutral state regulatory oversight" that previous Supreme Court decisions have permitted.

The Baptist Joint Committee and the American Jewish Committee filed a joint brief arguing that the Cleveland plan is unconstitutional because "it has the primary effect of financing religious indoctrination with state money." This brief says that the program "ensures that religious schools will dominate the universe of options available to voucher recipients." Furthermore, the program "supplants private funds with state money by providing the religious schools with tuition money that the schools could only receive from private sources."

BJC general counsel K. Hollyn Hollman added, "The government should not be in the business of funding religious education." BJC executive director J. Brent Walker said, "Vouchers are a misguided effort to finance church schools with public funds under the guise of choice."

The Supreme Court is expected to render a verdict in this critical case before July.

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No to Vouchers

The U.S. Supreme Court is hearing arguments . . . in a landmark Ohio case involving school vouchers. We believe voucher programs that funnel public tax dollars to private and parochial schools are needlessly divisive and violate constitutional prohibitions against government support of religion. . . .

Ostensibly designed to promote parental choice, the program in practice overwhelmingly benefits religious education. Fully 99 percent of the students receiving the vouchers use them for religious schools; the suburban systems refused to participate and private school tuitions are too high for the vouchers to be of much use. . . .

Voucher programs do not enhance educational equality. Private and parochial schools are already advantaged over public schools because they need not take all comers. They can refuse children with special needs, learning disabilities, behavioral problems, language difficulties or who come from abusive homes. Meanwhile, private schools are free of the accountability increasingly – and properly – applied to public schools. . . .

Vouchers also could use public money to support exclusionary hiring practices. Religious schools need not hire anyone who disagrees with their sectarian teachings; if they accept public money, will that need to change? This threatened loss of autonomy led many religious groups that stood to benefit from the president's faith-based initiative for social service programs to opt out.

There are better ways to promote competition and choice – the charter school movement is thriving – without religious proselytizing. America wisely keeps government out of that business, and it should stay out.

The Boston Globe, Feb. 20.

Cleveland, *continued from page 1*

recent study by Policy Matters Ohio, a research group financed by the George Gund Foundation, showed that 99.4% of students using vouchers in Cleveland attend religious schools, compared to 76.8% in the program's first year. One parochial school principal, Sister Margaret O'Brian of Our Lady of Good Counsel School, told *Education Week*, "It has really helped our school. I do think that without this program, it would be hard to sustain this school." Interviews with parents that have appeared in several newspapers sustain this intimate connection between the voucher funds and parental choice for religious schooling. Only 21% of the current voucher students attended public schools in the past. Most were already in private schools or in private kindergartens. No nonsectarian private schools in Cleveland, and no suburban schools of any kind, have chosen to participate in the program. Their tuitions are much higher than \$2,250, and evidence suggests that they do not want minority children from Cleveland's gritty inner-city as students.

The New York Times, calling this case "one of the most important church-state cases in the last decade," editorialized, "[I]n keeping with the founding fathers' vision of a nation that is neutral toward and among religions, the court has always insisted that tax money cannot be used to teach children religion, or lead them in religious practices. That principle is manifestly violated in Cleveland, where taxpayer money is used to fund Catholic Masses, Protestant Bible study and instruction in the practice of Islam." The newspaper concluded, "Vouchers are not a solution. They are a distraction."

Irish Voters Reject Tighter Restrictions on Abortion

Ireland's voters turned down a proposal backed by Prime Minister Bertie Ahern and his ruling coalition government that would have removed the threat of suicide as a grounds for abortion and would have mandated a prison sentence for those who participated in nontherapeutic abortions. The margin was 50.42% to 49.58%. This leaves Ireland's present constitutional ban on most abortions intact. Abortion is legal in Ireland to save the mother's life or health, the policy found in the United States and most other Western nations prior to the late 1960s. About 7,000 Irish women travel to Britain each year for elective abortions.

The referendum result was a defeat for the Roman Catholic Church leadership in the still heavily Catholic Irish Republic. Cardinal Desmond Connell directed that letters be read in all parishes on the Sunday prior to the March 6 referendum, telling parishioners that the government's abortion proposal "has been fully endorsed by the Church authorities in Rome." Cardinal Connell, however, seemed fully aware that Irish Catholic voters no longer take dictation from the hierarchy. In his pastoral letter he said, "The Catholic bishops of Ireland are encouraging you to vote Yes on Wednesday, while respecting your right in conscience to vote against the proposal."

Only about 43% of voters cast ballots on the issue but the results confirm the deep divide in Irish society over social issues like abortion and divorce. Divorce was legalized in 1995 by an almost identical margin. These new referenda indicate how far Ireland has moved in the direction of pluralism and respect for diversity. The small island nation of 3.8 million is a prosperous member of the European Union with a young population and seems fully dedicated to moving socially and legally, even if slowly, in the direction charted by the rest of Europe. The nation has a flourishing literary and cultural life and is home to more first class, internationally known writers than any other nation of its size.

The referendum was defeated largely by voters in Dublin, where all 10 constituencies rejected the stricter anti-abortion proposal, by an aggregate margin of almost 63% to 37%. The Dublin rejection, by 207,317 to 123,712, provided an 83,605 vote defeat for the proposal, just offsetting a 73,049 margin for the amendment in the rest of the country. In the city the heaviest no vote came in Dublin South and Southeast, areas containing the embassies, the great universities (Trinity College and UCD), the museums and the bulk of the professional vote — Dublin's equivalent to London's West End or Manhattan's East Side.

Of all the constituencies, Dun Laoghaire, cast the highest (68.2%) no vote. This fashionable and prestigious suburb just south of the city is home to singers Bono and Enya and playwright Hugh Leonard.

A majority no vote also came in County Kildare, the "horse country" suburbs west of Dublin, and in several other urban areas (Cork, Limerick and Galway). Some of the rural counties near Dublin that are becoming suburbs of the capital split almost evenly.

Two other counties south of Dublin voted no. County Wicklow, "the garden of Ireland," cast a 59% no vote. And Waterford, a southeastern county near the ancestral home of President Kennedy, voted no by a small margin. Waterford and Wicklow have a substantial Church of Ireland vote. This Irish branch of the Episcopal/Anglican tradition takes progressive stands on Irish social issues. Its archbishop, Walton Empey, urged a no vote in *The Irish Times*, claiming that the referendum's provisions would harm "the vulnerable and poor, especially teenagers and young women who cannot afford to travel to have an abortion."

The strongest yes votes came in rural, traditional Ireland, where conservative social relationships and Roman Catholic Church participation are pronounced. The highest support was registered in Donegal, the isolated, windswept northwest region which has no train service to the rest of Ireland. (Only buses and cars give access to it.) Donegal, which borders Northern Ireland, has a fairly high Presbyterian vote, as do Cavan and Monaghan, two other border counties which voted 2-1 yes. It should be remembered that Northern Ireland refused to apply the 1967 Abortion Reform Act passed by the British Parliament because of conservative Protestant opposition.

Gerry Adams, president of Sinn Fein, which contests elections in both Irelands, hailed the referendum result as a "victory for compassion."

Large yes votes also came in Tipperary and the rural Midlands, as well as in Mayo, the location for a major Catholic shrine at Knock.

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The White House Faith-Based Office: A One Year Report

President Bush's Office of Faith-Based and Community Initiatives (OFBCI) has failed to achieve anything substantive nor has it captured the political support necessary to sustain it. So concludes an interim report commissioned by the Pew Forum on Religion and Public Life.

Released on the first anniversary of the office's establishment, the report by Kathryn Dunn Tenpas of the University of Pennsylvania concluded that political miscalculations and infighting and poor communications within the White House and with the general public have limited the office's effectiveness. Tenpas suggested that the initiative was organized too hastily, was never explained to the public adequately, and failed to build a natural political constituency. Both evangelicals, who support government-funded religious enterprises with no strings attached, and civil libertarians, who oppose close connections between government and religious charities that insist on religious homogeneity in hiring and proselytizing in the delivery of services, were unwilling to support the overall program.

Tenpas argued that "the hasty assemblage of the office and the uncertainty surrounding its mission laid a weak foundation that only grew weaker over time."

The Tenpas report emphasized the lack of political support for the initiative, which inevitably weakened the OFBCI. She wrote, "In terms of policy, there was no natural coalition for H.R. 7 [the House Charitable Choice bill]. This fact was starkly illustrated by the barrage of criticism that emanated from the left and the right. The opposition was so broad as to defy generalization. While those who favor the separation of church and state declared HR 7 unconstitutional, conservative Christians feared that government involvement would cause waste and corruption and civil rights groups thought it would lead to employment discrimination. At the same time, a number of religious organizations believed that government intrusion would potentially hinder their efforts."

Tenpas also concluded, "In retrospect, the faith-based initiative proved to be far more controversial than anticipated, prompting White House strategists to shift their focus rather than further de-

plete their political capital." Therefore, "The faith-based initiative took a back seat to tax cuts and education-accountability proposals."

Tenpas believes that moderate Democrat John DiIulio lacked political support at the increasingly right-wing dominated White House. He wanted the president to accept more compromises with Congress, especially in respect to the employee religious discrimination problem, but White House staffers, ever eager to appease the party's fundamentalist wing, supported the House Republican version of charitable choice. "Bush's senior confidantes and Republicans on the Hill overshadowed DiIulio's efforts," wrote Tenpas. DiIulio's office also "lacked budgetary authority, the ability to staff the office with his own colleagues and the power to develop and execute political strategy."

Tenpas found that DiIulio was ostracized by White House conservatives. No one from other White House offices bothered to attend his first hearings on Capitol Hill. "He was not briefed nor did he work in concert with other key components of the White House organization." White House political guru Karl Rove showed little or no interest in shoring up the office.

While support has dissipated, the initiative still has significant political clout and may be more effective under a new command. Tenpas says the five cabinet-based centers that promote implementation are quietly seeking more church-based participation in federal welfare programs. There is also a move to issue new regulations that would assist church-based groups.

This regulatory shift could prove to be the most dangerous to religious and civil liberties in the long run. Tenpas argues, "The most profound impact will lie in the rewriting of hundreds of regulations that would shift the flow of federal funds to religious groups. . . . These less visible, less controversial efforts to encourage faith-based organizations may well prove to be more effective than any additional legislation, as they may be able to remove a number of restrictions through regulation alone. And, avoiding the media spotlight, as bureaucratic efforts typically do, can only enhance their prospects for success."

Update

Pickering Nomination Rejected

President Bush's nomination of Mississippi District Court Judge Charles Pickering to the Fifth Circuit Court of Appeals was rejected by the US Senate Judiciary Committee on March 14 by a party-line, 10-9 vote. Opposition to Pickering rested mainly on his less than vigorous defense of civil rights and his early segregationist record as a politician. Pickering opposed the Voting Rights Act of 1965 and has repeatedly sought to weaken its application during his eleven years as a federal judge.

But Pickering is also opposed to reproductive freedom and has attempted to advance his own personal religious views on the bench. As a state senator he supported a resolution calling for a constitutional convention to propose an amendment banning abortion. He opposed state funding of family planning programs. In 1976 he chaired a subcommittee of the 1976 Republican platform committee

which called for a constitutional amendment banning all abortions, the first time any national political party took such a stand. As president of the Mississippi Baptist Convention, Pickering lobbied for a strict anti-abortion plank, "upholding the Christian views of human life." Pickering opposed the Equal Rights Amendment.

Pickering was opposed by the Alliance for Justice, which said his nomination "would turn back the clock on civil rights and on women's rights." Emphasizing his "consistent lack of support for civil rights and strong opposition to reproductive freedom" as well as "his predisposition to deny ordinary Americans access to the courts," the Alliance said his selection would "reverse rights and protections won over the last 50 years."

In its opposition People For the American Way stressed that "Judge Pickering has been reversed in 26 cases that were appealed to the Fifth Circuit." His nomination "poses a grave danger to our rights and liberties," the group concluded.

Pickering has often sought to promote his personal religious values, frequently lecturing defendants about religious concepts and urging prisoners "to become involved in Chuck Colson's prison fellow-

ship or some other such ministry?" (*United States v. Halat*, 1997). In 2001 Pickering reduced a defendant's life sentence to ten years in prison because the prisoner had been "seeking God, reading and studying God's word" (*United States v. Edmond C. Brown*, 2001).

In a 1984 address to the Mississippi Baptist Convention, Pickering said "the Bible should be recognized as the absolute authority by which all conduct of man is judged." In a 1995 case, *Barnes v. Mississippi Dept. of Corrections*, 90 F. Supp. 972 (S.D. Miss.), Pickering called the Bible "one of the oldest recorded codes of law" and suggested that it stood equal or superior to the U.S. and Mississippi constitutions and statutes.

Faith-Based Office Downgraded

A move that may reflect the administration's recognition that the faith-based initiative remains in serious trouble in Congress came on January 31 when President Bush shifted this office to the USA Freedom Corps. The White House Office of Community and Faith-Based Initiatives had reported directly to the White House until its first director, John DiIulio, resigned last August. The USA Freedom Corps, headed by Bush's chief domestic policy adviser John Bridgeland, is an "advisory council" that oversees the new emphasis on volunteerism.

Bush also announced the appointment of Florida lawyer Jim Towey to head the new but scaled-down office. Towey, a Democrat and a Catholic, headed Florida's health and social services agency under Democratic Governor Lawton Chiles. Ironically, he was bitterly opposed by the state's Republicans, who refused to confirm his appointment in 1995 even though he had held the appointment unofficially for nearly two years. Towey had denounced Republican plans to cut social services by 25%.

Towey later founded an advocacy group, Aging with Dignity, and became a friend of Republican Governor Jeb Bush. Towey worked on Capitol Hill, served as legal counsel to Mother Teresa's American-based operations for a dozen years, and worked with AIDS patients in Washington, DC.

Towey is the second Catholic Democrat to hold this position, a strategy the Bush administration is pursuing to win Democratic support for some of its programs.

Bush is trying to reshape his faith-based agenda but still seems committed to a pervasively religious emphasis. Attending the White

House ceremony on February 1 was Steve Burger, head of the Association of Gospel Rescue Missions, who praised the Bush program.

However, the far right is angry that the compromise bill now in the Senate will not include a provision that would exempt religious groups that receive federal funds from local laws barring job discrimination against gays and lesbians. The draft legislation, being overseen by Sens. Rick Santorum (R-PA) and Joe Lieberman (D-CT), will also not give religious groups the opportunity to bid for government programs. The House bill passed last July includes both of these provisions.

One Religious Right group, the American Family Association, through its government affairs director, Patrick Trueman, said, "We're very upset. The president's faith-based initiative was the hallmark of his administration. If he caves in on that, we can't trust him on any issue of our agenda."

Senator Lieberman's office made clear that a bill allowing religious groups to discriminate against homosexuals in hiring would never pass the Senate. The bill, incidentally, has a new name. It is now called the Charity Aid, Recovery and Empowerment Act of 2001, or CARE for short.

Bible Classes End in Scopes Country

On February 8 a federal judge ordered the Rhea County, Tennessee public schools to halt Bible classes that have been taught in county schools for the past 51 years. U.S. District Judge Allan Edgar wrote that school officials "acted with both purpose and effect to endorse and advance religion in the public schools" when they allowed students from fundamentalist Bryan College to teach weekly classes in Bible for the county's three elementary schools. Parental consent was not required. Parents of two children attending the classes sued the school board and were supported by the Freedom from Religion Foundation. The district may appeal.

Rhea County was the site of the 1925 Scopes trial regarding the permissibility of teaching evolution in Tennessee public schools. Almost all residents are white Protestants, and 54% belong to Southern Baptist churches. It is strongly Republican and has supported every GOP presidential candidate except in 1976, when it went for Jimmy Carter.

The Bush Budget Follies

President Bush's \$2.13 trillion budget proposal for 2003 includes a tax credit to pay up to \$2,500 a year in private school tuition for children whose public schools are considered to be failing. The proposal could cost \$3.7 billion over five years. Under the plan, the money could be used for books, computers, home schooling or private school transportation. The education tax credit would be refundable, meaning that low income workers who owe no federal taxes would be eligible to receive cash benefits.

At the same time, administration officials proposed that government-funded health insurance should be extended to developing fetuses. At present, the \$40 billion program that began in 1997 has covered children from birth to age 19. States have the option of extending coverage to pregnant women under the State Children's Health Insurance Program (S-CHIP).

While administration officials contend that the program changes are designed only to expand pre-natal health care, supporters of reproductive freedom are not so sure that the proposal is innocuous. Peter Rubin, a professor of constitutional law at Georgetown University, warned, "The change would for the first time put into federal law the concept that from the moment of conception, a fetus is a

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child. To suggest in federal law that a one-cell zygote is a full human being is at variance with the American legal tradition and does ultimately present a threat to women's reproductive rights – and not just abortion, but also contraception.”

More Funds for Abstinence Education

President Bush's new budget includes \$135 million for sexual abstinence programs that ban any discussion of birth control to prevent pregnancy. This \$33 million increase fulfills a Bush campaign pledge to conservative religious groups.

The trouble is, say critics, the “abstinence only” programs have never been shown to work effectively. Programs that offer a wide range of sexual information options may be more effective in reducing unwanted teenage pregnancy. Recent data show that 900,000 US teenagers get pregnant each year. One in three American babies is born to unmarried women, a figure in line with most Western nations.

James Wagoner, president of Advocates for Youth, criticized the spending priorities. “I find it stunning that an administration that touts the values of science when it comes to environmental policy can't run fast enough away from science when it comes to sexual health.”

Even Health and Human Services Secretary Tommy Thompson acknowledged that there is little evidence that sexual abstinence programs work. “Let's try them out and see if we can't get it to work,” he said.

Religious Materials Cause Classroom Problems

A second-grade student's attempt to distribute a religious booklet in a New York public elementary school has led to a lawsuit. Joshua Leirer sought to pass out a booklet, “God is Our Shelter and Strength,” at Tangier Smith Elementary School on Long Island last fall, but was prevented from doing so by his teacher. Joshua's angry parents enlisted the Rev. Pat Robertson's American Center for Law and Justice to file a suit alleging religious discrimination against the William Floyd Union Free School District in Mastic Beach, New York. While the school would seem to be on solid legal footing in forbidding the distribution of religious literature on campus, the parents asserted that the event occurred in non-instructional time, a factor that may be murky under school board policy and in prior law rulings.

In a related case, a federal court ruled on February 8 that the Egg Harbor Township (New Jersey) school district did not violate the

First Amendment rights of a student when it barred him from distributing Christian messages at classroom parties. The boy's parents, enlisting the aid of the right-wing Rutherford Institute, claimed his free exercise of religion and free speech rights were violated. Judge Jerome Simandle ruled that classroom parties were not protected forums for student speech. The Rutherford Institute plans to appeal the decision.

Missionaries, Monuments, and Courts

The U.S. Supreme Court has decided to review a federal district court ruling that Utah cannot include overseas Mormon missionaries in the population count. The dispute has become nationally important because the heavily Mormon and Republican state narrowly lost an additional member of Congress in the decennial reapportionment required by the Constitution. North Carolina's population growth gave it the seat that Utah wanted.

The Court's decision to intervene in the case is puzzling. More to the point was a February 25 decision not to intervene in a case involving the placing of monuments including the Ten Commandments throughout the state of Indiana. The High Court rejected Governor Frank O'Bannon's attempt to erect a donated seven-foot limestone monument including the Ten Commandments at the state capitol. Nine states supported Indiana in a friend of the court brief urging the Court to review a May, 2001 lower court decision forcing the removal of a similar monument outside the Elkhart, Indiana City Hall. Governor O'Bannon commented, “The court's decision not to hear our case effectively ends this issue for the state.”

If only to underscore the complexity of the Ten Commandments-in-court issue, a federal judge ruled in March that the city of Elkhart, Indiana can keep its Ten Commandments plaque on the City Hall lawn. The city agreed to erect four other monuments featuring excerpts from the Declaration of Independence, the preamble to the Constitution, the Bill of Rights and the Magna Charta. Kenneth Falk, legal director for the Indiana Civil Liberties Union, promised an appeal to the Seventh Circuit. The city's major, Dave Miller, saw the dispute in political terms, calling the ACLU a “snake that's crawling around, looking for religious markers to devour.” Miller, who called himself a “Republican, conservative and Christian,” added, “The ACLU and its tyrannical assault on religious freedom need to be stopped.”

A federal judge in southeastern Pennsylvania also ruled in March that Chester County must remove its 1920 Ten Commandments plaque from the courthouse. Judge Stewart Dalzell concluded that “the tablet's necessary effect on those who see it is to endorse or advance the unique importance of this predominantly religious text for mainline Protestantism.”

Ashcroft's Religious Wars

Attorney General John Ashcroft continues to embarrass himself and his administration with his impolitic remarks on religion. Under fire from Arab American and Muslim groups for a slur against all Muslims, saying, “Islam is a religion in which God requires you to send your son to die for him,” Ashcroft tried to downplay these remarks. James Zogby, president of the Arab American Institute, asked President Bush to fire Ashcroft.

Then, in an address to a group of Christian broadcasters in Nashville on February 19, Ashcroft added to the furor. The Attorney General said, “The guarding of freedom that God grants is the noble charge of the Department of Justice.” Ashcroft added that the conflict between the U.S. and international terrorism is “a conflict be-

ARL in Action

On February 8 ARL joined its allies in the National Coalition for Public Education in urging Congress to reject the Bush administration's proposed tuition tax credit and voucher experiments in its education omnibus bill. The Coalition warned that the proposal, which would cost \$3.7 billion, would reduce badly needed revenue from public schools and would raise “church/state implications that threaten the autonomy of religious schools and undermine accountability for how public education dollars are spent.”

ARL and its allies in PEARL filed a brief urging the Supreme Court to uphold an appellate court ruling against the Cleveland voucher program.

tween good and evil, and God is not neutral between the two.”

Zogby criticized Ashcroft’s remarks and said, “He seems to be projecting himself as a religious leader.” Writing in the *Los Angeles Times* on February 26, Robert Scheer castigated the nation’s chief law enforcement officer. “What hooley! The Justice Department is a creation of men to enforce laws written by ordinary mortals, some of them drunk as well as godless, and, most important, to follow the precepts of the U.S. Constitution, itself the product largely of those founders who were suspicious of efforts to bring any official notion of God into the day-to-day governance of a free people.”

Justice Department Supports Ohio Abortion Ban

In its first intervention in an abortion case, the Bush administration’s Justice Department has asked the federal appeals court in Cincinnati to uphold an Ohio ban on late-term abortions. The ban had been struck down by a federal district court and is now before the Sixth Circuit Court of Appeals. The Ohio law was supposedly written to meet the objections in a 2000 Supreme Court decision, *Stenberg v. Carhart*, which invalidated a Nebraska ban because it lacked a provision to protect a woman’s health.

Linda Greenhouse, Supreme Court reporter for *The New York Times*, said the Bush administration’s intervention was noteworthy. “It is unusual, although not unprecedented, for the Justice Department to file a brief in a lower court case that does not directly involve a federal statute.”

The Justice Department brief, signed by Assistant Attorney General Robert D. McCallum, said, “The United States has a significant interest in clarifying the constitutional principles that would govern federal legislation relating to the partial-birth method of abortion.”

Janet Crepps, a staff attorney with the Center for Reproductive Law and Policy, warned that a decision upholding the ban would “set off a wave of state and perhaps federal legislation that could weaken protections for women’s health.”

Law and Religion: Uneasy Allies?

Justice Antonin Scalia, who appears at times to wear his conservative Catholicism on his judicial robes, attacked the Vatican’s stance on capital punishment before an audience at Washington’s Georgetown University on February 4. The unusually outspoken justice said that Catholic judges who follow current Vatican teaching against the death penalty should resign. Scalia said the Vatican had supported the death penalty for many centuries before condemning almost all impositions of capital punishment in recent years. In similar remarks to a conference in Chicago on January 25, Scalia said that “judges who believe the death penalty to be immoral should resign rather than simply ignoring the duly enacted constitutional laws and sabotaging the death penalty.”

Meanwhile, in a Rome address to Catholic judges on January 28, Pope John Paul II said that Catholic lawyers and judges should not participate in divorce cases because divorce is “a plague that has devastating consequences on society.” The Pope was echoing views expressed by a predecessor, Pius XII, in a 1950 address.

Theocracy in Ann Arbor?

Critics of recent developments in Ann Arbor Township, Michigan, a small high-income suburb of the university town of Ann Arbor, fear that sectarian politics is threatening to turn their prosper-

ous suburb into a theocracy. It seems that Thomas Monaghan, founder of the Dominos Pizza empire, and a zealous advocate of Catholic Far Right causes, has set his sights on creating a religious empire in the township.

Monaghan has built a church, parochial school, religious day care center, two convents, two Catholic radio stations, a foreign mission office and a newspaper in Ann Arbor Township. Now he is seeking to expand his land holdings to include Ave Maria College, presently located a few miles away in Ypsilanti. He wants to consolidate it with Ave Maria Law School, located in Ann Arbor City. The law school, as yet unaccredited, seeks to inculcate “natural law” into all of its legal studies courses. One of its lecturers is Robert Bork, who was rejected by the U.S. Senate for a seat on the U.S. Supreme Court in 1987.

Monaghan’s schemes have been rejected when the town planning commission, citing burdens on firefighting, police, water and sewerage resources, urged the town board in February to reject the expansion. One area of contention was Monaghan’s plan to build a 250-foot-high crucifix in the town. Local politics revolve around Monaghan’s grandiose schemes. In the 2000 election Monaghan set up three political action committees to defeat the four incumbents who had opposed his development projects. A national Republican PAC also sent money to the Monaghan slate. All the incumbents were reelected.

Muslim Schools on Rise in U.S.

At least 30,000 students attend several hundred Muslim private schools throughout the United States. Though accurate data are hard to come by, this represents an increase over the past decade.

The schools are being challenged by a move to integrate religious teachings and values into all secular course offerings. Most of the academies provide a standard secular curriculum but add courses in Islamic studies, Arabic language and the study of the Koran.

Some parents are demanding a more tolerant approach to religious studies and favor the inclusion of more courses about American democracy and civil values. This tension between emphasis on religious values and respect for American pluralism is engaging Islamic educators nationwide. Parent Teacher Associations are also blossoming in Islamic schools.

The *Washington Post* reported that many Islamic schools import textbooks which decry other religions from Muslim nations. One eleventh-grade textbook used in several Islamic schools in Virginia urges Muslims to kill Jews on the Day of Judgment. One problem, say experts, is the lack of any national association of Muslim schools that might coordinate studies and prevent extremism. Most of these schools are not accredited by academic accrediting agencies. The *Post* reported that many teachers “lack proper qualifications and receive an average salary of \$16,000,” which is much below the national norm.

The vast majority of U.S. Muslim children attend public schools.

Virginia Legislature Dabbles in Religious Politics

Virginia’s Republican-dominated legislature has been bogged down in conflicts affecting reproductive freedoms and religion in the schools. The lower House voted narrowly to allow public schools to post the Ten Commandments, along with secular historical documents, in the state’s classrooms. But the state Senate rejected the bill, HB 161. At the same time, a Senate committee endorsed legislation to place “In God We Trust” in public schools. The Education and Health Committee voted 9-6 in favor of the plan, after claiming that Congress made this the national motto in 1956. But the legislature required the

state to pay for the cost of adding the motto to courtrooms and public schools.

Abortion remained a divisive issue. Legislation requiring an unmarried woman under age 18 to get a parent's permission before obtaining an abortion passed a Senate committee. But the action may not satisfy the anti-choice lobby since the bill was referred to the Education and Health Committee, which has rejected a string of abortion restrictions. The bill seeks to expand and make more restrictive a 1997 parental notification law. The House of Delegates had already passed the bill by a wide margin, 73-25, enough to survive a possible veto by Governor Mark Warner, who opposes any additional restrictions on abortion. The Senate committee may decline to act on the parental consent proposal.

Another attempt to ban late-term abortions in the Commonwealth may meet with success since an initial ban passed by a large margin, and Governor Warner, in his campaign last year, indicated his opposition to the procedure.

Maryland Parochiaiders Press for Aid

Maryland's small but visible parochial school aid lobby has mounted a campaign to convince the state legislature to retain and increase the textbook loan program which cost \$6 million in 2001.

The program, initiated by Governor Parris Glendening in the year 2000, originally cost \$6 million and was paid for out of the state's settlement with tobacco companies. Only private schools where tuition is less than \$7,600 per year are eligible for the state-purchased textbook program. The books are "loaned" to the nonpublic schools. Each student receives \$90 of annual textbook costs if at least 20 percent of the students are eligible for free or reduced lunches. Other qualifying schools receive \$60 per student.

Revenue shortfalls have placed the program's continuation in jeopardy. The House of Delegates is increasingly unfriendly to the aid program and nearly killed it last year. But private school advocates mounted a campaign in January to increase state funding to \$7 million.

Rallies sponsored by Catholic schools on January 7 statewide showed how intense the campaign has become. At St. Mary's School in Rockville, a crowd of 150 parents "shouted and jeered," according to the *Gazette Community News*, at several legislators who explained their reasons for opposing the program's refunding. Delegate Cheryl C. Kagar told the crowd, "It was a bad idea before and an even worse one in a bad economy." The *Maryland Poll* revealed that voters are opposed, by 49% to 45%, to the private school textbook program.

Revisiting School Choice in Wisconsin

Several Wisconsin plaintiffs filed papers in January asking the Wisconsin Supreme Court to vacate the 1998 decision allowing Milwaukee students to use publicly-funded vouchers to attend religious schools. (Private nonsectarian schools were already designated as acceptable venues for state funds.) The plaintiffs cited a conflict of interest by Justice Jon Wilcox, the deciding vote, who received large campaign contributions from pro-voucher groups during his 1997 reelection campaign. The plaintiffs are asking that an "impartial tribunal" rehear the case. "His decision to participate despite the scandal surrounding the campaign and its illegal funding and support from the private school voucher advocates has prompted this motion," the brief states.

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VMI Prayer is on Hold

US District Judge Norman K. Moon ruled on January 24 that mandatory prayers before the evening meal at Virginia Military Institute, a state-sponsored military school, is "a state-sponsored religious exercise," and therefore unconstitutional. Judge Moon added, "Because the prayers are drafted and recited at the direction of the Institute's Superintendent, the result is that government has become impermissibly entangled with religion." The case had been filed by ACLU on behalf of two cadets at the Lexington, Virginia, college. Virginia is expected to appeal the decision.

Religious Broadcasters Still Political

America's powerful National Religious Broadcasters Association, representing 1,400 conservative Protestant television and radio outlets, has long been a primary component of the Religious Right. While technically nonpartisan, the NRB gives a prime audience to exclusively conservative Republican causes and candidates. And when its new president, Minnesota radio executive Wayne Pederson, tried to move the organization out of conservative politics, he was forced to resign.

Pederson told the *Minneapolis Star Tribune* in January that religious broadcasters are "associated with the far Christian right and therefore marginalized." He added, "To me, the important thing is to keep the focus on what's important to us spiritually. We do not need to be pulled into the political arena."

His remarks set off a firestorm among the extreme right of electronic evangelism, and calls for his resignation or firing came from James Dobson of Focus on the Family and Don Wildmon of the American Family Radio Network.

His opponents indicated that they intend to remain in politics. Richard Bott of the Bott Radio Network in Kansas City said, "The involvement of NRB member organizations in politics is because of their conservative Christian theology, not in spite of it."

The NRB, based in Manassas, Virginia, has invited Republican presidents and vice presidents to its annual meetings but publicly refused to invite Democrat Bill Clinton.

Court Overturns Ban on Communion Wine

The U.S. Court of Appeals for the District of Columbia struck down a lower federal court ruling that denied wine to Catholic inmates during communion services at federal prisons. The unanimous decision concluded that the prohibition may violate the basic constitutional right of religious liberty. The appellate decision sent the case back to the district court.

Until 1997 federal prisons allowed priests to dip communion

bread into wine (the ancient practice of intinction) and offer that to inmates during the Mass. But new rules adopted by the Justice Department in 1998 abolished that practice.

In an unusual move, a Florida inmate, Daniel J. Levitan, filed a suit *pro se* (without a lawyer), claiming that he and the entire class of prisoners had been denied an essential element of their religious freedom rights. The government countered with testimony from a Catholic nun who said that consuming wine is not an essential part of the Roman Catholic rite. District court judge Henry Kennedy apparently agreed and focused on what problems religious practices might cause prison officials rather than the fundamental question of religious free exercise.

The court appointed attorney for the plaintiffs, Michael J. Golden, said of the decision, "This is more about religious liberty than prison administration. It establishes the threshold you must meet to invoke First Amendment protection. That has far-reaching implications across federal law."

Justice Department officials said they would review the opinion. It also has implications for Episcopalians, Lutherans and Eastern Orthodox Christians, all of whom use wine in their communion services.

Creationism Redux

Having failed to get old-fashioned biblical literalist creationism into public school classrooms, the Supreme Court having found it unconstitutional in 1987, creationists are trying again with something called "Intelligent Design" (ID). The basic thrust of the ID movement is to admit the antiquity of life and the existence of evolution but to claim also that the complexity of life requires some sort of "intelligent designer," whether called "God" or not.

ID was detailed at a well-attended meeting of the Ohio State Board of Education on March 11. The board is trying to come up with new science teaching standards and the ID folks regarded the process as an opportunity for their movement. The ID viewpoint was presented by Whitworth College philosophy professor Stephen Meyer and sometime biologist Jonathan Wells, a follower of Unification Church founder Rev. Sun Myung Moon, who reportedly sees attacking evolution as a religious duty.

Opposing ID was Brown University biologist Kenneth Miller, who said there is no controversy over ID among the vast majority of scientists, and Case Western Reserve University physics chairman Lawrence Kraus, who told the board that, as *The New York Times* reported, "Darwin's theory had only grown in strength through decades of repeated experimentation and discoveries that intelligent design had not been subjected to."

International

Dublin: An agreement between the Irish government and eighteen Roman Catholic religious orders will compensate thousands of individuals who suffered sexual or physical abuse at industrial schools run by the church but financed by the government. Those schools, a combination of reform schools and orphanages, were phased out in the 1990s after nearly a century of operation.

In 1999 the Irish state broadcasting network, RTE, aired a series of documentaries exposing and detailing horrendous cases of abuse, humiliation, malnutrition, and inadequate education administered by members of religious orders to the children and young adults under their care. The documentaries prompted a formal government inquiry and an apology by Prime Minister Bertie Ahern. In addition, 20 priests, brothers and nuns were convicted in courts of child abuse.

About 20,000 former residents of these schools are alive, and 3,500 have applied for hearings to redress grievances and to seek compensation for their misery. The religious orders have offered \$110 million to compensate the plaintiffs, and the Irish government may offer an additional \$320 million. The collusion between church and state has resulted in a costly financial arrangement. Sister Elizabeth Maxwell, the secretary general of the Conference of Religious in Ireland, apologized for the deprivation and abuse.

This is just another scandal befalling the Catholic Church in Ireland. And while church leaders have offered apologies, one bishop, Eamon Walsh of Dublin, said he was concerned that the financial agreement could "damage the good work done by the religious orders because of the great burden placed on their resources."

Jerusalem: The Supreme Court of Israel ruled on February 20 that Israeli law must recognize conversions to Judaism that have been performed by Reform or Conservative rabbis. The 11-panel court limited the effects of the decision to government-issued identity cards and to the population registry. Previously, only conversions performed by Orthodox rabbis were considered valid by the state. The ruling could make it easier for hundreds of thousands of immigrants from the former Soviet Union, many of mixed parentage, to undergo conversion ceremonies in rites more congenial to their mostly secular perspective.

American Reform and Conservative leaders hailed the ruling as a victory, albeit a limited one, for religious liberty and inclusiveness. But the powerful Orthodox rabbinate in Israel, which controls all marriage and divorce proceedings for Jewish residents, scoffed at the decision, calling it symbolic and a violation of the Jewish law, halakha. Two American Orthodox associations issued a statement, saying, "The decision of the court may eventually lead to the division of the people of Israel into two camps. There will be a group of halakhically valid Jews and a group of people who are Jewish only by the ruling of the Supreme Court. Inevitably this myopic decision will be tragic for all of Israel, but especially for those who have been misled by the court to think they are Jewish."

London: Prime Minister Tony Blair has created the country's first "faith czar," a government official whose charge is to coordinate relations with Britain's religious communities. The first appointee is Labor M.P. John Battle, a practicing Catholic and former seminarian. The position is similar to Bush's director of faith-based initiatives. Blair also appointed new officials to coordinate government policies toward drug abuse and homelessness.

Meanwhile, Cardinal Cormac Murphy-O'Connor, Britain's leading Roman Catholic prelate, told a BBC audience that Britain's parliament should end the three centuries-old ban on Catholics' marrying into the royal family or being eligible to become the monarch. Labor M.P. Kevin McNamara introduced a private bill to repeal the Act of Settlement, the last remaining legal barrier based on religious discrimination. The cardinal called these laws "an unnecessary bar and anomaly which should be removed."

Moscow: The Vatican's decision to erect four full-fledged dioceses with resident bishops in Russia has infuriated the Russian Orthodox hierarchy, which resents the presence of other Christians. Catholic

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officials say the creation of dioceses is only an administrative step to improve relations with its 1.3 million parishioners, not an attempt to convert Orthodox believers. Patriarch Alexy II and the Orthodox Holy Synod denounced the plan as “an unfriendly act intended to lay claim to the flock of all the Russian people, who are culturally, spiritually and historically the flock of the Russian Orthodox Church.” About half of Russians identify with the Orthodox Church, compared to 1% who are Catholic.

Russian law still makes it difficult for non-Orthodox Christians to operate openly or to build new property for worship services and seminary training. In one province Mormons have been unable to register as a legitimate religious group. The region’s human rights commissioner denounced the American-based sect as “a strange neo-religion.” Officials in Moscow have shut down the Salvation Army, while similar action is pending against Jehovah’s Witnesses and Pentecostals. Denial of registration, which is on the increase, means that a religious group cannot rent or own property, open a bank account, publish literature or provide religious training. Foreign clergy are strictly prohibited.

The Orthodox Church apparently forced Russian television to refuse to carry a brief prayer service from the Vatican, necessitating the broadcast of the event by the Catholic cathedral in Moscow on its own cable system.

New Delhi: Renewed Hindu-Muslim violence claimed more than 500 lives in late February when a mob in a predominantly Muslim town attacked and firebombed a train filled with activists who had visited the shrine of Ayodhya. Ten years before a Hindu mob had destroyed a sixteenth century mosque built by the Mogul emperor Babu because it had supposedly been built over the birthplace of a Hindu god, Lord Ram. Many of the Hindu extremists who praised the mosque’s demolition are now wielding political power in India.

The Hindu nationalist party, in coalition with minor parties, holds power in India’s parliament. The federal minister of education, Murli Manohar Joshi, is vigorously promoting a new Indian history curriculum that celebrates Hindu culture and bravery and severely criticizes the Muslim Mogul emperors, who built the Taj Mahal. A textbook calls Muslims “invaders” and calls upon students to emulate “Hindutva,” or Hindu spirituality in opposition to secularity. Mr. Joshi has also allocated funds to teach such “Hindu sciences” as astrology. Indian historians have denounced the new textbooks for their sectarian biases, but Joshi condemned them as “academic terrorists.”

India’s largest-circulation news magazine, *India Today*, has called the mood today “the return of the militant Hindu,” and has exposed its near control of the media and the vibrant film industry. Crackdowns on journalists who expose Hindu extremism are anticipated by human rights groups.

Indian novelist Pankaj Mishra wrote in *The New York Times*, “What was once quickly identified as unreasonable and aberrant – Hindu majoritarianism – enjoys a growing influence and legitimacy as the ruling ideology of the Indian government.”

Singapore: The government has banned the wearing of Muslim head scarves in the nation’s ten Muslim independent schools. Those who resisted were expelled. Some Muslim activists have threatened to take the government to court, but Muslim religious authorities have encouraged children to obey the laws. Muslims, mostly ethnic Malays, are a small minority in this Chinese-dominated city-state of four million. The government emphasized the importance of attending public schools as a symbol of harmony. But critics charge that the government has also been promoting Confucianism and Chinese language and culture in the public schools. All religious

clothing and religious symbols are banned.

Vatican City: The Vatican announced on February 16 that it would open some of its prewar archives but would not make available documents on Pope Pius XII’s World War II activities for at least three more years. Jewish leaders, scholars and historians expressed dismay at the continuing delay in the release of documents central to an understanding of the Vatican’s role in global politics and diplomacy during the Holocaust.

Pope John Paul II is the only individual with the authority to open the archives, and he seems bent on canonizing Pope Pius XII. The Vatican statement said the archives would be opened “to put an end to unjust and ungrateful speculation,” a comment obviously aimed at a spate of critical books on the papacy and its World War II relationships.

Some scholars worry that Vatican documents would be released selectively to show the papacy in a good light. The Vatican announcement was a red flag to critics. “We want historians to know the great activities and assistance by Pius XII toward many prisoners and other war victims, including those of any nation, religion and race.” Vatican spokesman, Joaquin Navarro-Valls pleaded for more patience, saying that Vatican files were haphazardly catalogued and still in poor shape, fifty-five years after the war ended.

Books

The Best of “The Public Square” Book Two, by Richard John Neuhaus, Eerdmans, 246 pp., \$14.00.

Neuhaus is an ecclesiastical version of William F. Buckley, Jr. and George Will. That is, he is glib, polysyllabic, given to ruminations on every subject imaginable. The trouble is, he is wrong on every church-state issue. He reviles pluralism, and regards separation of church and state as a myth and as a roadblock to his theocratic designs.

Reading these 32 essays will give one an insight into the modern conservative (dare we say pseudo-conservative?) mind. Intolerant, contemptuous of religious and cultural diversity and always on the prowl for dissent and heresy, Neuhaus is a throwback to another era. It’s too bad he delayed his conversion from Lutheranism to Roman Catholicism until his new faith had become diverse, pluralistic and at least theoretically committed to the modern concepts of justice contemplated and ratified by the Second Vatican Council. He would have been much happier in an earlier era before all these new and bothersome concepts of tolerance and plurality emerged.

Neuhaus is worth reading, if only to gain an insight into the Religious Right mind.

— Al Menendez

Recommended Reading

“What Would Jesus Have Done?” is the title of historian Daniel Jonah Goldhagen’s 25-page article in the January 21, 2002, *New Republic* reviewing ten recent books about Pope Pius XII, the Catholic Church, European anti-semitism, and the Holocaust, some of which have been reviewed in this newsletter.

-- Edd Doerr

The Popes Against the Jews: The Vatican's Role in the Rise of Modern Anti-Semitism, by David I. Kertzer, Alfred A. Knopf, 355 pp., \$27.95.

Kertzer, author of the critically-acclaimed *Kidnapping of Edgardo Mortara* in 1997, has amassed a great deal of historical evidence of modern anti-Semitism. This particularly occurred in the nineteenth and early twentieth centuries, according to the author.

While admiring recent papal efforts to combat anti-Jewish prejudice, Kertzer criticizes "the very recent attempts by the Vatican to rewrite its own history of dealings with the Jews."

Kertzer found that the Catholic press and hierarchies in Italy, France, Germany and Austria were especially prone to political anti-Semitism that was rooted in theology.

Kertzer writes, "If I argue in these pages that the Vatican's denial of Church responsibility for anti-Semitism is belied by the facts, that the institutional Church, from the popes on down, played an important role in the development of modern anti-Semitism, I do not mean to suggest that the Roman Catholic Church is alone to blame for the Holocaust. Such a conclusion would be ludicrous. After all, Germany had more Protestants than Catholics, and we know that anti-Semitism was widespread among Protestants as well."

Kertzer's book, while valuable, seems highly selective in its interpretation of historical evidence, since some Catholic countries seemed to have resisted anti-Semitism.

— *Al Menendez*

Farewell to Christendom: The Future of Church and State in America, by Thomas J. Curry, Oxford University Press, 143 pp., \$25.00.

Thomas J. Curry is a bishop of the Roman Catholic Archdiocese of Los Angeles and author of a highly praised 1987 book, *The First Freedoms*, which depicts the scope of church-state relationships in colonial America. He now argues, though his is not an original argument, that the First Amendment is a prohibition on governmental intervention in religious matters, not the granting of religious rights to the citizens.

Curry states his position succinctly: "Understanding that the First Amendment prohibits government from exercising power in religious matters – either by promoting government-sponsored religious exercises, or, conversely, by walling off religion from the public sphere – will liberate America from the numbing controversies that have troubled it for decades. For religious believers, a clear comprehension of government's lack of competence and authority in religious matters will lead to the rediscovery that religion is above all a matter of the spirit, not of the secular authority." That may be too optimistic an assertion, since sectarian special interests will continue to press their claims in the public square.

Curry also defends the concept of a secular state. "As the Supreme Court has rightly declared, a secular state is not ipso facto an anti-religious state. By refraining from interference in religious matters, government respects the God-given freedom of individuals to follow their own chosen religious beliefs and practices."

Curry criticizes those who think government can aid any and all religions, as long as it shows no preference between or among them. "To argue that government can exercise power in religion on a nonpreferential basis is not only to misunderstand the First Amendment but also to misinterpret human experience, history, the nature of religion, and the view of human nature that helped generate the amendment."

Bishop Curry has written a provocative if brief essay on the First Amendment, especially when he asserts that the Catholic Church has "abandoned Christendom," the "sixteen-hundred-year cooperation between sacred and secular power to promote the common good."

— *Al Menendez*

Sacred Places, Civic Purposes: Should Government Help Faith-Based Charity? Edited by E.J. Dionne, Jr. and Ming Hsu Chen (Washington, DC: Brookings Institution Press, 2001), 354 pp., \$20.95 paper.

This weighty anthology of 21 essays and assorted "comments" from specialists emerged from a December 1997 conference funded by the Pew Charitable Trusts and sponsored by the Brookings Institution, the publisher of this volume.

The book, edited by the always interesting journalist E.J. Dionne, Jr. and researcher Ming Hsu Chien, generally succeeds in its objectives. That is also part of the problem, since most contributors emphasize the accomplishments of religious-based charities. No one denies that religious-generated charities have accomplished good things for the needy and marginalized members of society, and have done so for centuries. The basic question, treated in part six of this book, is whether they should be funded by government, and at what level of funding, and whether they should be held accountable to certain community standards and legal requirements appropriate to a secular, democratic society.

Even John DiIulio Jr., the first director of the now rather shaky White House office charged with the implementation of new administrative and congressional decrees in this field, warns, "While faith-based organizations can supplement and strengthen public service programs, they can by no means substitute for government support."

Constitutional and practical problems receive their due consideration in excellent essays by David Saperstein and Melissa Rogers. Saperstein notes that "direct funding can exert a secular influence on religious organizations because government money comes tied to government rules, regulations, restrictions, audits, monitoring and interference. Saperstein also argues that "charitable choice will do little to help and will undoubtedly harm the recipients of social services" primarily because "the religious rights of recipients will be compromised as they are forced to turn to programs with religious content to receive government-supported services."

Melissa Rogers writes that "the fundamental divisions" over charitable choice "witness the clash of multiple visions of religious freedom." And *The New York Times'* Peter Steinfels observes, "The challenge of maintaining religious communities with distinctive and compelling identities will not be met by any program to bolster faith-based initiatives with government aid."

-- *Al Menendez*

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