AN ABSTRACT OF THE THESIS OF

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The Catholic Church's Position on the Prayer in Public Schools Issue

Abstract approved: _____

It is evident that the 1948 decision of the Supreme Court declaring released time for religious instruction on public school property unconstitutional was viewed by some Catholic Church officials as an affront to the institutional church. Subsequent decisions, e.g., Engle and Schempp, were seen as hostile to religion in general and overstepping the view of Madison, author of the First Amendment, that there should be a line of separation between church and state.

Public outcry for an amendment to the Constitution was fueled by religious leaders of all major Christian faiths and peaked in the mid 1960s with the Becker Amendment. Still, some insisted that the judiciary was trying to destroy the religiousness of America, a contention that is false and held only by a minority today. The wisdom of the Court's decisions became clearer as denominational thinking, Catholic, Protestant, and Jewish, was revealed and the rational and logical mind of the Court became apparent.

Few argue against the proposition that religion is an important part of American culture and was a major factor in the formation of the

country. Arguments over how to approach denominational religious instruction in a pluralistic society festered until the solution of separation commanded by the First Amendment was enforced by the Supreme Court. The compromise satisfied few, angered many, and protected those who would be hurt and confused the most--the children.

Concern by fundamentalists over the godlessness of schools in the United States can be relieved through understanding that religion begins in the home, and what religiousness is carried to school in the hearts and minds of children can be neither hindered nor helped by the secular education, therein attained. Americans are religiously free. Instruction in religion can be given and learned or refused without fear of being ostracized. No more peaceful way has been found to ensure equality and fairness among the faiths than to adopt the policy set down by the Court separating church and state in the public schools.

"Prayer is not overcoming God's reluctance; it is laying hold of His highest willingness."

Richard Chenevix Trench.
British archbishop and author
1807-1886

THE CATHOLIC CHURCH'S POSITION ON THE PRAYER IN PUBLIC SCHOOLS ISSUE

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A C K N O W L E D G M E N T S

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P R E F A C E

After the United States Supreme Court's decisions banning prayer and Bible reading from the classrooms of public schools in America, church officials, in many cases, expressed outrage and indignation that the high court of the land would bar God from the schools.

Careful examination of the reasoning of the Founding Fathers for wording the First Amendment and Constitution as they did will give some idea why the Court decided the cases in favor of outlawing government sponsored school prayer. The persecution of religious people, especially the Catholics who were considered unacceptable by many protestants, makes it easy to see that church and state are institutions that must be kept from combining.

The Supreme Court offers compromise. From the Court's interpretation of the First Amendment comes a spirit of acceptance and cooperation of all religious beliefs in a country that is full of people with differing religious backgrounds. Americans can take pride in their wide-ranging religious differences, their ability to work with one another for the improvement of the country, and at the same time refine and incorporate individual talents for the betterment of the most heterogeneous political group in the world.

Most Catholic officials were able to see that the Court's decisions, instead of being hostile to religion, actually enabled a country with a pluralistic citizenry to grow and become educated in American traditions. The interpretation by the Supreme Court of the First Amendment protects all denominations from a ceremonial, politically motivated event promoted and fostered by state institutions. Although no outright force was used to make students attend religious events, the pressure to conform certainly amounted to coercion. Protestants tended to agree and, in some cases, were generally quicker to accept the Court's reasoning.

Finally there comes a time in current events that shows that perhaps nothing has been learned as church organizations once again push for an amendment to allow for prayer and religious instruction in the public schools. Protestants and Catholics joined in the early 1980s to encourage a prayer amendment supported by the president.

"Heaven is never deaf but when man's heart is dumb."

Francis Quarles
English poet
1592-1644

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CHAPTER ONE

THE SUPREME COURT'S DECISION ON CEREMONIAL SCHOOL PRAYER . . .

AMERICANS DENIED

"I have lived to thank God that all my prayers have not been answered."

Jean Ingelow
English poet and novelist
1820-1897

On April 3, 1962, the Supreme Court of the United States listened to arguments for and against a twenty-two word prayer adopted and recommended to the boards of education in New York State by the New York State Board of Regents. The Court declared the Regent's Prayer, as it would come to be called, unconstitutional because it was a state promoted aid to religion.

Various school boards adopted a prayer that said, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers and our Country." The Board of Education of Union Free School District Number 9, New Hyde Park, New York directed that the school district principal "cause the [Regent's] prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day."

The parents of ten pupils challenged the constitutionality of the state law authorizing the school district to direct that the prayer be said. The practice, according to the parents, was contrary to their religious beliefs and those of their children. Such actions, they said, violated the first clause of the First Amendment, "Congress shall make no law respecting an establishment of religion. . . ."

The Supreme Court, in a six to one decision (Justices Felix Frankfurter and Byron White took no part in considering this case), agreed with the parents, and on June 25, 1962 issued an opinion that began a controversy over whether prayer should be allowed in schools. Forty-nine "ill conceived and injudicious" bills were submitted to Congress to amend the Constitution. Their intent was to allow prayers to be said in school![1] Perhaps what may have been a more appropriate question, however, was whether the government had the right to force school children to pray. The controversy pitted religious leaders on one side agreeing with the Supreme Court's decision to abolish public school prayer against those opposed to the school prayer ban.

Among those in the controversy was the Roman Catholic Church. Leaders rallied on both sides of the issue even though a unanimous official stand was never taken. The bishops in the United States were, of course, concerned with the moral development of students in public schools, but the Court's judgement had practically no effect on the Church's parochial schools. After all, prayer had always been a part of Catholic school policy. It was, and remains, a requirement and a high priority.

The Regent's Prayer was said aloud every day, but students, with their parents permission, were excused from taking part in the ceremony. The only people who were obligated to say the prayer were the teachers, and none of them openly complained.

Justice Black, writing the opinion of the Court, said that the daily class invocation of God's blessing is a religious activity, (The

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[1]Editorial, "A Prayer Amendment?," America, 8 September 1962, 685.

New York Court of Appeals even conceded the religiousness of prayer, but granted an exception to the argument against it because of the United States' spiritual heritage.) The opinion went on to hold that it was no part of the role of government to compose official prayers for any group of Americans to recite as part of a religious program carried on by the government. The establishment clause of the Constitution is nonreligious. It is neither religious nor antireligious, for the mixture of religion and government tends to destroy government and degrade religion.

Besides the controversies over and about religion in foreign countries, Black stated in his opinion that at least eight of the thirteen colonies at the time of the Revolutionary War had established churches, and there were established religions in four of the remaining five. In Virginia, Presbyterians, Lutherans, Quakers and Baptists gained enough support that Episcopal Church members were reduced to a minority of the citizenry. Finally, the Virginia Bill for Religious Liberty was enacted, thanks to Thomas Jefferson and James Madison, both of whom claimed to be members of none of the factions.[2]

The Court decided that New York's prayer program officially established a religious belief, the belief in God. The ceremony was considered inherently religious. The establishment clause of the First Amendment, the Court ruled, is disregarded with the enactment of laws establishing an official religion. Anytime the power of the government

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[2]Engle v. Vitale, 370 U.S. 421, 428 (1962).

is used for religious purposes, religious minorities are discriminated against by excluding them from the affairs of an activity whether that activity is business, learning, teaching, job hunting, or any one of a number of others.

Justice Potter Stewart was the only justice to dissent. He cited all of the honor and recognition that the Deity receives throughout the official proclamations of the United States and by United States officials as reasons that the use of the Regent's Prayer should have been allowed to stand. Presidents since George Washington have acknowledged the dependence of the United States upon God. The Declaration of Independence ends with "And for the support of the Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives our Fortunes and our sacred Honor." School children, Justice Stewart said, should be allowed to pray at the start of each school day.[3]

Christian Century, in an editorial, noted that people like Francis Cardinal Spellman and Billy Graham can give a quick response to an important Supreme Court decision like the one in Engle v. Vitale. The danger then becomes that churchmen will act without thinking.[4]

Christian Century solicited the opinions of protestant leaders. Thirty-one from 12 denominations approved the following:

We are in agreement with the Supreme Court that "It is

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[3]Ibid.

[4]Editorial, "Churchmen Support the Supreme Court," Christian Century, 18 July 1962, 882.

> neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance." We call upon the American people to study this decision prayerfully and without political emotion. We believe the court's ruling against officially written and officially prescribed prayers protects the integrity of the religious conscience and the proper function of religious and governmental institutions.[5]

The Jesuit magazine America, in an editorial opinion, agreed with the statement of the 31 protestant leaders. The concern over the amendment to the Constitution would never reach the root of the problem. Ambiguities in the First Amendment, suggested America, would have to be clarified. America's editorial asked the question whether there are two restraints on government against establishing a religion and prohibiting the free exercise of worship, or if there are separable limitations? The position taken by America was that the Court caused a lot of controversy in the latter area. It failed to make clear whether government, through the composition by the board of regents of a prayer, violated the establishment clause of the First Amendment, or if the First Amendment was violated because the school children were

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[5] Ibid.

required to pray, thus prohibiting them of their right of free exercise of religion or having no religion whatsoever. Justice Hugo Black said in his opinion, however, that the prayer clearly violated the establishment clause. Both parties agreed that it was religious.

Three schools of thought existed. First was the wall theory that, simply put, says that there is a wall erected between church and state and neither, in theory, should acknowledge the other. Second is a literal interpretation that the amendment prohibits only Congress from establishing a religion. Last is a middle position that no wall exists, and an interrelationship of government and religion is recognized and is controlled by custom and compromise. America called for clarification and education. People were urged to study the facts of the case.[6]

Less than a year after the Court decided the Engle case, the justices were asked, and agreed, to hear a case from Pennsylvania. Once again the breadth of the First Amendment was to be explored. The case was School District of Abington Township, Pennsylvania, et al. v. Schempp et al. Arguments were heard on February 27-28, 1963.

The practice in Abington Township was to read at least ten verses of the Bible without note or comment at the beginning of each school day while the school children were in their homerooms. After the Bible reading, the Lord's Prayer was recited. Any child was excused from the practice with a written request from the child's parent, but the children were required to wait in the hall outside the classroom.

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[6]Editorial, "A Prayer Amendment?," America, 8 September 1962, 685.

According to Lewis and Sidney Schempp, the First Amendment to the Constitution of the United States banned prayer from public schools. Their children, Roger, Donna, and Ellory, brought the case to district court to have the practice of Bible reading and prayer stopped. The family were members of the Unitarian Church in Germantown, Pennsylvania that objected to the religious practices enacted by the Pennsylvania lawmakers. The Schempps decided to keep their children in the room while the service was conducted because they wanted to prevent their children from being labeled "odd balls". Further, they were afraid that the children in the class would think that any religious differences were atheistic, and that atheism was equated with being un-American and pro-Red. In addition, announcements were given immediately following the prayer service and some of these announcements would be beneficial to all children.

Expert testimony was used by both sides in the argument. One expert said that reading the Bible without note or comment could be psychologically harmful to children. Another expert said that he believed that the Bible was nonsectarian among Christian faiths, and that the Holy Bible included Jewish Holy Scriptures.[7]

The Court struck down the practice taking place in Abington Township "The reading of the verse, even without comment, possesses a devotional and religious character and constitutes, in effect, a religious observance." Just because pupils were excused from the

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[7]School District of Abington Township, Pennsylvania, et al. v. Schempp et al., 374 U.S. 203, 209 (1963).

service, the nature of the ceremony was still obligatory because of the ceremonial format and the crucial announcements following the religious exercise. The Court also said that the law required the reading of the Holy Bible and the Bible is a Christian document. The state, thereby, preferred the Christian religion. The intention was clear on the part of the state to introduce a religious ceremony into the public schools.

In a companion case of School District of Abington Township v. Schempp, Murray v. Curlett, the Supreme Court heard and decided in favor of a petition protesting a 1905 Baltimore rule providing for opening exercises in schools consisting of reading, without comment, a chapter from the Bible. The complaint was filed by Mrs. Madalyn Murray and her son William J. Murray III, both professed atheists.

The Supreme Court agreed with the arguments presented in the case that the history of man was inseparable from the history of religion. Mankind had always been religious. Ceremonies and rituals had been used from the beginning of recorded history. Evidence exists in wall paintings and artifacts that prehistoric man believed in a deity. The fact was also recognized that most of the Founding Fathers were devout Christians. Pointing once again to the fact that religiousness entered into everything from the oaths for the president to oaths for witnesses in a court of law, and that 64% of the population had church memberships, the justices said that religious freedom was also imbedded in the American tradition and must be protected.

The Court, said Justice Tom Clark, had always rejected the contention that the establishment clause forbids only governmental

preference of one religion or another. Part of the decision from an earlier case, Everson v. Board of Education, was recalled in which the justices said that the government is prohibited from passing laws aiding one religion or all religions, or showing preference for one religion over another.

In Everson v. Board tax subsidized bus transportation for parochial school children was approved by the Court even though the beneficiaries were all parents of Catholic school children. There were other private schools in the district, but they were money-making institutions and reimbursement for bus rides for children going to these schools was forbidden.

In Everson Justice Hugo Black said,

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of

religion by law was intended to erect "a wall of separation between church and state."[8]

On June 17, 1963, relying heavily on the Everson case, the Court found in favor of Schempp and Murray by a vote of eight to one. The controversy over the school prayer issue heated up again.

After the Court's ban on ceremonial school prayer was announced, the State Board of Education in Alabama ordered daily Bible reading as part of a course of study in all schools. The State Superintendent of Education in South Carolina publicly notified teachers that they might "feel free" to continue classroom religious exercises. A bill passed in the Florida legislature allowed county school boards to decide what to do about school prayer. Delaware's attorney general said that daily recitation of the Lord's Prayer and Bible reading "may and should continue" in the public schools. Texas, Arkansas and Vermont operated on the assumption that religious exercises in public schools were acceptable so long as no one was forced to participate by law or school board regulations.

Adhering to the Court's decision, California's legislature allowed schools to make use of the Bible and religious literature in regular courses of study. New York's State Education Commissioner, James E. Allen, Jr., banned reading or recitation from the Bible in public schools. He also pointed out that the fourth stanza of America (asking

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[8]Everson v. Board of Education, 330 U.S. 1, 15-16 (1947).

for God's protection) was forbidden when sung or recited as a devotional exercise.[9]

Christian Century stated in an editorial, again, that the Supreme Court had made a good decision. Religion had been, for a long time, invading an area of government that should have been closed to it by the First Amendment. Additionally, according to the Christian Century, "The power of the state to coerce Bible reading and corporate prayer in public places is only a step removed from the state's power to prohibit Bible reading and corporate prayer in all areas of the common life."

It was reported that a group of 25 lawyers, editors and religious leaders had met in New York City. The group was made up of protestants, Catholics and Jews, and was meeting under the auspices of the National Conference of Christians and Jews. The members discussed the implications of the Supreme Court decision in Schempp banning Bible reading in public schools. They issued the following statement:

> 1. We treasure the guarantees in the First Amendment of the Constitution and appreciate the role of the Supreme Court in protecting religious liberty. We are obliged to respect and heed this decision. 2. The decision does not endorse irreligion or atheism in America. We see no need to amend the Constitution or change the role of the Supreme Court. 3. Although devotional exercises are forbidden, the Court clearly allows for the objective study of religion and particularly of the Bible in the public school. Citizens should encourage public school

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[9] "School Prayer: What's Scheduled this Autumn," U.S. News and World Report, 19 August 1963, 11.

authorities to explore the possibilities suggested by this decision to include within the public school curriculum an understanding of the role of religion in society, culture and history. 4. We advocate that in the pluralistic society religious and civic groups use the instrumentality of dialogue to resolve conflict. 5. The decision challenges parents and religious leaders to shape and strengthen spiritual commitment by reliance on voluntary means and to resist the temptation to rely on governmental institutions to create religious conviction.[10]

Ten months later, some conservative leaders, political and religious, were still espousing that prayer should be allowed in public schools. Alabama's governor, George Wallace, said "We will stand up for God! We will stand up for America."[11] Archbishop Fulton J. Sheen said that although he supported no constitutional amendment, he was still fearful for a country that outlawed prayer in public schools. He suggested that at least the prayer carried in every House member's pocket, "In God We Trust," be allowed."[12]

Billy Graham and fundamentalist Carl McIntire were two prominent protestant preachers who remained opposed to the Supreme Court's

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[10]Editorial, "The Court Decides Wisely," Christian Century, 3 July 1963, 851.

[11]The Constitution, "Does Schoolroom Prayer Require a New Amendment?," Time, 8 May 1964, 62-64.

[12]Hearings Before the Committee on the Judiciary, House of Representatives, Eighty-eighth Congress, School Prayers, Part I, 825-842.

decision on prayer and Bible reading. Archbishop Sheen and James Francis Cardinal McIntyre of Los Angeles were only two of several Roman Catholic prelates opposed to the decision. Father William Dubay, a 29-year-old priest in Cardinal McIntyre's diocese, petitioned Pope Paul VI asking that the cardinal be removed because of "gross malfeasance in office". Father Dubay said that Cardinal McIntyre failed to show moral leadership on racial and social issues when he had earlier denied clergy permission to take part in civil rights campaigns. Father Dubay criticized Cardinal McIntyre early in June for the conservative stand taken on the prayer issue and was immediately relieved of his administrative duties.[13]

On August 28, 1990, Bishop Steven E. Blaire, Moderator of The Curia-Chancellor, Archdiocese of Los Angeles, said he believed that Father Dubay had been nonfunctional as a priest for many years. Bishop Blaire indicated that it would be difficult to find Father Dubay for a comment on the actions taken in the early 1960's.[14]

Nearly all protestant denominations had approved of the Court's decision on the prayer issue. The three major Lutheran bodies took the Court's side. Baptists, Presbyterians, Unitarian Universalists, Seventh Day Adventists and the Episcopal National Council had gone on

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[13]CHURCH & STATE, "A Tide Reversed," Time, 19 June 1964, 60-65.

[14]Bishop Steven E. Blaire: Telephone conversation with the author.

record supporting the Court. Almost all Jewish organizations also approved of the Court's decision.[15]

By 1964 the foremost amendment among over 150 offered that would allow reinstatement of state sanctioned public school prayer being considered in a congressional committee was offered by Representative Frank J. Becker (R-NY). The Becker Amendment said:

I. [H.J. Res. 693, 88th Cong., 1st sess.]

"JOINT RESOLUTION proposing an amendment to the Constitution of the United States Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

ARTICLE--

"SEC. 1. Nothing in this Constitution shall be deemed to prohibit the offering, reading from, or listening to prayers or biblical scriptures, if participation therein is on a voluntary basis, in any governmental or public school, institution, or place.

"SEC. 2. Nothing in the Constitution shall be deemed to prohibit making reference to belief in, reliance upon, or invoking

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15 Time, 19 June 1964, 60-65.

the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place, or upon any coinage, currency, or obligation of the United States.

"SEC. 3. Nothing in this article shall constitute an establishment of religion.

"SEC. 4 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."[16]

Most of the Catholic organizations that submitted material to the Judiciary Committee were against changing the Constitution. The basis for their arguments was the monumental task of answering questions that would be raised by such an amendment. For example, would an amendment solve the problem? Is the ideal balance of church and state attainable? Should part of the battle ground between church and state be public schools? If, as Congressman Becker suggested, there was no problem with the system before Engle, how did Engle make its way to the Supreme Court?

Congressman Becker left many questions unsatisfactorily answered. For example, who would choose the prayer to be said in the public schools? Congressman Becker's idea was that the school board would

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[16]Hearings Before the Committee on the Judiciary House of Representatives, Eighty-eighth Congress, School Prayers, Part I, 22.

decide. This proposal drew considerable criticism because it was pointed out that Becker, a Catholic, would be, by his amendment, allowing Catholics to be told in many cases to say a prayer chosen by a board of education that was completely alien to Catholicism. Utah, for example, predominantly Mormon, would most likely have a majority of Mormon-run schools controlled by Mormon boards of education. Another suggestion was to have the superintendent choose the prayer. This would tend to cause the superintendent to be chosen for his religious principles rather than his ideas on education, and education would be the poorer for it.[17]

Institutions such as the National Catholic Welfare Conference, Catholic Telegraph newspaper, Boston College, and the Catholic Press Association opposed enactment of the Becker Amendment. Their main premise was that no amendment was needed. The prevailing opinion was that the Bill of Rights was sufficient to take care of the public school prayer controversy. The First Amendment, as framed by Madison and adopted by Congress, had been correctly interpreted by the Supreme Court, they apparently believed. The Bill of Rights was too important a document to jeopardize by amending it.[18]

The Buffalo Diocesan Catholic Council on Civil Liberties, on April 25, submitted its resolution of August 4, 1963 supporting the Supreme Court's decision against the Regent's Prayer. The Council gave no reason for its opposition to the Becker Amendment. It simply enclosed the June 1963 resolution of the National Conference of Christians and

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[17] Ibid., 235-239.

[18] Ibid., Part III, 2114-2561.

Jews (NCCJ). In it was stated the fact that Joseph Cardinal Ritter of St. Louis, Missouri called for "compliance with the decision [of the Court]." Further, Ritter and several Catholic organizations said that there was a challenge to those who were religious to strengthen spiritual values through voluntary rather than governmental means. The NCCJ's resolution went on to say that "Pope John XXIII, the universal declaration of human rights of the United Nations, and previous Supreme Court decisions have all held that the primary responsibility in the education of children belongs to the parents. Government, therefore, has no right to teach religion to a child." Since there was no prohibition of objective study of religion, the NCCJ supported the Supreme Court and said that by the decision in Engle religious liberty was protected.[19]

The editorial of The Catholic Reporter of the Kansas City-St. Joseph, Missouri Diocese, May 8, 1964 was submitted to the congressional hearings. The decision of the Court in Engle, it said, was to more completely define the role of religion and government. The editorial supported the Court's decision, and argued the Becker Amendment would only blur the distinction between religion and government made by the Court in Engle. Amending the Constitution could make people once again believe that public schools were attending to everything. It is clear, the editorial pointed out, that parents could be lulled into thinking that the schools would be able to handle issues

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[19]Ibid., Part II, p. 1119, 1120.

in child development that parents should and were more capable of handling. The Catholic School Chronicle newspaper in Toledo, Ohio, May 1, 1964, added to the sentiment that more questions would be raised than answered by a constitutional amendment allowing prayer in schools.[20]

Lt. Col. Raymond J. Fening, President, Men's Society of St. Mary's Catholic Church, Middletown, Ohio, testified in favor of a constitutional amendment to overturn the Everson and Schempp decisions. The society proposed that any amendment should say simply "We are a religious people whose institutions presuppose a Supreme Being."[21] The statement, practically speaking, would have meant almost nothing. The Catholic War Veterans endorsed the Becker Amendment. They said that they believed a majority of Americans were being deprived of a right to pray.[22]

The Commonweal called the Becker Amendment one of no merit. "The idea of a Constitutional Amendment--an amendment to the First Amendment--to bring prayer back into the school strikes us as dangerous, a very dangerous idea," it said.[23] Allowing government to furnish a prayer and then legislate that it be said would soon make local and national political leaders responsible for the religiousness of the country.

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[20]Ibid., Part III, p. 1810, 2109 & 2110.

[21]Ibid., Part II, p. 1632 & 1633.

[22]Ibid., Part III, p. 1791.

[23]Editorial, "The Prayer Amendment," The Commonweal, 8 May 1964, 188-189.

America reported that in the June 6 publication of the Catholic newspaper Ave Maria, 48 Catholic publications were surveyed, and 35 were opposed to the Becker Amendment. America was among those opposed.[24] Again, the First Amendment was adequate to keep politics out of school prayer.

Congressman Becker thought that the most unkind remark was from the National Catholic Welfare Conference's legal department urging great caution when trying to modify the First Amendment. Becker refused to believe the results of the survey in Ave Maria, and on June 24, 1964 sent a letter to all 229 American bishops asking for their opinion on his amendment. By July 9 only 35 replies had been received, most apparently negative. Becker sent out a follow-up letter to the bishops. A spokesman for Becker said that hopefully the responses would be "slow--very slow--in coming."[25] It was becoming obvious that the zeal for the Becker Amendment was weakening.

America called the Becker Amendment well meant, but ill-advised. Further, it recommended that the Catholic Church seriously consider whether it should commit its reputation to the Becker cause.[26]

When hearings began on April 20, 1964 on the Becker Amendment, some congressmen said that mail ran about 20 to 1 in favor of the amendment. In June it was almost the same ratio against it. Time

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[24]"CURRENT COMMENT, Mr. Becker and the Bishops," America 25 July 1964, 79.

[25]Ibid., 79.

[26]Ibid., 79.

magazine reported that at least 20 of the 35 members of the committee would vote against the Becker Amendment. Emanuel Celler, the chairman, said of the House Judiciary Committee that when hearings began there had been a wave of what he called patriotic piety. As churchmen began pointing out how congressmen could be embarrassed if they tried to change the Constitution, support for the Becker Amendment waned.[27]

The Commonweal said that the findings of the Court, especially in the Engle case, were sound ones. The public schools' function is anything but advocating religion.[28] Additionally, The Commonweal said that attention should be paid to Justice Clark's note. "Nothing we have said here indicates that such study of the Bible or religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment."[29] (See School District v. Schempp, 374 U.S. 203, 225.)

Advocating the objective study of religion, The Commonweal all but suggested that the public schools study the possibly of teaching religion in an academic manner consistent with the ruling of the Court instead of in religious courses.[30] There was no intellectual content to the Regent's Prayer, no religious meaning. With no meaning and only symbolic exercises in piety performed, more harm than good was done.

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[27]Ibid.

[28]Editorial, "The Prayer Amendment," The Commonweal, 8 May 1964, 188-189.

[29]Ibid.

[30]Ibid.

The future of religion in a secular environment is in real courses in religion.

Much was made of the Court's decision in Engle. According to Father Drinan, Boston College,

> I think we have an opportunity here. Instead of mourning the demise of school prayer, we should be rejoicing in the Supreme Court's very clear suggestion that the study of comparative religion, of the history of religion and its relationship to the Bible for its literary and historical qualities, is not in violation of the Constitution. It has been indefensible for public schools not to have been teaching about religion. Without a knowledge of Christianity and Judaism, of Islam and Buddhism, how can today's children understand the world and how it came to be?[31]

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[31]Arlene and Howard Eisenberg, "Why Clergymen are Against School Prayer," Redbook, January 1965, 104.

CHAPTER TWO

THE FOUNDING FATHERS

CHRISTIAN, RELIGIOUS, PRACTICAL, CAUTIOUS

"I believe I should have been swept away by the flood of French infidelity, if it had not been for one thing, the remembrance of the time when my sainted mother used to make me kneel by her side, taking my little hands in hers, and caused me to repeat the Lord's Prayer."

John Randolph
American Statesman
1773-1833

How had a country with a document like the Constitution of the United States progressed from a Bill of Rights ensuring freedom of religion to what some civil and religious leaders called banning God from the classroom? Was it possible, as Francis Burch, Baltimore City Solicitor who formed the Constitutional Prayer Foundation stated, that "In New York, kids can't sing the fourth verse of 'The Star-Spangled Banner' in school any more because it mentions God." That statement, by the way, was only partially true. Could it be, as Burch continued, that "Pretty soon they [the Supreme Court] won't permit chaplains in the jails. . . . Tax exemption for churches will go next."? Burch said that he believed that the American people would become used to the idea of losing their religious freedoms and

allowing them to be taken away one by one. Many people thought that Burch was right.[1]

To look accurately and objectively at the way in which the events transpired, a development of the politics and attitudes of the past needs to be briefly outlined. As may be seen, the laws laid down by the Founding Fathers that were enacted as a protection of religious groups, minorities included, may indeed have worked as they were meant to work.

I

For centuries there was, for all practical purposes, only one church. The general acceptance of religious authority came to an end in 1517 when Martin Luther demanded reform in the Roman Catholic Church. At Luther's death, the protestant Reformers left the Church and started religious practices of their own, saying that the Roman Church had lost its way, that the new movement was a fresh approach to theology, and that the Reformation promised tolerance of religious differences. Very little was tolerated, however, and the Protestant Reformation ushered in numerous new denominations.

In England King Henry VIII found little use for the Catholic Church, other than its land and property, and incorporated his church to fit dogmatically with that of Rome. The wealth of the Church was Henry's main objective. He also saw an opportunity to reduce the power of Pope Paul III and his successors. The new Anglican Church held that the monarch of England would be the head of this church.

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[1]Eisenberg, "Clergy Against Prayer," Redbook, Jan. 1965, 98.

Thus the Church of England, or the Anglican Church, was formed.

In short order Henry's church became so hated that a new way of religious expression was sought and founded. To escape the persecution of the Church of England, those seeking to separate from or to purify the Church of England journeyed to the New World that had been discovered by Christopher Columbus 128 years before. The Pilgrims and the Puritans began lives free from the formalism, ceremony and hierarchy of the Anglican Church. Their ideas were to make men and women lead an exemplary lifestyle with God as the sole confessor, their Bible as the strictly interpreted word of God, and a code of behavior that allowed little self-expression.

The Puritan mode of life soon became the accepted norm of behavior because the standards set by the Puritan clergy demanded that one work hard and live a good life. If everyone lived as they were supposed to live, by the Puritan Work Ethic, worked hard, lived a good life, and you belonged in heaven, God would bless them and their lives would be fruitful.

Standards of Puritan religiousness were based on physical and intellectual virtues. When a member of the community worked hard, he would be rewarded. So long as he was an established and upstanding citizen, others in the community would trade with him and he would lead an active social life. It was this attitude that would eventually develop the belief in Manifest Destiny, the presumption that the new world should be conquered and enjoyed by the settlers.

Conversely, if a person was unable to work, or was unacceptable in the eyes of the community, he would most likely be shunned by the

rest of the people and was, therefore, relegated to a life of hard times. With the impoverished lifestyle of those who were rejected came the explanation from Puritan Church leaders that the outcast was displeasing to God and was unfit for Puritan society.

Any deviant form of religious expression brought down the disfavor of the Puritan elders. In some cases the religious practices of those deviants ended in the death of the person when he was accused of witchcraft. Any religious practice, in reality, differing from that of the established church in Massachusetts was at least questioned and almost certainly condemned.

The Puritans may have been religiously free from England, but the government still taxed the fruits of Puritan labor, and, for the next 156 years, the constant bickering between the New World and the Mother Country, and the economics of mercantilism became a cause of the American Revolutionary War. The vast resources of America were being revealed and turned the attention of religious leaders from things godly to practical economics and ways of exploiting God's gift to Americans for a place in world trade.

II

World history, thought, and philosophy played important roles in the development of the ideals for the formation of the Declaration of Independence, the Constitution, and the Bill of Rights. Events and philosophy from the beginning of recorded history were considered by those who drafted the integral documents leading to the formation of America.

Philosophy began developing ideas on the nature and meaning of life in the 6th century B.C. Philosophical reasoning bound by natural reasoning established correct rules and logical pattern for thinking. Philosophers, in general, accepted God, or at least accepted someone or something far superior to man.

In Eastern philosophy, Confucius (551-479 B.C.) believed that it was impossible to know the gods, and with this view, probably accidentally and more accurately than most philosophers describes God, because when an attempt is made to define God, He becomes something less than supreme and all encompassing. It is impossible to say what or who God is. Gautama Budda (563 B.C.?-483 B.C.), when asked if God existed, said nothing, and when asked what God is, he persisted in his silence. Budda's implication was that with any attempt to define God, that which is finally defined is something less than God because God is infinite and impossible to comprehend.

In the West Socrates (469 B.C.-399 B.C.) accepted a belief in God. According to Plato, in Plato and His Dialogues, Socrates talks of his service to God and how people should perfect their soul and then concern themselves with their bodily needs. Plato (427 B.C.-347 B.C.) said that there had to be something behind the gods of Greece. According to Plato, even Zeus, the king of the gods, had to have been created.

Aristotle (384 B.C.-322 B.C.) took Plato's ideas of a creator who had created the traditional Greek gods a step further. Aristotle considered and developed the idea of a Prime Mover. Intellectual pursuits of man, Aristotle believed, should be held to the highest good.

III

Aware then of the strengths of a church and weakness and failings of men, mindful of political and philosophical theories and beliefs, and of the events building up to the decision to break away from England, the United States was founded on the idea of a nondenominational government. The Founding Fathers were careful to consider religious implications when they drafted the system of government for the United States. Neither would the state interfere with religion, nor religion be allowed to interfere with the workings of government. So attuned were they to the importance of religious liberty that James Madison insisted on including it in the Bill of Rights, the first ten amendments to the Constitution. They were adopted by 1791, three years after the adoption of the Constitution.

The Founding Fathers of the United States were well aware of the great philosophers. Men like Thomas Jefferson, James Madison, Alexander Hamilton, John Adams and Benjamin Franklin studied the history, economics and culture of the world. They knew of the various philosophies governing other nations. The United States would be home to a most heterogeneous population as people came from around the world to settle in America. At the time, the leaders of fledgling America recognized the importance of a religion and man's relation to it. Almost all of the Founders knew that there were virtues in a religious group. Franklin went so far as to say that the teachings of Jesus were the best and most constant of all of the world's religions.[2]

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[2]Robert Michaelson, Piety in the Public School, (New York: Macmillan Co., 1970), 125.

Franklin, in his Proposals Relating to the Education of Youth in Philadelphia (1749), stressed how important it was to study history because it will

> afford frequent opportunities of showing the necessity of a public religion, from its usefulness to the public; the advantages of a religious character among private persons; the mischiefs of superstition and the Excellency of the Christian Religion above all others ancient or modern.[3]

He even moved, since the proceedings of the Constitutional Convention were deadlocked, that "henceforth prayers imploring the assistance of heaven and its blessings on our deliberations be held in the assembly every morning before we proceed to business." The motion failed with only a few voting in favor, but this tends to show the religious leanings of a man who molded and shaped the thinking of America.[4]

Jefferson wrote a bill for establishing religious freedom in Virginia in which he mentions that it is abhorrent to make a man contribute money in support of a teacher who professes a different religious persuasion. He also stated his belief in Almighty God and that men should leave the power over men's souls to God rather than legislate morality.

IV

Religion was a spiritual, highly emotional matter, and government was of a practical nature and primarily concerned with the physical

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[3]Richard P. McBrien, Caesar's Coin, (New York: Macmillan Co., 1987), 12.

[4]Donald E. Boles, The Bible, Religion and Public Schools, (Ames, Iowa: State University Press, 1961), 17.

well-being and cultural enrichment of the people. They were wisely prevented from mixing. Through the First Amendment, government was prohibited from controlling religion as much as religion was prevented from entering into governmental affairs. The First Amendment says,

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ."

Madison knew that religious liberty had to be protected lest the United States be torn by an attempt to enforce religious conformity. (See Appendix A, Madison's Memorial and Remonstrance.) Many religions and religious sects attempted it (e.g., Puritans, Presbyterians, Anglicans). The founders had plenty of issues with which to concern themselves without religion entering into the debates.

The First Amendment is concerned with preventing religion from interfering with government. It begins, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ." Had the United States government shown favor with one religion or another, it would have elevated that religion to a position in which the government would be subordinate. Governmental support of any religion would be an acknowledgment of that particular denomination by representatives of the people. Being generally agreed that religion embodied higher ideals and more noble goals than those of any government, it would then be arguable and logical to assume that government, naturally, should accept and enact policy of the

established body. Nothing could be more diametrically opposed to the system of government embraced by Americans as government of the people, by the people, and for the people. Though most people are religious or have church memberships, no one group is, by itself, a majority, and certainly the total membership of no religious group thinks religiously and politically the same.

Government should be the representative of all of the people in the country. By becoming subservient to a few of the religious elite, the form of government, as it now stands, would bow to the whims and desires of some few people, the religious. Principles established in the Declaration of Independence and the Constitution must be followed even when religion seems to be disadvantaged by the laws and representatives of the states. Religion and religiousness will survive as long as government keeps out of its affairs and offers no support for it.

In effect, government, by favoring a religious denomination, would create a theocracy. States controlled by religious men have invariably proved to be intolerable, as in the witch hunts suppressing men's rights and privileges under the law. As can be seen throughout United States history, there have always been attempts to establish and develop religious sects. Churches have succeeded in becoming well-established in this country. Roman Catholics suffered severe persecution at the hands of protestants during the early days of settlement in the United States, and yet Catholicism developed a system of churches and schools that is larger than that of any other denomination.

CHAPTER THREE

AMERICA'S RELIGIOUS PERSECUTION, CHRISTIAN AGAINST CHRISTIAN

"The only instance of praying to saints mentioned in the Bible, is that of the rich man in torment calling upon Abraham; and let it be remembered, that it was practiced only by a lost soul and without success."

Edgar Cecil
English Statesman
1864-1958

Although there was never a threat to national security in the United States by the Catholics, a seemingly natural prejudice was instilled in the emigrants from England. Their fathers and grandfathers remembered Henry VIII's battle with the Roman Church, and stories of the hated Papists were surely fresh in the minds of the new settlers.

Lord Baltimore, in the mid-1600's, was exiled from his own province by protestants who had only recently taken over the legislature. In 1654 the Toleration Act of 1649 that had originally been passed to protect Catholics in Maryland was repealed. The law that replaced it said that no one who professed the popish religion could be protected in the province.[1]

In New York Catholics were prohibited from holding places of trust. Even after an anti-Catholic like Jacob Leisler was deposed

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[1]Ray Allen Billington, The Protestant Crusade 1800-1860 (Chicago: Quadrangle Books, 1964), 5-6.

there, office holders were required to sign a statement disavowing the doctrine of transubstantiation.[2]

By 1700 a Catholic could have full civil and religious rights only in Rhode Island. Even there the statutes were conservatively drawn.[3] In 1716 Maryland passed a measure that forbade public office to anyone who attended popish assemblies or heard mass. In the 1740's Catholics were prohibited from joining the military. Any priest who tried to convert people was guilty of treason.[4]

Anti-Catholicism ran deep. In 1776 the New Jersey Constitution safeguarded protestant rights, but barred Catholics from state offices. North Carolina and Georgia had similar clauses in their constitutions. Vermont's constitution of 1777 required that office holders profess a protestant religion. That same year New York made everyone naturalized in the state swear no allegiance to any foreign power in civil or ecclesiastical matters. South Carolina, in 1778, established protestantism as the state religion. All of New Hampshire's constitutions between 1779 and 1784 had anti-Catholic clauses.[5]

The church and state issue, far from settled, was still being tested in America when, in 1789, the first Roman Catholic bishop, John Carroll, was appointed. His job was to foster the religion and tend to

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[2] Ibid., 8.

[3] Ibid., 9.

[4] Ibid., 11

[5] Ibid., 20-21.

the spiritual needs of the country's 25,000 Catholics with the help of 24 priests.[6]

Anti-Catholicism was part of the American culture. All classes of people held anti-Catholic prejudices. John Jay, the first United States Supreme Court chief justice, was active and vocal in his hatred of Catholics. Coincidentally, Jay became the first chief justice the same year that Carroll was appointed the first Catholic bishop in the United States.

Under Carroll, the Catholic population grew steadily. In 1790 there were about 35,000 Catholics in the United States. In 1820, five years after Bishop Carroll died, there were about 195,000 Catholics. The steady growth of Catholicism was apparent with the opening of Georgetown University in 1791, and the introduction of a new teaching order of sisters founded by Elizabeth Ann Seaton in 1792. In 1808 the Diocese of Baltimore was divided. Carroll then became archbishop for the Diocese of New York, Philadelphia, Boston and Bardstown (Louisville), Kentucky.

Bishop Carroll fought the prejudices against Catholics until his death, December 3, 1815. He was succeeded by Leonard Neale until 1817, then Ambrose Marchal until 1828. Catholic priests and bishops had begun looking for and demanding rights for the people in their parishes.[7]

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[6]Robert P. Wood, "America's Catholic bicentennial [sic]," Columbia, August 1989, 7.

[7]Ibid., 7-9.

With the increase in the number of Catholics, it was apparent that protestants would recognize it as a papal conspiracy to take over the United States. The affront to Catholicism was led by men like Samuel F. B. Morse, who asserted that Catholics of the day, if they were true to the principles of the sect, would refuse to tolerate liberty of conscience or liberty of the press.[8] Much ado was made about Catholics seeking funding for their schools. Archbishop John Hughes of New York responded to these accusations saying

> Nothing can be more false than some statements of our motives which have been put forth against us. It has been asserted that we seek our share of the school funds for the support and advance of our religion. We beg to assure you with respect that we would scorn to support or advance our religion at any other than our own expense.[9]

There are numerous examples available of the anti-Catholic prejudices that existed in the legislatures and constitutions of the several states. protestant hatred of Catholicism was becoming prevalent in the 1830's. A weekly newspaper, The protestant, edited by Reverend George Bourne, began publication on January 2, 1830. The declared purpose of the paper was to turn the mind of Americans against the Roman Catholic Church. Its prospectus stated:

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[8]Samuel Finley Breese Morse, Foreign Conspiracy Against the Liberties of the United States (New York Crocker & Brewster, 1835), 50-51.

[9]John Ross Greene Hassand, Life of the Most Reverend John Hughes, D.D., First Archbishop of New York, (New York: D. Appleton & Company, 1866) 232.

The sole objects of this publication are, to inculcate Gospel doctrines against Romanish corruptions--to maintain the purity and sufficiency of the Holy Scriptures against Monkish traditions--to exemplify the watchful care of Immanuel over the 'Church of God which he hath purchased with his own blood,' and to defend that revealed truth, which Luther and Zuingle; Calvin and Arminius; Cramer and Knox; Usher and Rutherford; Baxter and Owen; Burnett and Neal; Wall and Gale; Whitefield and Wesley; and all their different followers ex anima and un voce [heartily and in one voice] have approved, against the creed of Pope Pius IV and the cannons [sic] of the Council of Trent and no article will be admitted into the protestant, which does not contribute to these desirable results.[10]

Narratives displaying the rise and progress of the Papacy; its spirit and character in former periods; its modern pretensions; and its present enterprising efforts to recover and extend its unholy dominion, especially on the western continent. Biographical notices of Martyrs, Reformers and Popish Persecutors. Essays describing the doctrines, discipline, and ceremonies of the Romanish Hierarchy; and its desolating influence upon individual advancement, domestic comfort, and national prosperity. Illustrations of Sacred Prophecy relative to the Mystical Babylon. A faithful expose of the moral and religious conditions

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[10]Billington, The Protestant Crusade, 53-54.

of Lower Canada, as debased by the prevalence of Roman supremacy.[11]

In September 1833 The Protestant magazine began publication. The first issue stated:

> The important cause in which we are engaged, is consequence of the almost total silence of the religious papers formerly, rendered a weekly publication necessary. But happily a great change has of late taken place: articles against popery are now appearing weekly, in almost every part of our country. . . . But to embody for dissemination, and preservation, all the valuable articles which may be written against popery; and especially to elicit from the pens of ready and able writers, well digested, well prepared papers against this great enemy of truth, a Monthly Magazine is thought by many discerning men to be necessary.

The magazine's clear intent was to produce information against the Roman Catholic Church and make it available to as many people as possible.[12]

The protestant publications only serve to manifest the deeply anti-Catholic sentiment of New England in the 1830's. Similar messages were sent to the citizens by the press. The Morning Post and the Boston Commercial Gazette printed misleading statements of comments by sisters at an Ursuline school, Mount Benedict, in Charlestown, Massachusetts. This, along with strongly worded sermons from some of

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[11] Ibid., 54.

[12] Ibid., 56-57.

the protestant clergy against the Catholics, and a lack of action on the part of Boston selectmen, caused the burning of Mount Benedict.[13]

On the night of August 11, a mob gathered on the school grounds between 11:00 and 12:00 o'clock. Forty or fifty well organized men broke into the school and set it on fire. Twelve of the sisters and their 60 students were able to escape through a back door. Outrage at the burning was declared by almost all of Boston. A reward was offered for the arrest of the guilty parties, and there was a call for public funds to rebuild the school.[14]

Within two weeks of the $500.00 reward being offered for the arrest of guilty parties, thirteen men had been captured. The Supreme Judicial Court of Massachusetts heard the arraignment of eight of them on the charge of arson on October 10, 1834. Trial was set for December 1st and the early date was protested by the attorney general because of the uncaring attitude about mob violence among Boston's people. His protest was denied. All of the witnesses for the attorney general had been threatened and he said that even he had been hanged in effigy.[15]

On December 2nd the trial of John R. Buzzell began. The Court refused to allow the attorney general to ask any of the jurors whether they had anti-Catholic prejudices. The defense attorney, however, said in his opening statement that the school was in no way a charity and that the only way that the defendant could be convicted was with

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[13] Ibid., 70-73.

[14] Ibid.

[15] Ibid., 87.

Catholic testimony. Slanders against the mother superior and other nuns was allowed. The defense, for example, said that the sisters were feigning colds caught the night of the burning of their convent and their escape.[16]

After the trial, the jury deliberated for 20 hours and returned a verdict of innocent. The crowd in the courtroom broke into applause. So many people gave gifts to John Buzzell that he took out an ad in the newspaper thanking everyone. The other accused rioters were excused with one exception. He was a young man who was convicted and sentenced to life imprisonment. He was pardoned, ironically, after the Catholics of Boston petitioned for his release.[17]

Bishop Fenwick of the Catholic Diocese of Boston petitioned for funds to rebuild the convent. Members of the legislature were reminded of the deeply ingrained anti-Catholic feelings in a protestant newspaper, the American Protestant Vindicator, 21 January 1835. It said,

> Any man who proposes, or who would vote for the measure, which would rob the treasury of the decedents of the Puritans to build Ursuline Nunneries, after the model of the Ursuline Nunnery at Quebec, and as the headquarters of the Jesuit Fenwick and his 20,000 vilest Irishmen must be a raving lunatic.

The funds were never appropriated.[18]

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[16] Ibid., 87-88.

[17] Ibid., 88.

[18] Ibid., 89.

Besides the battle between protestants and Catholics on the streets and in the legislature, battles raged in the classroom. Religious thinking and a contest for the mind of the student were prevalent. Public money and how it was spent in the 1800s may be a reason that religious leaders in the 1960s disagreed on how to approach the federal government for financial help.

Horace Mann was the prominent protestant layman and proponent of nondenominational religious instruction in the public schools. He said "The Religion of Heaven should be taught to children, while the creeds of men should be postponed until their minds are sufficiently matured to weigh evidence and arguments."[19] Although Mann desired and pursued a nondenominational approach to religious instruction in public education, it became evident that such instruction was impossible. One of the main instruments of religious instruction in the public schools in New York in the mid-1800s was the Bible. A scripture passage was read by the teacher to the students without note or comment. According to men like Mann, scripture could and should stand on its own.

In an official statement on the Bible reading issue, Bishop Hughes said that the reading of the Bible was too important to leave to the interpretation of children. Passages that were read in the public schools had been selected as reading lessons and those passages were against Catholics. There would be no reason to complain if the public

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[19]Vincent P. Lannie, Public Money and Parochial Education (Cleveland: The Press Case Western Reserve University, 1968), ix.

schools were neutral on the subject of religion, but protestant and prejudiced authors on Holy Scripture were unacceptable to Catholics.[20]

Protestant thinking on the subject of scripture was considered inaccurate by the Catholic Church. The policy of scripture reading was challenged by Bishop Hughes on some of the same grounds that the protestant leadership would read it: private interpretation. No one had the right to rewrite the Bible. Those charged with its interpretation and meaning were responsible for the correct interpretation being conveyed to their parishioners. The awareness on the part of the faithful to guard against charlatans and false prophets was the protection for which Hughes was fighting. He wanted no one, especially the children, interpreting the scriptures for themselves. The inspired word of God needed some explanation. Hughes knew this and demanded it. Private interpretation of the scriptures and passages taken out of context was inappropriate and dangerous.

In a written statement by Hughes to the New York Board of Aldermen, he said, "It has been contended by the Public School Society, that the law disqualifies schools which admit any profession of religion from receiving any encouragements from the school fund." Hughes requested that something be done to correct the inconsistency in the rule since it was obvious that religion was being promoted in the schools.[21] When the New York Board of Aldermen rejected the bishop's plea for monetary support, Hughes' failure to acquire a grant of public

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[20]Hassand, Life of Bishop Hughes, 231-232.

[21]Ibid., 232.

funds served only to redouble his zeal to create a privately funded Catholic school system in the United States. Indeed, the parochial school program developed by Hughes in the 1830s was adopted 50 years later by the Baltimore Council when it established a network of Catholic schools.[22]

One of the small political victories for which Bishop John Hughes of New York was given credit came in the form of the Maclay bill. The bill expanded the state of New York's educational system to include New York City and provided for the position of elective commissioners for the wards. The commissioners were to supervise the school system and, collectively, make up a board of education that controlled New York City's educational system. The Sunday Times and the Catholic papers of New York were the only press that gave no opposition to the Maclay bill. The bill successfully polarized New York with Catholics favoring it and the protestants opposing it.[23]

In April of 1842, the Maclay bill passed the New York Senate. The bill, although forbidding sectarian teaching in the schools, allowed daily Bible reading by teachers. In fact, the state superintendent of education favored reading the Bible. Many attempts were made to prohibit Bible reading from the protestant King James Version to Catholic children.

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[22]Ibid.

[23]Billington, Protestant Crusade, 153.

A loophole in the system allowed moderate Catholic success. The state's elective commissioners had the power to select books that would be used in the New York schools. They excluded the Bible and by 1844 31 of the schools had abandoned Bible reading.[24]

This was the only measure of success that Catholics had against an increasingly protestant attitude. New York would become a center of Catholicism in America.

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[24] Ibid., 155.

CHAPTER FOUR

THE CATHOLIC BISHOPS' POSITION ON THE ISSUE OF PRAYER IN THE PUBLIC SCHOOLS

"It is a legal matter, not a Church matter."

Archbishop of Kansas City, Kansas
Ignatius J. Strecker
1917-

As early as 1952, the bishops of the United States said that there appeared to be a "movement to divorce religion from education in the nations schools." It looked to the bishops as though secularism was becoming an accepted way of life in America.

Dr. James B. Conant, president of Harvard University, at a meeting of the American Association of School Administrators in April, 1952, had intimated that Catholic and other private schools were divisive influences in America. The bishops pointed out "that all differences were not divisive. . . . Sometimes [they are] simply manifestations of our fundamental freedom. Education that is truly religious is a unifying rather that a dividing force."

The bishops advanced the idea that although Communist ideals were unpopular, the structure of an all-encompassing state controlled school system was being fostered. The bishops asserted that eliminating the influence of religion is dangerous. A socialist state could evolve. Institutions whose foundations are in "religion--freedom, equality, human dignity, the stable family" are disappearing. "The real threat

to the nation does not come from religious differences but from "irreligious social decay."

The statement was signed by the Administrative Board of the National Catholic Welfare Conference, the Catholic action body, and included Cardinals Mooney, Detroit, Stritch, Chicago, and Spellman of New York. After the decision in Engle banning school prayer, church officials seemed outraged and discouraged that the Supreme Court would make such a pronouncement. Cardinal Spellman of New York said that "The decision strikes at the very heart of the Godly traditions in which America's children have for so long been raised." James Francis Cardinal McIntyre of Los Angeles said that the decision was "positively shocking and scandalizing to one of American blood and principles. It is not a decision according to law, but a decision of license." McIntyre went on to say that God is the giver of law and that the Supreme Court was "biting the hand that feeds it." He was referring to the doctrine that God is the giver of all things and that being the case, the Court received the right of judgement from God. The Court, it should be said, receives its right of judgement from the people through the Constitution. "This decision," said McIntyre, "puts shame on our faces as we are forced to emulate Mr. [Nikita] Khrushchev."[1] By

1963 the bishops appeared relatively unconcerned about prayer in public schools. This was due, at least in part, to the fact that at the time the parochial system of primary schools, the diocesan system of secondary schools, and the national systems of Catholic colleges and

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[1]New York Times, "Catholic Bishops on Secularism and Schools" 16 November 1952, 1, 80-81.

universities seemed more than adequate to fulfill the needs of the Catholic population. One bishop, in his opinion of Catholic students who attended secular colleges, said of the students that they are uninterested in practicing their faith. John Cardinal Carberry of St. Louis, Missouri said that no classroom was to be built unless a sister was available to staff it.[2]

Archbishop Sheen, as it will be recalled, did say that he was concerned about a country that would outlaw prayer in school. His idea of the best prayer was one that was carried in every House member's pocket, "In God We Trust," but he stopped short of endorsing an amendment, specifically the Becker Amendment, to the Bill of Rights in favor of prayer in public schools.[3]

Father William McManus was secretary to the National Catholic Welfare Conference, an organization charged with the duties of safeguarding the rights and overseeing the general well-being of the Catholic Church and its organizations in the United States. In this capacity he spent much of his time seeking federal aid to Catholic schools. Father, now Bishop, McManus points out that Catholic parochial schools are unique to the United States. In Germany, for example, Confessional schools are public schools. As McManus puts it,

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[2]Father John L. Kumli, retired Roman Catholic priest of the Wichita (Kansas) Diocese: interview with the author, 16 November 1990.

[3]Hearings Before the Committee on the Judiciary, House of Representatives, Eighty-eighth Congress, School Prayers, Part I, 825-842.

in Germany, "religion is where you are; if protestant, you go to a protestant school; if Catholic, you go to a Catholic School."[4]

In the United States the Catholic schools have a network. These are formed under the auspices of the diocese and governed by a council, a Catholic school board, according to educational standards set by the state, with little or no input by the Catholic Church.[5]

Being distinct and separate from other schools makes the Catholic school system in the United States unique. The official stand of the Catholic Church has been that all Catholic children were to be educated in Catholic schools, but when the stand was taken, the bishops were convinced that the Catholic school system could provide a proper education to all Catholics of school age. They were unable to foresee the disintegration of the Catholic sisterhood and the religious orders of teaching brothers and priests.

After the Second Vatican Council, many of the sisters left their vocation and this made Catholic education more difficult. The cost alone became an issue. Many of the sisters had been working for $1.00 a day. Since 1964 there has been a steady decline of Catholic teaching sisters, brothers and priests. It is now rare to find a school at any level staffed entirely by sisters, brothers, or priests. It is quite common to find Catholic educational institutions which have sisters, brothers and priests in administrative positions and the vast majority of teachers are either Catholic or non-Catholic laymen.[6]

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[4]Bishop William McManus, retired Bishop of Fort Wayne, Indiana: interview with the author, 1 October 1988, Chicago.

[5]Ibid.

[6]Father John L. Kumli, 16 November 1990.

As each year passes, more and more parochial schools are closed and Catholic high schools become fewer and fewer. Consequently, it is reasonable to assume that if the bishops in 1963 had foreseen the decline in vocations and schools, they would most likely have been much more interested in the prayer in public schools issue.[7]

Since the Third Plenary Council of Baltimore in 1884, Catholic schools have met standards of education set by the state. They are to be in no way inferior to the public schools. The thrust of the Third Plenary Council was in Catholic education. Interest and consideration on the part of Catholic parents should be to have their child in a Catholic school, according to the teachings of the Church.[8]

The Baltimore Council decreed that a Catholic school must be built and maintained near every church. The school was to be built within two years after the completion of the church and maintained as long as there was a church. All Catholic parents were bound to send their children to the parish school unless a proper religious education could be given in the homes or in other Catholic schools. Only the bishop was allowed to excuse the parents from this rule of sending their children to a Catholic school.[9]

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[7] Ibid.

[8] For the Third Plenary Council of Baltimore see Fredrick E. Ellis, "Parochial & Public Schools: A Point of View", Educational Forum, Vol. XIV.

[9] Ibid.

Bishop McManus said that a child should experience religion in the home and church. To teach the child religion is relatively unimportant. Religion needs to be stressed all of the time. It needs to be a big part of a child's life.[10] The United States is a pluralistic society. Church and state in such a society must be separate, and being and staying separate is preferable especially in the schools. When mixed, as in the public school system of the 1830's, government becomes the moral doctrine. With government pronouncing moral platitudes within a school setting, children are easily confused. The religious doctrine of the administration that is presently in charge would be the official ethic. As soon as the administration changed, the policies and theology would change. The proof of this contention is found in the House Judiciary Hearings when it was discussed what prayer would be said in the schools, and the answer was the prayer of the school superintendent's choice.[11]

The government is, and must be, pragmatic. It watches out for the physical and economic development of the country and its citizens. When it becomes a part of the religiousness of a person, especially a child, the system has the moral obligation to fulfill the child's needs. If it fails, the well-being of the child and future society is put in jeopardy. The government's policy on issues of education, for example, math, science, literature, history and the curriculum that

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[10]Bishop William McManus, interview with the author 1 October 1988.

[11]Hearings Before the Committee on the Judiciary, 235-239.

must be followed for success in each, can be dictated by what programs the government will finance. When government decides to manipulate the religious thinking of children, the overall beliefs of large groups of young people are affected. The very core of personality is heavily influenced by the moral and religious teachings of a community.

With separation comes the question of whether aid should be given to the Catholic schools. Does separation of church and state mean also no monetary aid? One answer that perhaps befits the issues of separation is found in Canada where Separate schools have existed for many years. Separate schools are the counterpart of Germany's Confessional schools and the United States' Catholic schools. Monsignor John O'Neil, Vicar General of the Archdiocese of Ottawa, Ontario (Canada), in 1958 saw the parochial school system existing in the United States as much more preferable than the Separate schools that existed in Canada. The Separate system obtained its funds from federal taxes. This was accomplished by a check mark in one of two boxes by Canadian citizens when voting. One of the boxes on a special ballot read Separate and the other Public. The amount of money given by the government to each school system depended on the proportion of separate or public ballots. The effect on religion and teaching was highly negative.[12]

O'Neil railed at the fact that he was prohibited from entering a classroom in his own school without first clearing his visit through the Separate school board and the principal of the school. He said he

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[12]Father John L. Kumli, 16 November 1990.

actually envied the pastors of parochial schools because they had full authority within their school.[13]

Monsignor O'Neil was barred from having children from his Separate schools come to church to attend mass, to practice for First Communion or Confirmation without first clearing the plans through the Separate board and principal of his school. He often said that he believed the Separate school boards were anti-clerical and against religion being in the schools.[14]

In the United States in the 1950s and 60s, the seminaries taught that federal aid led to federal control. It was a generally accepted opinion of the Catholic clergy that federal aid would be acceptable if it would permit the schools to govern themselves as they saw fit. This particular matter has never been adequately resolved. To this day the question of governmental monetary aid for Catholic schools remains a moot question. The Separate school system of Canada has many drawbacks as stated above and the parochial schools system, at least theoretically, is still preferred today.[15]

In 1946 the Supreme Court heard arguments in Everson v. Township of Ewing against a New Jersey statute that allowed local school districts to pay for bus rides to and from nonpublic, nonprofit schools. The money paid by parents of the children for public transportation was reimbursed on a quarterly basis by the school board.

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[13] Ibid.

[14] Ibid.

[15] Ibid.

The money was refunded by the government to each child's parents, including the parents of Catholic school children.[16]

Bishop McManus was present at the Supreme Court when the decision was announced in the Everson case. Then a priest, Father McManus recalled that a great victory was handed to the Catholic schools, but it was obvious that the decision in Everson was going to restrict aid to Catholic schools. For the first time substantive aid was considered aid. There had been no distinction in aid before Everson. No money was paid to Catholic schools, only to the parents of the children. Now necessities, milk, food and bus rides could be called into question. None of it was forthcoming under the interpretation of the Court. The Everson case was the first time that the Establishment Clause was examined and applied. Everson, McManus believed, was "a tough position for the Catholics, and the Bishop's Council." Aid to Catholic schools would be slow in coming.[17]

In Everson a New Jersey statute authorized boards of education to contract for transportation of children going to schools other than private schools operated for profit. Boards of education routinely authorized reimbursement of transportation charges by a public carrier to parents whose children rode the bus to and from Catholic and public schools. The New Jersey legislature decided that a public good was served by refunding to parents the cost of transporting their children

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[16]Everson v. Board of Education of Ewing Township et al, 330 U.S. 1, (1947).

[17]Bishop William McManus, interview with the author 1 October 1988.

to schools, whether public or private so long as the school was nonprofit.[18]

The first phase of taxpayer Everson's argument was one of due process. It stated that tax money was taken as public money and given to a private interest group. The second phase said that taxation for the transportation of Catholic school children constituted state support of religion and, therefore, violated the First Amendment.[19]

Of central importance with Bishop McManus was the quality of religion being taught at secular schools. For example, in the case of Engle v. Vitale, the New York State Board of Regents composed and supported the use of their prayer in the public schools. It was declared unconstitutional for the children to be forced to say the prayer. McManus agreed. According to him, a moment of prayer only served to belittle religion in the minds of the children. Much caution needed to be used when it comes to prayer. Bishop McManus puts it this way: "Would it be good to have only a moment of prayer?"[20]

Many Catholics believe even a constitutional amendment tends to demean religion and that there is no reason for an amendment. They believe the United States was founded on the principle that God exists and is deserving of all reverence. They ask why there should be a law requiring the veneration of the Deity. The secular constitutional belief is based on Supreme Court decisions that call into question the premise that God should be put back into schools.

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[18]Everson v. Board, 330 U.S. 1, (1947).

[19]Ibid.

[20]Bishop William McManus: interview with the author 1 October 1988.

The Catholic Church, said McManus, needs to use caution because prayer in public schools, if allowed, naturally allows for governmental control. If for no other reason than this, the Catholic Church needs to take a middle position on the issue. The middle position is the posture of McManus as he makes the almost axiomatic statement that federal aid means federal control.

The question of whether religion should be mixed with public schools was answered in two separate Supreme Court cases. In McCollum v. Board of Education of Champaign County, Illinois, et al., the Court decided, eight to one, against allowing privately employed religion teachers to teach a thirty to forty-five minute class of religious instruction. According to the Court, the facts showed that there was tax supported use of public property for religious instruction. Further, there was evidence of a close cooperation between the school authorities and the Champaign Council on Religious Education.[21]

Unlike McCollum, Zorach v. Clauson addressed the issue of released time for the purpose of religious instruction off of school premises. For this reason, the Supreme Court found, six to three, in favor of the New York City program.[22]

The religion course in New York allowed students to be released from school during the day so that they were able to leave the school property and go to religious centers for religious instruction. Other students stayed in the classrooms. There was no religious instruction

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[21]Illinois Ex Rel McCollum v. Board of Education of School District No. 71 Champaign County, Illinois, et al, 333 U.S. 203 (1948).

[22]Zorach v. Clauson, 343 U.S. 306 (1952).

on school property nor was there an additional expenditure of public funds.[23]

The question in Zorach was separation of church and state. In McCollum the point was made that the weight of public education was being used to promote religious instruction. In Zorach the students were released from the regular school curriculum to attend religious instruction off school property. In McCollum the students were released from school classes to attend religious instruction on school property. The schools in the Zorach case did no more than accommodate their schedules to those students of religion.

It seems logical to assume the more fervent pastors would use whatever means were available to them to see that Catholic students utilized this time for the purpose it was meant to fulfill. It is reasonable to assume that there was pressure to participate placed upon the students who were released.

Bishop Charles H. Helmsing stated that the rights of every group need to be respected. It is almost impossible to have a common prayer or program in public schools. Helmsing indicated that the decisions of the Supreme Court have been good ones. From a Roman Catholic standpoint, Helmsing insisted that we need to guard against engendering indifferentism, that is, that one religion is as good as another.[24]

Ecumenism, according to Helmsing, tends to secularize education. Quarrels on how to pray together, especially among young children, can

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[23]Ibid., 308-309.

[24]Bishop Charles H. Helmsing, retired Bishop of Kansas City-St. Joseph, telephone interview, 20 September 1988.

hurt the little ones. There is just no way that all of the faiths can be satisfied with a common prayer.[25] On the subject of prayer in public schools, Helmsing, and all of the bishops contacted, found disfavor with a common prayer in public schools. In general their arguments followed Helmsing's reasoning.

Retired Bishop Fredrick W. Freking of La Crosse, Wisconsin was contacted about the bishops' feelings concerning prayer in public schools in the early 1960s. He is in almost total agreement with most other church authorities. Bishops had too many concerns within the Church to worry about prayer in public schools and the impossibility of a comprehensive prayer.[26]

Bishop Freking said that although there was a lot of concern about the decision of the Supreme Court declaring that prayer was unconstitutional when said as part of a ceremony in the public schools, it had practically no effect on Catholic schools. The issue was government policy and outside the province of bishops. There would be no pronouncement on what was considered an almost exclusively government policy.[27]

Bishop Freking sees the church and the state having high regard for one another. While bishop of Salina (Kansas), Freking remembers that all of the bishops were in agreement to allow the Kansas State Superintendent of Schools inspection privileges in Catholic schools

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[25]Ibid.

[26]Bishop Fredrick W. Freking, retired Bishop of La Crosse, telephone interview, 13 November 1990.

[27]Ibid.

as long as the Catholic Superintendent of Schools was notified and had an opportunity to be present during the inspection. Bishop Freking said that as far as he knows, all of the Catholic schools were accredited and never had a problem passing an inspection.[28]

Bishop Freking went on to say that the main concern of the bishops in the 1960s in the area of education was the federal aid policy, and many of the bishops had differing views on it. Freking's was one of consideration of the Catholic schools in federal aid. The transportation question, bus rides for Catholic school children, had been decided in 1947 with the Everson case. Catholic school children were allowed to be carried on public transportation and their parents reimbursed for the charges of taking them to and from school. Now the question of whether Catholic schools would be allowed to participate in the government's program of subsidy was in question. Freking recalled a panel discussion at Kansas State University in Manhattan, Kansas in the early 1960's. He was called to participate because he favored inclusion of the Catholic schools in the federal aid program.[29]

Some bishops, however, were against the idea of federal aid to their schools. Freking said that at one meeting, Bishop Richard Cushing (later Richard Cardinal Cushing of Boston, Massachusetts) declared that even if federal aid were granted and offered to the

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[28] Ibid.

[29] Ibid.

[30] Ibid.

Catholic schools, he would refuse it.[30] Probably the proposition of losing control of the institution was a consideration.

This seems to be the case in many of the areas where there were Catholic schools, and, to some extent, explains why there was never a consensus among the bishops of America on the prayer in public schools issue. If federal money would mean adhering to federal rules, few Catholics would be willing to accept the program. Cushing's view of federal aid seems to substantiate the position of Monsignor O'Neil of Ottawa, Ontario, Canada, that federal aid will result in federal control.

Bishop Freking was able to provide a view point on the substantive aid question. According to him, school lunches were administered through the United States Department of Agriculture. None of the funds for school lunches came from the state. Normally the state distributed federal funds, but the states were to be bypassed with this program because it would have been difficult to prove whether the Catholic schools actually received the money for the lunches.[31] Too many governmental agencies would have become involved if states had been included in the chain of distribution of funds. States would have to include counties. Counties would have been pressured to include school districts.

Archbishop Ignatius J. Strecker, Archbishop of Kansas City in Kansas, is still active and enthusiastic about Church issues. A deeply religious man profoundly concerned with matters relating to his

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[31] Ibid.

pastorate and church, he is truly interested in scholarship and questions on Catholic education. Archbishop Strecker quickly sees through the clutter of pronouncements, problems and bureaucracy of church/state relations and says that while he knows that the courts have denied prayer in public schools, the Catholic Church, in its schools, has a very definite position. The question on prayer in public schools, Strecker says quite simply, is a legal question.[32]

Other members of the Catholic Church's clergy were defending the Supreme Court's decision in Engle soon after it was made. The Becker Amendment was introduced immediately following the Court's decision. Church leaders spoke out against taking such action. Speaking of religious persecution and the way in which it was applied in this country, Father William Kenealy, law professor at Boston College, during a popular 1960s television program "Under Discussion," said "Our Founding Fathers came to these shores to escape religious persecution, but they became very adept at it themselves."[33]

The executive editor of the Catholic Star-Herald, Monsignor Salvadore Adamo, told Redbook magazine that he remembers well singing "Stout-Hearted Men" and reading a few verses from the Bible at the public schools he attended in New Jersey. He said

> I never understood or paid much attention to [it]. They'd begin any place and end in the air. They [the exercises] didn't affect

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[32]Archbishop Ignatius J. Strecker, Archbishop of Kansas City in Kansas, letter, 29 June 1988.

[33]Arlene and Howard Eisenberg, "Why Clergymen are Against School Prayer," Redbook, January 1965, 96.

us they didn't improve us. The fact is that many good, earnest people feel that school prayer does far more than it's capable of doing. And if they're successful in their campaign, they'll sit back and say, "Well, we've taken care of the religious education of our children." Unfortunately, it's an exercise in self-delusion.[34]

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[34]Ibid., 97.

CHAPTER FIVE

AN OVERVIEW OF PROTESTANT AND JEWISH THINKING ON THE SCHOOL PRAYER ISSUE

"Whatsoever we beg of God let us also work for it."

Jeremy Taylor
English prelate
1613-1667

The arguments of the Catholic Church against a prayer amendment were echoed by protestant denominations. Reverend Dean Lewis, Secretary for Social Education of the United Presbyterian Church, and William Petersen, Executive Editor of Eternity magazine of the Evangelical Foundation, met with Redbook magazine and seemed to be in total agreement against a prayer amendment. The fear expressed by both Lewis and Petersen was the effect of a state religious ceremony on the purity of the Christian faith. There was agreement that there was little or no danger of a state-established church, but there was a "danger of [the church] hocking its soul for a little public recognition. When people equate religion with Americanism, the consequences can be serious for both."[1]

Reverend H. Vance Johnson of the Church of Presidents said

> We've got the idea that if we mention God two or three times in a speech, or at the beginning of a meeting or dinner in a

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[1]Eisenberg, "Clergymen Against School Prayer," Redbook, January 1965, 96.

benediction, we are good Americans, and good religious people too. Then we can sit back--we've done our duty.

Dr. Ben Sissel, Secretary for National Affairs of the United Presbyterian Church, said

> When men bowed down to idols of stone and wood, at least this was obvious idolatry, where we make profession of faith an object of worship. We surround ourselves with symbols, with the outward signs of piety--sanctimonious slogans on coins, prayers for every public occasion--and feel that is enough. We have faith, we say virtuously. But it is a poor substitute for the real thing.

Sissel's observation is that "patriotism faith" is more detrimental to real faith than idol worship.[2]

The executive secretary for the Southern California Methodist Conference's Board of Education, Grover C. Bagby, said almost the same thing as other religious leaders who are afraid prayer will be only a public show of religiousness. He points out that "It is good to serve God, but it is not good to identify love of country with love of God, because our nation, like every other nation, stands under the judgment of God."[3]

The New York Board of Rabbis said in 1962 that prayer in the public schools was tantamount to teaching prayer. They stated

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[2] Ibid.

[3] Ibid.

that allowing prayer violated the spirit of the American concept of separation of church and state.[4]

Teaching morality as dictated by the state, Rabbi Joachim Prinz, President of the American Jewish Congress, reminded the Cellar Committee, conducting hearings on the Becker Amendment, that prior to World War II, Germany required children aged six to 18 to recite a prayer at the beginning of school and they received religious instruction two times a week.[5] This had little effect preventing the Holocaust. Just because a patriotic prayer is said, no assurances are given against terrible things happening in a country.

In 1962 the pastor of St. James Protestant Episcopal Church and president of the Protestant Council of the City of New York, Reverend Authur L. Kinsolving, said that he understood the thinking of the Court, but added that he was disappointed in it, and that some way needed to be found back to the country's religious foundation.[6]

Right Reverend James A. Pike of the Protestant Episcopal diocese of California, said he was surprised by the decision of the Court because the prayer in question was clearly nondenominational and the forefathers had intended to allow such a prayer.[7]

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[4]New York Times, 26 June 1962, 1.

[5]Eisenberg, "Clergymen Agains School Prayer," Redbook, January 1965, 97.

[6]New York Times, 26 June 1962, 1.

[7]Ibid.

The rights of the minority, it needs to be remembered in the Court cases, led to the decision of outlawing prayer in school. Bishop Brooke Mosley, Episcopal bishop in Delaware, said that "Even the simplest prayer, when supervised by the teacher in a public school--the authority symbol--is a subtle form of coercion." Like many good men, Episcopal Bishop Mosley admitted that he had taken for granted that since prayer is good, it must be good in schools. He said

> It is as wrong to force a person to pray as to force him to marry someone he doesn't love. Even for the majority group, classroom prayer--sometimes piped in by a public-address system from the principal's office--may very well become no more than a magical incantation. Prayer is entering into a conversation with God--it's listening as well as speaking. That can't be achieved by a rote prayer in a public-school classroom. And Bible reading without comment can be just as valueless. Many sincere people are supporting school prayer, but if they get their way they will hurt religion and damage the very things that we, and they, value most.[8]

As far as the ecumenical interests of the clergy were concerned, the Methodist Reverend Dean Kelly, director of the Department of Religious Liberty of the National Council of Churches, said an amendment to the Bill of Rights proposed by Representative Frank Becker would "open a Pandora's box of problems." Reverend Kelly

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[8]Eisenberg, "Clergymen Against School Prayer," Redbook, January 1965, 97.

suggested that if there is as much debate over the prayer issue in one committee in Congress, there may be endless debates in each school district in the United States. He concluded by saying, "It is tragic when Christians think they can serve with an attitude of Fight, Fight, Fight for the Prince of Peace!"[9]

Along the same lines is the thinking of the General Secretary for Christian Education of the United Church of Christ, Dr. Edward A. Powers. He stated that

> Prayer and devotional Bible reading were poor ways to teach our religious heritage--no more than tipping the hat. Now youngsters can have a complete picture of the tremendous role religion has played in the story of mankind. We'll have considerable work to do first, of course, but the results will be well worth it.[10]

Regrettable is the term applied to the Court's ruling by Stanley Mooneyham, director of information for the National Association of Evangelicals. He said that the majority will have to push for a constitutional amendment to allow school prayer.[11] It appeared that the prayer in public schools issue was susceptible to no decision from the religious leaders; few could agree. The decision was best left to the Supreme Court.

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[9]Ibid., 104.

[10]Ibid.

[11]New York Times, 26 June 1962, 1.

CHAPTER SIX

RENEWED INTEREST IN A SCHOOL PRAYER AMENDMENT BY CATHOLICS AND PROTESTANTS

"The fewer words the better prayer."

Martin Luther
German Reformation Leader
1483-1546

So called prayer amendments were being submitted well into the 1980s. In November 1971 the House of Representatives was preparing to vote on a prayer amendment. The text of the amendment read:

> Nothing contained in this constitution shall abridge the right of persons lawfully assembled in any public building supported in whole or in part through the expenditure of public funds to participate in nondenominational prayer.[1]

The office of General Counsel of the United States Catholic Conference (USCC), the national level action agency of the Catholic Church and the organization that encompasses what used to be the National Catholic Welfare Conference, advised Bishop Joseph Bernardin to "follow a policy of caution and inaction in this [prayer in public buildings] area." The October 19th memorandum said that the basic reasons for the position were that there was a "fear that the adoption of a prayer amendment would work against us [the USCC] in the school aid controversy," and there was a concern that most of the amendments, as

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[1]Memorandum to Bishop Joseph Bernardin, October 20, 1971, United States Catholic Conference.

proposed, might create constitutional problems that could be unpredictable.[2]

The memo stated recommitment to the reasons for remaining neutral on the subject and went on to recommend to Bernardin that the specific bill [H.J. Res. 191] be opposed outright. It was stated that there could be negative constitutional implications of "new forms of aid [for] parochial schools." The language of the bill was also considered defective. The vagueness of nondenominational prayer was a clear concern to the USCC because of the implication that denominational prayer in public buildings is unconstitutional. The question was raised whether state and federal courts would decide what prayers are nondenominational, or if perhaps the Supreme Court would be the deciding voice on many of the prayer issues. The theological questions that could be raised in courts if the amendment were adopted would be "utterly beyond their competence." The memo concluded by questioning whether a short prayer is essential to the religious education of children.[3]

Apparently Bernardin took the advice of the USCC's general counsel. On November 2, 1971, James L. Robinson, Director of the Office of Government Liaison, wrote to a congressman about the opposition to H.J. 191 and enclosed a copy of Bernardin's statement.[4]

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[2]Ibid.

[3]Ibid.

[4]Letter of James L. Robinson, November 2, 1971.

In a news release from William Ryan of the USCC, Bernardin is quoted as saying that the conference, though unopposed to prayer in public buildings, was opposed to the amendment. The reasons were that the amendment would fail to accomplish the goals for which it was meant, and that it would threaten the legality of denominational prayer. Bernardin said

> The subtle implication of the amendment, therefore, is that 'denominational' prayer in public buildings is unconstitutional. . . . Moreover, the amendment cannot be justified as a 'school prayer' amendment. . . . Passage of this amendment might lead many to think that something serious has been done about the problem of religious education of public school children. In fact, nothing of any moment would have been achieved.[5]

By 1973 the Administrative Board (28 bishops) of the USCC had adopted its own recommendation for the wording of a constitutional amendment. They said that many parents had become concerned about the lack of religious training in the public schools. According to the board, the parents believed that the Supreme Court's recommendation of teaching about religion, religion as culture, and objective religion was unacceptable. Further, the parents referred to in the board's statement were skeptical whether children received adequate religious training at home or during extra-school instruction. These parents believed that a formal religious education was needed for their

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[5]United States Catholic Conference, News Release, November 1971.

children's moral development, and that depriving them of such instruction might make religion unimportant for the children. Keeping with the policy that an amendment allowing prayer in schools would be ambiguous, the board offered the following suggestion for an amendment:

> Section 1. Nothing in this Constitution shall be construed to (i) forbid prayer in public places or in the United States, including schools; (ii) forbid religious instruction in public places or in institutions of the several States or of the United States, including schools, if such instruction is provided under private auspices whether or not religious.
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> Section 2. The right of the people to participate or not to participate in prayer or religious instruction shall never be infringed by several States or the United States.[6]

The intent of the board's amendment was to correct the situation created in the 1960s with the Court's decisions banning public school prayer. Bishop James S. Rausch, General Secretary of the USCC, said the proposed amendment was in keeping with the Conference's position in 1971 opposing a school prayer amendment. Rausch said "An amendment permitting religious instruction and prayer in public schools and other public institutions is vitally important to protect the religious liberty of parents and children." The advantages cited by Rausch were to "learn the truths of one's faith" and to be free "from

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[6]USCC Statement on "A Constitutional Amendment to Permit Religious Instructions and Prayer in Public Schools and Other Public Institutions," September 19, 1973.

imposition . . . of values hostile to one's faith or its moral precepts."[7]

President Ronald Reagan, in the early 1980s, said that he would welcome an amendment that would permit prayer in the public schools. The general secretary of the USCC said that he agreed with the idea, but Father Daniel F. Hoye of the USCC said that the organization would prefer an amendment that would deal with allowing religious instruction for public schools pupils. Hoye said that beginning with the legally unsound McCollum decision, the Supreme Court made decisions that did away with prayer. In the view of the USCC, Hoye said, "an amendment will be a powerful factor in restoring to all Americans a basic liberty of which they are now deprived."[8]

Mariella Frye and Richard Duffy of the USCC stated that President Reagan's prayer initiative was questionable public policy at best. In a memorandum to Father Tom Gallagher, they commented to him on whether it was advisable to support the proposed amendment. They said that the United States is a pluralistic society and it would be difficult to select prayers that would be acceptable to all religious faiths. Also a prayer initiative would bring embarrassment to those people who profess no religious belief. Children must be taught how to pray and what prayer means. Further, the memorandum asked who would establish the prayer or prayer service; if the state did so, which it would,

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[7]USCC News Release, September 1973.

[8]USCC News Release, May 10, 1982.

of course, the First Amendment that had served all Americans would be violated.[9]

The Knights of Columbus came out in favor of the prayer amendment. In the August issue of Columbia, an editorial stated that the Knights backed President Reagan's prayer amendment saying, that such an amendment was needed to moderate judicial philosophy that is hostile to religion. It would also prepare schools for religious education under the auspices of parental committees. The public schools, according to Columbia, had formed a sort of paganism similar to that of countries behind the Iron Curtain.[10]

On September 16 the USCC again released its opinion of Reagan's prayer amendment initiative, and once again called for a broader amendment. According to the USCC, an amendment allowing religious instruction was needed to override the Supreme Court's decision in McCollum when it was decided that students voluntarily participating in religious education on school property was unconstitutional.[11]

In mid-1983 Father Daniel F. Hoye, now Monsignor Hoye, requested information from the Office of General Counsel of the USCC in his preparation of a statement that would be filed concerning Senate resolutions on the prayer issue. Wilfred R. Caron said that a development in the Supreme Court's decisions was that any voluntary

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[9]USCC Memorandum, July 22, 1983.

[10]Editorial, Columbia, August 1982, 1.

[11]USCC News Release, Sept. 16, 1982.

program of religious instruction or prayer in public schools would be declared unconstitutional. The secularization of public buildings was called a wedge to "empty all our public institutions of any sense of religious values." The Supreme Court was charged with "misconstruction of the Establishment Clause" of the First Amendment. Caron said that religious liberty was "meant to foster religious liberty by preempting religious tyranny, not to erect a wall of separation" between church and state.[12]

Caron called for a constitutional amendment to overcome the effects of the Supreme Court's decisions. He said that such an amendment was essential if the intent of the Founding Fathers who meant for religion and public institutions to work in harmony was to continue to function. The amendment, he said, would help revive the "authentic spirit and purpose of the Religion Clauses." An amendment should protect voluntary prayer in public places. Any amendment should ensure the right to pray and Caron suggested the following:

> No person shall be denied the right voluntarily to engage in individual or group prayer, or to receive religious instruction provided by private auspices, in public places or institutions, including schools, of the several States or the United States.[13]

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[12]USCC, Office of General Counsel memorandum, May 6, 1983, 1-5.

[13]Ibid. 5-6.

On May 9, 1983 Monsignor Hoye, on behalf of the USCC, submitted a statement to the Senate Subcommittee on the Constitution that encouraged adoption of a constitutional amendment that would allow voluntary public prayer and religious instruction in public schools. In it he said that there is no such thing as a value-free education. Hoye called into question the kinds of values being instilled in America's youth with the Supreme Court's decisions concerning prayer and religious education issues.[14]

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[14]USCC Statement on Senate Joint Res. 73., Msgr. Daniel F. Hoye, 9 May 1983.

EPILOGUE

"The prayer of each man from his soul must be his and his alone. That is the wisdom of the First Amendment . . .".

Justice Hugo Black
Associate Justice of the
United States Supreme
Court
1886-1971

Religion has always played an integral part in the life of man. With it he stirs and inspires the souls of others regardless of race, color, sex, or creed. For it he tries to establish a relationship with God, and in it he hopes to shroud himself and be received into eternal life in heaven.

In every religion it is understood that man is in some way inferior. Someone, God, or some group, gods, are superior and responsible for the sustenance of man. From the time man conceived his position as being above the animals and below the angels, he has attempted to pour forth his feelings, thoughts, and failings to the one who is universal and omnipotent. Seeking ways to accomplish this, he has sought the high and exalted places to pray and perform rites that prove him worthy of his deity.

In some cases the rites serve simply to aggrandize the ceremony and prayers offered by those professing to be the religious leaders. Usually these are the self-proclaimed bearers of the gospel and declare that they alone have knowledge of God and the secrets of eternity. Often they say that the deity speaks directly to them. They are rewarded in a worldly way and tend to be self-serving and petty when

relating to the religious practices of one culture or another. The prudent followers have always used caution in accepting these evangelists.

It was apparent that in the early 1980s America was searching for its spiritual heritage, and some members of all denominations were in favor of some kind of amendment that would allow religious worship and teaching on public property. In a document from the United States Catholic Conference, a witness list was provided. The people on it were to be members of panels headed by Senator Jesse Helms (R-NC) in favor of S.J. Res. 199, Voluntary Prayer in Schools. They included representatives of the Jewish Theological Seminary of America, the Knights of Columbus, the National Association of Evangelicals, the Moral Majority, the Religious Roundtable and Project Prayer.[1]

Perhaps some have learned that government wants to keep separate state sanctioned religious observances, and when religious bodies are allowed to use a podium paid for by the taxpayers and keep the state at bay, their beliefs and precepts can be proclaimed and exalted. One religion can be sold and held above others at government expense until it is realized that the majority disagrees with what is being said and that the tax money of that majority is supporting something that is alien to its beliefs. The whole argument begins again.

The Equal Access Act, PL 98 377 (See Appendix B), was signed into law on August 11, 1984. It was designed to open public secondary

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[1]USCC Memorandum from July 1982.

schools to organized religious meetings under a teacher's supervision. The Anti-Defamation League of B'NAI B'RITH opposed the act because it divided school children into Catholic, Protestant, Jew, and Moslem on government time when they should be learning and studying secular subjects.[2]

Certainly man is and always has been a spiritual creature, and within the confines of a political state it becomes increasingly difficult to decide what religious practices are acceptable, or whether to reject all ways of relating with God. Because of the power of reason with which man has been endowed, he has used knowledge to form practices and rituals which his family, friends, and associates have sometimes been forced to share or endure. The blatant disrespect of the rights of all to freely choose how or whether to worship resulted in action to assure all people freedom in religious matters, at least when dealing with government institutions.

Developmentally the United States has gone through periods of time when it was seemingly important to ignore the religious rights of some people. In a pluralistic nation there must be one government and that government must serve all of the people and many different cultures. Sociopolitical pressures on government have forced decisions on policy that required enactment of federal statutes that favored a positively secular government.

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[2]The Aftermath of "Equal Access" A Critical Analysis, pamphlet Religion and the Public Schools, Anti-Defamation League, New York.

The United States Supreme Court had decided, morally and rightly, the cases involving the prayer in public schools issue. As President John F. Kennedy said in a press conference in 1962 when asked about his opinion on the Supreme Court's decision against public school prayer, Americans need to pray more fervently at home, and to attend church regularly. He urged prayer, but prayer in places of worship and at home; public places, he obviously agreed, were to remain neutral in matters of religion.[3]

Americans will eventually see the logic in the Supreme Court's interpretation of the First Amendment. The thinking of the nine justices involved in the prayer in schools decisions can be studied and digested many times over, but until the path that has been laid out by the Court concerning freedom of religion is followed, emotions will dominate what should be intellectual discussions on whether to allow religious events in public places. The Court has thoroughly debated the aspects of religious freedom in the United States. All that remains now is to obey the law of the land. Ceremonial prayer combined with public money in any form is at least unadvisable and potentially dangerous.

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[3]Video Tape of White House Press Conference 1962.

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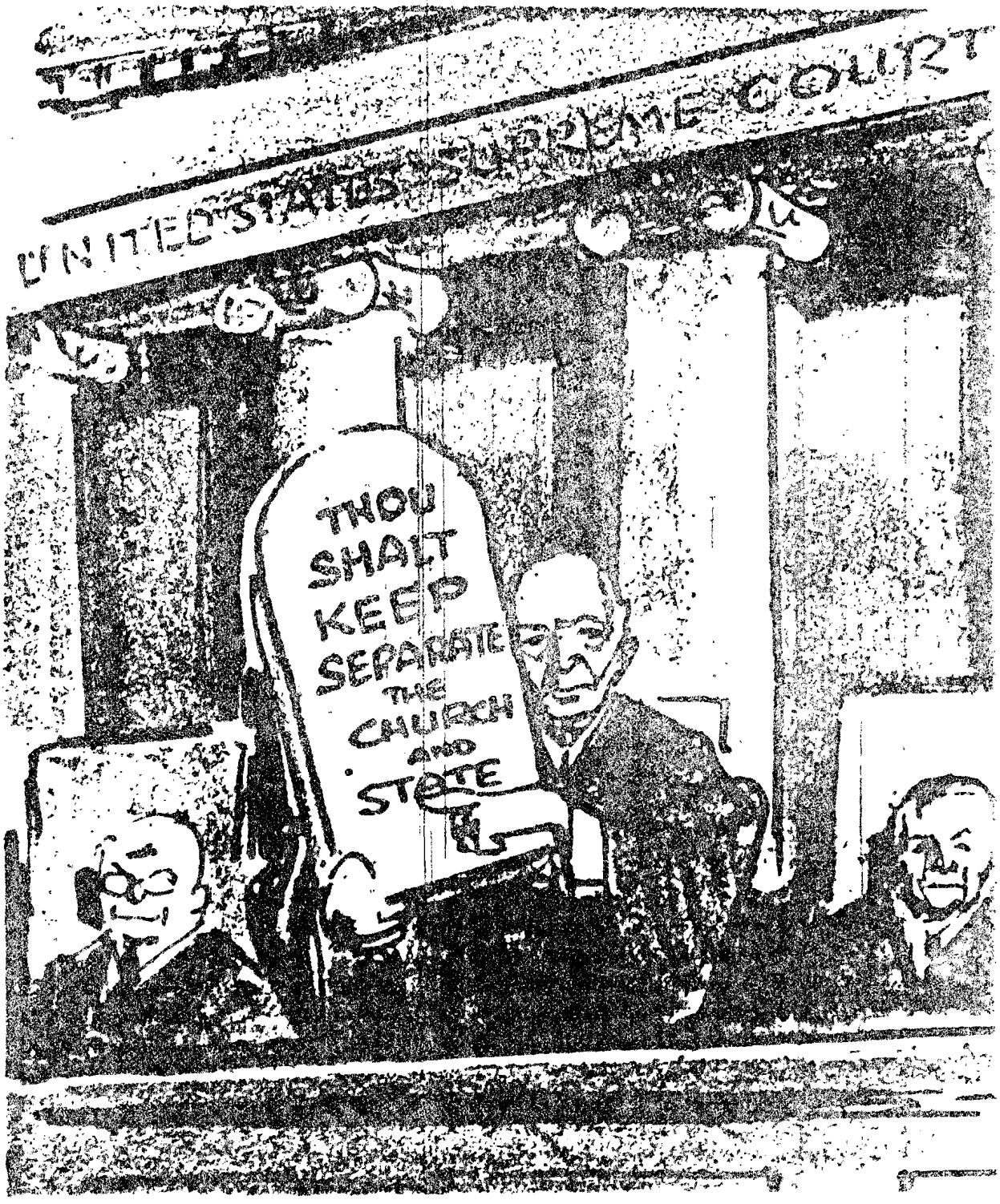

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SECTION E
PAGE 9

APPENDIX. A

MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS.

To the Honorable the General Assembly
of
the Commonwealth of Virginia.
A Memorial and Remonstrance.

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A

Copied from Everson v. Board of Education, 330 U.S. 1, 63-72.

Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence."[1] The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance.

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[1] Decl. Rights, Art: 16. [Note in the original.]

True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the coordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence

only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensible, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent,"[1] all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "*equal* title to the free exercise of Religion according to the dictates of conscience"[2] Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarantable? Can their piety alone be intrusted with the care of public worship? Ought their Religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet preeminencies over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

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[1] Decl. Rights, Art. 1. [Note in the original.]

[2] Art: 16. [Note in the original.]

5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have preexisted and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior

to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within [the] cognizance of Civil Government, how can its legal establishment be said to be necessary to civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal

of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthrophy in their due extent may offer a more certain repose from his troubles.

10. Because, it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration, by revoking the liberty which they now enjoy, would be the same species of folly which has dishonoured and depopulated flourishing kingdoms.

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs, that equal and compleat liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that "Chris-

tian forbearance,' love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of [revelation] from coming into the Region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of levelling as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defence, against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous.[1] and what may be the effect of so striking an example of impotency in the Government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens: and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties

[1] Art. 16. [Note in the original.]

are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal, before the voice either of the Representatives or of the Counties, will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the "basis and foundation of Government," [1] it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may controul the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly: or we must say, that they have no authority to enact into law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty

[1] Decl Rights-title. [Note in the original.]

bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his Blessing, may redound to their own praise, and may establish more firmly the liberties, the prosperity, and the Happiness of the Commonwealth.

II Madison, 183-191.

Appendix B

The Equal Access Act

Sec. 1. (a) It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

(b) A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.

(c) Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that–

(1) the meeting is voluntary and student-initiated;

(2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;

(3) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;

(4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and

(5) nonschool persons may not direct, conduct, control or regularly attend activities of student groups.

(d) Nothing in this title shall be construed to authorize the United States or any State or political subdivision thereof–

(1) to influence the form or content of any prayer or other religious activity;

(2) to require any person to participate in prayer or other religious activity;

(3) to expend public funds beyond the incidental cost of providing the space for student-initiated meetings;

(4) to compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;

(5) to sanction meetings that are otherwise unlawful;

(6) to limit the rights of groups of students which are not of a specified numerical size; or

(7) to abridge the constitutional rights of any person.

(e) Notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this title shall be construed to authorize the United States to deny or withhold Federal financial assistance to any school.

(f) Nothing in this Act shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

Sec. 2. As used in this title–

(1) The term "secondary school" means a public school which provides secondary education as determined by state law.

(2) The term "sponsorship" includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.

(3) The term "meeting" includes those activities of student groups which are permitted under a school's limited open forum and are not directly related to the school curriculum.

(4) The term "noninstructional" time means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

Sec. 3. If any provision of this title or the application thereof to any person or circumstances is judicially determined to be invalid, the provisions of the remainder of the title and the application to other persons or circumstances shall not be affected thereby.

Sec. 4. The provisions of this title shall supersede all other provisions of Federal law that are inconsistent with the provisions of this title.

From a pamphlet, The Aftermath of "Equal Access" A Critical Analysis, Religion and the Public Schools, Anti-Defamation League, New York.

TO: All Graduate Students Who Submit a Thesis or Research Problem/Project as Partial Fulfillment of the Requirements for an Advanced Degree

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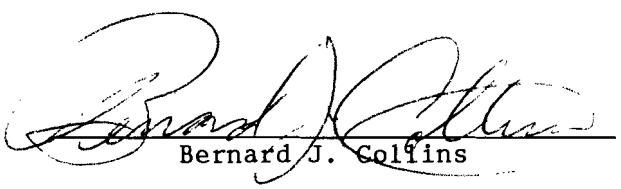

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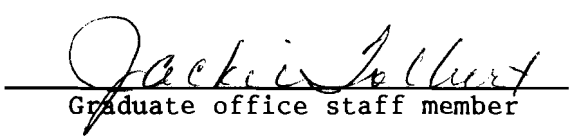

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