# REPORT FROM THE CAPITAL

★ RELIGIOUS LIBERTY ★ BAPTIST PRINCIPLES
★ PUBLIC AFFAIRS

A bulletin published by the Baptist Joint Committee on Public Affairs, Washington, D. C.
Vol. 18, No. 5 May-June-July, 1968


## Court Rejects Government Sponsorship of Religion

The United States Supreme Court ruled on June 17 that required reading of the Bible and recitation of the Lord's Prayer in public schools are unconstitutional because they violate the prohibitions of the First Amendment.

In an 8-1 decision the Court said that government has no business invading the religious life of the people. It said that the home, the church and the individual heart and mind are an "inviolable citadel" of religion.

"We have come to recognize through bitter experience," the Court said, "that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality."

Justice Tom C. Clark read the Court's opinion; Justices William J. Brennan, Jr., Arthur J. Goldberg, and William O. Douglas agreed with the decision of the Court, but they wrote separate concurring opinions.

Only Justice Potter Stewart dissented. He said that the cases before the Court had not presented enough evidence for a decision and that the issues were so complicated that he would have remanded them back to the lower courts "for the taking of additional evidence."

The Supreme Court's ruling against religious exercises in public schools were produced by two cases —one from Maryland and the other from Pennsylvania. In Maryland the Baltimore school board required a daily reading of a chapter from the Bible followed by a recitation of the Lord's Prayer. In Pennsylvania the state law required a reading of ten verses from "the Holy Bible." This was usually followed by recitation of the Lord's Prayer.

The Maryland Court of Appeals upheld the required religious practice as constitutional, but in Pennsylvania a three-judge federal court said it was unconstitutional. Both cases were argued before the Supreme Court on the same day earlier in the year.

In reaching its decision the Court went out of its way to say that its action is not hostile to religion and that it was not ruling out teaching about religion in public schools. It emphasized that the Constitution demands neutrality in matters of religion and that its action does not constitute an establishment of "a religion of secularism."

Justice Clark pointed out that the Establishment Clause of the First Amendment has been considered by the Supreme Court eight times in the past score of years. During that time the Court has consistently held, with only one Justice dissenting, "that the clause withdrew all legislative power respecting religious belief or the expression thereof."

Clark said, "The test may be stated as follows: what are the purposes and the primary effect of the enactment?" The Court said that the Constitution prohibits legislation either to advance or to inhibit religion.

The Court repeated the evidences that the American people are a religious people and that there have been close associations between the government and religion. It said, however, that it was because of bitter religious persecutions that the First Amendment was incorporated into the Constitution.

Citing another reason for the First Amendment Justice Clark said that the "first and most immediate purpose (of the Establishment Clause) rested on a belief that a union of government and religion tends to destroy government and to degrade religion."

The Court hit hard at the theory of church-state relations that says the First Amendment forbids only preference of one religion over another but that it allows aid to all im-

(See, COURT REJECTS, page 6)

### The Supreme Court on Prayer and Bible Reading

Two major articles on the Supreme Court's ruling on Bible reading and recitation of the Lord's Prayer in public schools are found in this issue of Report From The Capital. See "Questions and Answers" on page 2, and "Premises" on page 4.

Mimeographed copies of the text of the "opinion of the Court" are available. Send name, address and 25c to cover cost and mailing to Baptist Joint Committee on Public Affairs, 1628 Sixteenth Street, N. W., Washington, D. C., 20009.

# Questions On Court's Rule On Public School Religion

By C. Emanuel Carlson, Executive Director, Baptist Joint Committee on Public Affairs

On June 17 the United States Supreme Court, by an 8-1 decision, ruled that required Bible reading and recitation of the Lord's Prayer in public schools violate the First Amendment of the Constitution. The Court's decision does not answer all of the questions concerning the relation of religion to the public schools, but it does clearly answer a number of questions that are being asked about it.

The Court's opinion is not a lengthy document, only 22 pages, is very readable and can be understood by anyone. A careful reading of the document would clear up much misinformation about it.

Here are a number of questions about the decision that have come to our attention along with some answers as we see them.

**Question: What is the real point of the Supreme Court's decision?**

**Answer:** The point is that all governments, federal, state, and local, under the Constitution of the United States lack the authority or power to involve themselves in the religious teachings and practices of the American people. Accordingly, the Court ruled that state legislatures and school boards do not have the authority to require religious exercises in the schools.

**Q.: Is the Bible thereby excluded from use in the schools?**

A.: The answer is clearly "No." It is the requirement of a religious use of the Bible which is ruled out. The Court's opinion expressly says that the Bible may be studied objectively for all the information it can yield.

**Q.: Can one say that the Court has excluded God from the public schools and from American life?**

A.: The answer to this question does not lie in the Constitution, in the Supreme Court, nor in state law or school board rules. It lies in the person's theology who asks the question. The person who says that his God has been excluded from the schools by a Court decision thereby professes a very small God. The God who brought the Hebrew people over the Red Sea, and the God who raised Jesus Christ from the dead is not subject to government actions of any kind. This makes religious liberty a necessity.

**Q.: May pupils pray while they are in school?**

A.: The Court's decision places great emphasis on the person's right to free exercise of religion. If a pupil or a teacher wants to pray there is nothing in this decision that would prevent him from doing so. There is nothing there that prevents the pupils from even agreeing to pray together, but they must not be ordered to pray. How far voluntary religious expressions can go in the public schools has not been stated in any decisions to date.

**Q.: Will this decision tend to "secularize" the public schools and the American nation?**

A.: The American public school has always been a secular institution. So also has the American "nation" ever since church and state were separated at the beginning of our national history. Our Constitution holds all powers of government to be secular powers. Compare the powers of Caesar Augustus with the kind of power displayed at Pentecost to get the difference. "Secularization of the nation" could be debated in a country with some state religion or a state church but hardly in the United States of America.

Many other nations have demonstrated that the way to "secularize the minds of the people" is to tell them that God is a puppet under government regulation. From this viewpoint America is and will be as "secular" as the influences people put into the democratic political process. This is a challenge to the churches.

**Q.: Is this new Court decision a radical departure from American practice?**

A.: American practices on this matter vary widely. Many states and numerous localities have forbidden for decades regular religious exercises in their schools on the same grounds as those announced by the Court.

**Q.: Does the Court's ruling mean that our schools must promote "secularism"?**

A.: No. The Supreme Court specifically said that neither "secularism" nor any form of religion could be promoted by school authority.

**Q.: Does the Bible reading and prayer ruling mean that the Supreme Court is usurping or undermining the position of the local school board?**

A.: The Supreme Court has the responsibility to define the meaning of the Constitution and the rights of all American citizens. The definition of these rights may at times conflict with given actions of the federal, state and local governments and also with given actions of individuals or private organizations. The rights of the people are rooted in the Constitution. The Supreme Court in limiting illegal and unconstitutional actions is exercising a necessary and proper power that is a cornerstone of the American constitutional system.

**Q.: How does it happen that these matters come up now when these practices have gone on throughout our history?**

A.: This is a complicated inquiry. Our history is affected by many things. The new mobility of population brings our constitutional principles to new tests. Also "religious exercises" no longer pass as simply "heritage." They have come to be more meaningful than "tradition", and are recognized as **religion.** A new wave of litigation began in the 1940's with cases involving Jehovah's Witnesses, bus transportation, and released-time instruction. Litigation in the field became popular and frequent. Many states had discarded "public school religion" earlier, but now the "cold war" seems to make it more important. Furthermore, the "institutionalism" of our age has made Americans more aware of the need for protecting personal freedom, especially the inner man, from government regulation. Those who call for "less government" should be first to make serious efforts to exclude government from at least this "citadel".

**Q.: Where is the school child to receive the values of group religious exercise?** (Continued on next page)

## PUBLIC SCHOOL RELIGION

(Continued from page 2)

A.: These values can and should be instilled in the home, in the church and in other voluntary societies. Indeed, only when affirmations of faith are purely voluntary are they useful in influencing others.

**Q.: Does this sort of decision reflect a growing atheism in the United States?**

A.: Not at all. From all careful studies, it is clear that there is much less atheism in America today than in the 1920's. Also, such atheism as exists is much less militant than it once was.

**Q.: Will this decision cause an increase in parochial school attendance?**

A.: Many forces are at work that will determine the future size of America's parochial schools. This opinion would be minor if it has any influence in this regard. Indeed, the opinion may be a force against an increase in parochial schools, for in its argument the Court implies that it would not tolerate direct federal aids to such schools.

**Q.: Legislatures as well as courts open with some kind of prayer. Why not the public schools?**

A.: The Court pointed to congressional prayer as being not a legal requirement but an instance of free exercise of religion. They are free to do it if they wish to. The same is said of the court sessions. The Court made no ruling on the freedom of school classes to do it if they so desire.

**Q.: If there are no state laws on the subject are the schools free to do as they please in the matter of devotions?**

A.: School boards, superintendents, principals, and in some measure also the teachers, operate the schools by the authority of the law. If any one attempts to use his legal authority so as to either advance or hinder the free exercise of religion this would violate the Court's ruling. The "use of law" includes much more than state legislation on this subject.

**Q.: If a teacher has a class in which none of the pupils and none of their parents object to Bible reading and the Lord's Prayer, does the decision rule out the teacher's voluntary practices?**

**A.: The extent to which a teacher represents the legal powers of the state is not now clear. This means that the teacher's initiative in the matter could well be challenged in future cases. It is not handled in this decision.**

**Q.: Is this carrying the principle of separation of church and state too far?**

A.: The Court said that separation of church and state need not be applied to every aspect of their relationships, but in two matters this separation is "absolute". These two are: (1) no laws pertaining to an establishment of religion, and (2) no restraints on the free exercise of religion.

This leaves churches free to register deeds in a public office, to accept police protection, the use of public streets, fire departments and the like. But (1) and (2) are out. Is this "too far?" Some, especially those who want some help from government powers say "this is too far." I would expect Baptists to say, "No, it is not too far."

**Q. What effect does this have on non-government schools that receive government aid?**

A.: I do not believe the Court as a whole has spoken on this question. Some members of the Court have ideas on it. When this comes sharply under consideration financial aid could easily be defined as representing the use of law and therefore an "establishment of religion". This is interesting country for future exploration.

**Q.: Could this precedent be used to abolish the chaplaincy from the Armed Services?**

A.: The Court said the chaplaincy is there to protect the free exercise of religion by people who are ordered to certain locations, and it is described as "voluntary." I can foresee possible situations where the chaplaincy programs are more than this and become an "establishment of religion," in which case they would be vulnerable.

**Q.: Is this decision in any way a precedent for taxation of church properties?**

A.: If this is there, I have not found it yet.

**Q.: Does this decision announce to the world that we are renouncing our dependence upon God?**

A.: "Dependence upon God" is experience by "the humble and contrite heart". This experience is not transmitted by law or by force of government authority. Rather, this decision announces that our governments do not pretend to such competence.

**Q.: Does separation of church and state mean the separation of religion from government?**

A.: The decision of the Court states clearly the right of public leaders to "free exercise of religion." The President, congressmen, judges and all may pray, read devotionals, and the rest. However, they may not use their public authority to inflict religious ideas or practice on the people. It is high time to take the politician out of the role of spiritual leadership that aims at political goals.

**Q.: What effect does this decision have on federal aid to parochial schools?**

A.: The decision so restrains governments from involvement in religious instruction and observances that it must be discouraging to the advocates of parochial aid from public funds. If this decision is widely studied and supported the American people of all religious traditions will understand more clearly the basis of American freedom.

**Q.: How do public schools now properly relate themselves to religion?**

A.: Several things must be mentioned:

(a) Objective study of the Bible, of poetry, of music, art, etc., is proper as curricular content in the subject where it belongs, that is in history, in literature, in music class, et al.;

(b) the public school may plan to transmit our cultural heritage but not to make believe that this is "religion;"

(c) the customs, morals and ideals of American life can be taught in the schools, but not as "religion;"

(d) respect for the convictions and the freedoms of the children as well as the teachers should be cultivated in the school;

(e) care should be exercised so no element of coercion nor the use of state power is brought to bear for religious purposes.

# Premises of the Supreme Court in Restraining Government Activities Regarding Devotions

By C. Emanuel Carlson, Executive Director,
Baptist Joint Committee on Public Affairs

In June 1962, the Supreme Court of the United States set aside actions by the New York Board of Regents, and by a district school board, because these actions prescribed a religious activity, namely the saying of a prayer. At that time the Court rested its case on analysis without citing a single case. The decision resulted in unprecedented discussion and misunderstanding.

In handing down its opinion in the Maryland and the Pennsylvania cases, the Court took the opposite approach. This decision in June, 1963, contains a full review of the major decisions that the Court has handed down in interpreting the First Amendment. The Court's review is clearly written, and readable by most anyone. It should be carefully studied by all who prepare to discuss the issues.

This paper attempts to outline the premises which are involved. It is prepared in order to facilitate study and discussion of the Court's actual decision. The legal principles have been clearly set forth by the Court with ample quotations from previous decisions so there is now no need for reasoning from vague interpretations or from analogies. It is the writer's conviction that discussion of the case should conaider at least ten principles. After careful analysis of each principle a person may score the degree of his agreement with the findings of the nine men whose business it is to study and rule on constitutional questions.

1. **The Court proceeds on the premise that present American law is rooted in the principles of the Constitution and not in the practices of the colonial period of our history.** Thus the Court candidly admits that the colonial period did not carefully practice religious liberty, and it makes no attempt to fit these practices into its constitutional interpretations. It simply says:

> It is true that this liberty frequently was not realized by the colonists, but but this is readily accountable to their close ties to the Mother Country. However, the views of Madison and Jefferson, preceded by Roger Williams, came to be incorporated not only in the Federal Constitution but likewise in those of most of our States.

Since many people draw their illustrative materials for church-state discussions from the colonial period, it becomes necessary to place dates after all actions or practices and to screen out those that precede 1791, when the first ten amendments became effective.

2. **The Court accepts religious liberty as being as basic to American civic life as religion itself.** After reviewing some of the evidences that the American people have been and are "a religious people," the Court said:

> This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbedded in our public and private life.

To state the scope and purpose of the First Amendment, the Court chose, among others, the words of Justice Jackson who while dissenting to the Everson case yet agreed that

> There is no answer to the proposition . . . that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense. . . . This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity.

Lest there be any misunderstanding the Court added the words of Justice Rutledge, who was joined in another Everson statement by Justices Frankfurter, Jackson, and Burton:

> The (First) Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the Colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.

This conclusion the Court asserted "has been firmly maintained ever since that time," citing a number of other cases in its support.

3. **The Court looks upon the two parts of the First Amendment as supporting each other in the protection of this freedom:**

> The interrelationship of the Establishment and the Free-Exercise Clauses was first touched upon by Mr. Justice Roberts for the Court in Cantwell v. Connecticut, . . . where it was said that their "inhibition of legislation" had "a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act."

Both aspects of the First Amendment constitute reasons for a wholesome neutrality on the part of the state in its contacts with groups of religious believers and non-believers. Thus

> The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits.

But also this:

> And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees.

On these points the Court also approved the language of Justice Rutledge in the Everson case, as follows:

> Our constitutional policy . . . (D)oes not deny the value or necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, . .

(Continued on page 5)

(Continued from page 4)

as distinguished from the secular intellectual liberties, has been given the two-fold protection and as the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private.

In this discussion it should be noted that references are made to the free exercise of religion which is accorded legislators in their procedures, courts in their opening, and military personnel in service. Neither cases nor precedents are presented by the Court regarding the free exercise available for teachers or pupils who wish to exercise their religion in a public school without any legal prescription or directive. That such freedoms exist cannot be doubted but their nature and scope have not been determined by constitutional interpretation. Perhaps they neither can be nor should be.

4. **Aware that there are 83 separate religious bodies each exceeding 50,000 members, the Court holds that all are equal before the law:**

> Almost a hundred years ago in Minor v. **Board of Education of Cincinnati**, Judge Alphonzo **Taft**, father of the revered Chief Justice, in an unpublished opinion stated the ideal of our people as to religious freedom as one of "absolute equality before the law of all religious opinions and sects. . . ."
>
> "The government is neutral, and, while protecting all, it prefers none, and it disparages none."

This neutrality is directly applicable to those forms of religion which are antagonistic to the traditional forms. Hence:

> It is insisted that unless these religious exercises are permitted a "religion of secularism" is established in the schools. We agree of course that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe." **Zorach v. Clauson.** . . .

However, from this statement it does not appear that all ideas, attitudes, or social values are to be included under the word "religion," so as to prevent the teaching of the American heritage of values in the schools.

5. **The Court holds that the principles which restrain governments from regulating or prescribing devotions also restrain them from other forms of support or hindrance to religion.**

> . . . this Court has rejected unequivocally the contention that the establishment clause forbids only governmental preference of one religion over another. Almost 20 years ago in **Everson**, . . . the Court said that "(n)either 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."

Then from the **Zorach** case in the words of Justice Douglas:

> There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the 'free exercise' of religion and an 'establishment' of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter.

These comprehensive positions have been so often stated in the same or very similar words that there is every reason to believe the Court really means this as its position in the whole array of church-state issues that continue to plague legislatures and state or district courts.

6. **The Court is clearly committed to the Fourteenth Amendment as the application to the states of the First Amendment's protection of the religious freedom of the American people:**

> First, the Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" has been made wholly applicable to the states by the Fourteenth Amendment. Twenty-three years ago in **Cantwell** v. Connecticut, . . . this Court, through Mr. Justice Roberts, said:
>
> "The fundamental concept of liberty embodied in that (Fourteenth) Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. . . ."
>
> In a series of cases since **Cantwell** the Court has repeatedly reaffirmed that doctrine, and we do so now. . . .

While some aspects of federal-state relationships will of necessity be controversial, only nationwide principles of religious liberty can protect this nation from such religious divisions as have afflicted many other countries. It is hard to imagine responsible advocacy of public school systems in which religious emphases variously represent Mormons, Roman Catholics, Baptists, or Protestants. Hence the **Torcaso** decision said:

> We repeat and again reaffirm that neither a State nor the Federal government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

Regarding the New York Board of Regents' proposed state prayer the Court said in the **Engel v. Vitale** decision:

> . . . it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the government.

Personal religious freedom is to be respected by state as well as by federal government:

> The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority.

7. **The Court holds that all types of temporal knowledge can be given under public auspices leaving religious instructional goals to be reached by other agencies.** From **Emerson v. Board of Education** the Court quotes:

> . . . public schools are organized "on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion."

Also the Court asserts that governments can test the propriety of their involvement in this way:

> The test may be stated as follows: What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the

(Continued on page 6)

(Continued from page 5)

scope of legislative power as circumscribed by the Constitution.

The effort to gain temporal knowledge can include the objective study of religious materials:

> In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment.

Thus it is not God nor even information about God that is excluded from the public school. Rather it is the religious ceremony by public authority that is excluded, and also the pursuit of institutional religious goals within the public schools.

**8. The violation of the "no establishment" clause of the First Amendment is not affected by the presence or absence of either coercive force or required attendance.** From the **Engel v. Vitale** decision:

> Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct government compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not.

The Court's conclusion in these cases was based on the no-establishment clause:

> The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause.

**9. When the freedoms of people are involved the place of watchfulness is at the beginning of violations rather than at some more gross oppression:**

> Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberties."

**10. Under the American Constitution the rights of the majority do not include the right to use state powers or the machinery of government for the attainment of religious ends:**

> While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs. Such a contention was effectively answered by Mr. Justice Jackson for the Court in **West Virginia Board of Education v. Barnette** (1943):
>
> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to . . . freedom of worship . . . and other fundamental rights may not be submitted to votes, they depend on the outcome of no elections."

**Conclusion.** In view of these principles the Court concluded:

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment. Applying that rule to the facts of these cases, we affirm the judgment in No. 142. In No. 119, the judgment is reversed and the cause remanded to the Maryland Court of Appeals for further proceedings consistent with this opinion.

---

## Court Rejects

(Continued from page 1)

partially. "This court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another," Clark said. To challenge this conclusion, he continued, "seems entirely untenable and of value only as academic exercises."

The Court rejected the argument that the Bible is not primarily a religious book and that religious exercises in schools are mere moral instruction. Clark said, "Surely the place of the Bible as an instrument of religion cannot be gainsaid, and the State's recognition of the pervading religious character of the ceremony (Bible reading and recitation of the Lord's Prayer) is evident from the rule's specific permission of the alternative use of the Catholic Douay version as well as the recent amendment permitting nonattendance at the exercises."

Rejecting the charge of "a religion of secularism" in the public schools the Court said that government is forbidden to do this as much as to establish a more orthodox religion. The study of the Bible was not thrown out of the schools by the Court's decision. In fact, the Court said "It might be well said that one's education is not complete without a study of comparative religion and the history of religion and its relationship to the advancement of civilization.

"It certainly may be said that the Bible is worthy of study for its literary and historical qualities. Nothing we have here said 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. But the exercises here do not fall into those categories."

In a review of previous decisions on church-state relations the Court repeated what it said in the New York Regents' prayer case last year. It said, "It is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government." It applied this same principle to required reading of the Scriptures and recitation of the Lord's Prayer.

The Court rejected the concept that government should support religious belief. It said, "When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain."

# BJCPA Head Asks Service Act Changes

A Baptist executive here has highly commended the national concern for the needs of people which is being expressed by congressional efforts to create a National Service Corps.

C. Emanuel Carlson, executive director of the Baptist Joint Committee on Public Affairs, made a staff report to Baptist leaders in the nation on "The Church-State Relations Issues in the National Service Corps Bill." He was joined in the report by Walfred H. Peterson, interim assistant, who is doing special research for the Baptist agency. Peterson is professor of political science at Bethel College, St. Paul, Minn.

"There is undoubtedly a deep appreciation among our people for the needs which could be met by a 'National Service Corps' and I am certain that most of us would be anxious to see sacrificial service dramatized as a national expression," Carlson wrote to the Baptists.

Hearings before committees of both the House of Representatives and the Senate have been completed. Rep. Frank Thompson (D., N. J.) and Sen. Harrison A. Williams (D., N. J.) are chairmen of the subcommittees that conducted the hearings. The Baptist report is included in the record of the House hearings.

In his analysis the Baptist executive pointed out several strengths in the proposed National Service Corps. He said that the purposes to illuminate needs, to stimulate more "local" effort, to encourage growth in the service professions, and to focus national attention on the problems of America's poor and deprived are to be commended.

In addition Carlson said that "the bill also may do the nation good service by providing outlets for humanitarian impulses."

The major weakness in the draft bill now before Congress as it affects church-state relations, the Baptist report said, is that "it grants broad power to the President without congressionally defined guidelines for the use of that power." Put more briefly it said, "the bill inadequately provides for the rule of law."

Even though the President's powers are restricted to the purposes of the bill, Carlson said that "such purposes put no narrowly restrictive reins on the President" and that "this is more a grant of power than a limit."

"Failure of Congress to provide for the rule of law makes too much fall to the undirected discretion of the President. Undirected discretion," he explained, "needs to be replaced by carefully drafted law."

"Since the Corps will be doing work similar to that done by church welfare agencies, since it may undertake programs at the invitation of such agencies, since it may contract with church-related groups, and since it intends to inspire these agencies to expand their welfare efforts, one might expect some reference in the bill to church-state relations." But "there is none," he said.

"Not even a statement forbidding a religious test for corpsmen is included," he continued, "though in the testimony at House hearings and in an early draft, those who developed the bill said corpsmen would be accepted without regard to creed."

The proposed National Service Corps Act has the same loop-holes for public aid to church agencies as is found in the National School Lunch Program, the Hill-Burton Act and the testing programs of the National Defense Education Act, the Baptist report shows. In states forbidding the use of public funds for church agencies the federal government does not work through state programs but gives the aid directly to the organiation through a federal agency.

This means, Carlson said, "that church-related agencies which have been unable to receive aid from state governments for certain programs might be able to get aid for identical programs under the National Service Corps Act."

Put another way, he continued, "the federal system does not limit the church-state contacts that might develop under the Act. In fact . . . (it) can open more room for church-state contacts than are possible at present."

Carlson said that the analogy between the Peace Corps and the National Service Corps is faulty on three counts: (1) in international affairs the President must necessarily have more freedom of action than is ideal in domestic affairs; (2) the Peace Corps is young and its overseas operations need careful study for its effects on church-state relations; and (3) the 1960 political issues made the present administration especially sensitive to matters of church-state relations. Future administrations may not need to be so sensitive, he said.

The Baptist spokesman said that the National Service Corps Act needs to be carefully written "to protect both the church-related agency and the Corps from exploiting its own purposes for the prestige of the other, to keep a regrettable competition for federal funds from breaking out between church agencies; to protect the corps from charges of discrimination, intervention, and ulterior objective, and to carefully protect the role of church-related welfare agencies in the society from being weakened by federal assumption of their tasks."

He suggested five essential guidelines for the new agency:

1. Corps projects should not be undertaken for sectarian purposes. Participating agencies should be required to go on record declaring themselves to be non-sectarian.

2. No religious test or purpose should be involved in any project accepted.

3. No religious test should be required of any corpsman on enrollment or at any other point in his service.

4. No restraints on free religious practice and witness for off-duty hours should be imposed on volunteers who accept service in the Corps.

5. The exchange or loan of church-agency personnel with the National Service Corps should be made subject to the strictest review to insure public awareness of lines of responsibility and identity of both agencies.

REPORT FROM THE CAPITAL
Published 10 months during the year by
Baptist Joint Committee on Public Affairs
1628 16th Street, N. W.
Washington, D. C., 20009
Subscription—$1.00 per year
C. Emanuel Carlson, executive director
W. Barry Garrett, associate director, editor



# Congress Again Faces Church School Issue

Rumors and facts combine to reveal renewed efforts in Congress for tax aid to church schools on elementary, secondary and higher education levels.

Rumors: frequently these are planted by informed sources on Capitol Hill. There is growing talk that there has been a shift in public opinion in favor of public aid to parochial schools. Strong efforts in this direction can be expected in any proposed legislation affecting general education.

Facts: three education bills have cleared the House Committee on Education and Labor and are now pending in the Rules Committee. High priority for these bills has been agreed upon by both majority and minority leadership in the House of Representatives. Hearings are now in progress on other education bills.

The three bills now awaiting a rule for debate on the floor of the House are (1) to authorize $1,195,000,000 in grants and loans both to public and private colleges for construction of academic facilities, (2) to provide $450,000,000 for vocational education, and (3) to extend for another year aid to public schools in federally impacted areas.

A major battle on the college aid bill may develop first in the Rules Committee, then on the House floor. Last year a similar bill was defeated in the House by the narrow margin of 214-186. It lost largely because of opposition by those who opposed tax aid to church colleges. Its passage in both Houses of Congress this year is much more likely.

Although the vocational education bill would authorize grants to states, these funds could be used for public agencies, for contracts with private schools and for research in both public and other "nonprofit" schools. Church-sponsored vocational schools obviously could be included.

Church schools are not involved in the federally impacted areas education bills. However, a new feature is being proposed by the committee this year. No school that discriminates among students because of race, religion, color or national origin could receive federal assistance. Because of the popularity of this bill the past several years, and because of the national debate on civil rights, this amended bill may pass with little difficulty.

The proposed Higher Education Facilities Act of 1963 (H.R. 6143) is being pushed by Rep. Edith Green (D., Ore.). It provides (1) $690,000,000 in grants for construction of classrooms, laboratories, libraries and related facilities for both senior and junior colleges, both public and church-related, (2) $145,000,000 for existing and new graduate schools and for the development of "cooperative graduate centers," and (3) $360,000,000 for 50-year low-interest loans for college academic facilities.

Under the grant program the federal share would not exceed one-third of the total cost of the project, while the loans could be up to 75 per cent of the total cost. After three years the program will be re-examined to determine the amount of appropriations for the last two years of the overall five-year program.

Excluded from the college bill are facilities where admission to the general public is charged, gymnasium and recreation facilities, buildings used for sectarian instruction and for religious worship, divinity schools, and schools of medicine, dentistry and other health institutions.

Hearings are now in progress in the House on elementary and secondary education proposals. Both proponents and opponents of aid to parochial schools will be heard before the hearings are concluded. Rep. Carl Perkins (D., Ky.) is chairman of the education subcommittee conducting these hearings.

Also certain provisions of the National Defense Education Act are under review. It is rumored that the current "loans" for science equipment in parochial schools may be changed to "grants."

Thus far the Administration's omnibus education bill has been held intact by the Senate subcommittee on education, headed by Sen. Wayne Morse (D., Ore.). No report from the Senate committee has yet been agreed upon. In the House many of the provisions of the omnibus bill have been divided into separate bills in the hope of getting some of them through Congress.