Report from the Capital

MARCH
1973

Senator Hits 'Civil Religion,' Urges Biblical View

WASHINGTON—Senator Mark O. Hatfield (R., Ore.), at the National Prayer Breakfast on February 1, attended by President Richard Nixon and hundreds of other prominent public, business and religious personages, sounded a strong note for Biblical religion in contrast to "American civil religion."

The ideas enunciated by Sen. Hatfield, a Conservative Baptist, are basic to the preservation of religious liberty and proper church-state relations, as well as for a proper relationship to God.

Speaking prior to the President's presentation, Hatfield read from a prepared text as follows:

"My brothers and sisters:

"Events such as this prayer breakfast contain the real danger of misplaced allegiance, if not outright idolatry, to the extent that they fail to distinguish between the god of an American civil religion and the God who reveals Himself in the Holy Scriptures and in Jesus Christ.

"If we as leaders appeal to the god of an American civil religion, our faith is in a small and exclusive deity, a loyal spiritual Advisor to American power and prestige, a Defender of the American nation, the object of a national folk religion devoid of moral content. But if we pray to the Biblical God of justice and righteousness, we fall under God's judgment for calling upon His name, but failing to obey His commands.

"Our Lord Jesus Christ confronts false petitioners who disobey the Word of God:

'Why do you call me "Lord, Lord" and do not the things I say?' (Luke 6:46)

"God tells us that acceptable worship and obedience are expressed by specific acts of love and justice:

'Is not this the fast that I require of you . . . to

(See SENATOR, page 7)

Baptist College Case before Supreme Court

WASHINGTON (BPA)—A South Carolina taxpayer claimed before the U.S. Supreme Court here that a financial arrangement between the Baptist College of Charleston and the state of South Carolina is a violation of the First Amendment to the Constitution.

Richard W. Hunt, identified as "a taxpayer of the state of South Carolina and a resident of Charleston County," began his long fight against a state law that would aid both public and private colleges on March 20, 1970. The highest court in the nation finally heard the case on Feb. 21, 1973. A decision may be reached by June or July.

At issue is the South Carolina Educational Facilities Authority Act which provides for state-authorized tax-free revenue bonds for the benefit of institutions of higher education. Hunt charged that the arrangement would require "impermissible state involvement in the affairs of the Baptist College at Charleston."

The case arose originally when the Baptist College of Charleston applied for an issue of bonds not to exceed $3.5 million. If the plan had been completed, the Baptist College of Charleston would have deeded a portion of its campus to the state, which in turn would have leased it back to the school. The rental charge would have been adequate to pay off the bonds. After the bond issue had been retired, the state would in turn convey the campus back to the college.

The case has been in the courts for such

(See, BAPTIST COLLEGE, page 8)

Sen. Mark O. Hatfield

Nixon Plans Tax Credit Aid to Private Schools

WASHINGTON (BPA)—President Nixon said in his State of the Union message on the economy that he will ask Congress soon for tax credit legislation to benefit parents of children in parochial and private elementary and secondary schools.

"Tax credit for nonpublic schools" was one of seven items which the President listed among those included in his 1973

(See, NIXON PLANS, page 5)

Religious Nondiscrimination and Church Schools

By James E. Wood, Jr.

During the 1960's recognition was at last given, though long overdue, to a national policy to provide equal employment opportunity on the basis of race, color, religion, sex, or national origin. Legal standing inevitably came with the enactment by Congress of Title VII of the Civil Rights Act of 1964, which enunciated a policy of equal employment opportunity in the private sector of American life, without discrimination of race, color, religion, sex, or national origin. Government compliance with the Civil Rights Act of 1964 did not come until Executive Order No. 11246 was issued September 24, 1965, which declared that "the policy of equal opportunity applies to every aspect of Federal employment policy and practice."

Wood

Administered by the Office of Federal Contract Compliance (OFCC), the policy of "equal employment opportunity" is declared to be for the purpose of "insuring equal employment opportunity among Federal contractors and on Federally-assisted construction projects." As a result, no Federal contracts are to be awarded any institution or company with discriminatory employment practices. Specific provisions are made for the Federal government's monitoring and evaluating the equal employment compliance programs of all contracting agencies, both public and private. The policy is made to apply to any employer who holds a contract of $10,000.00 or more with the Federal government.

Particularly critical issues arise with regard to the application of this policy to denominational schools, whose religious identity is integral to their very being and necessarily dependent upon some form of religious discrimination in the selection of their faculty. Originally in the Civil Rights Act, religious discriminaton in employment was permitted for church schools. Executive Order No. 11246 now specifically prohibits such discrimination in employment even in the case of church-related schools. Compliance is to be maintained on the basis of annual reporting by the institution of the extent of the employer's compliance with the Code of Federal Regulations of the U. S. Department of Labor Office, Washington, D. C.

These far-reaching and unprecedented developments of Federal control over denominational and religiously oriented schools were explicitly brought out recently in a rather detailed consultation between an official of the Contract and Compliance Section of the Department of Labor and various religious representatives in Washington, D. C., including two members of the staff of the Baptist Joint Committee on Public Affairs. As church representatives we were reminded that the present Executive Order No. 11246 applies to all schools which have received Federal grants of $10,000.00 or more as well as those schools which have negotiated any contracts with the Federal government, such as training institute, R. O. T. C., and special education programs.

Editor's note: This article by the Executive Director of the Baptist Joint Committee on Public Affairs should be read and studied in connection with the news release from the U. S. Department of Labor that appears on page 6.

Inevitably, the enforcement of such a policy requiring nondiscrimination in religion in the employment practices of church schools raises serious questions concerning the continued identity, integrity, and existence of religiously oriented schools as such. To take the position that denominational or religiously oriented schools may no longer discriminate on the basis of religion in the selection of their faculty is, in effect, to deny the right of such schools to preserve their religious character. Yet the Contract and Compliance Section of the Department of Labor categorically maintains that church schools, for example, may no longer discriminate on the basis of religion in the employment of their faculty. While the policy of equal employment does not apply, we are told, to the admission of students, it does apply to all employees of a church school, both faculty and non-faculty.

Perhaps even more disconcerting is the ruling by the Department of Labor that religious nondiscrimination in employment by these schools must apply to persons employed to teach religion as well as other subjects. That is to say, a department of religion in a church-related college or university, if it holds a contract with the Federal government for $10,000.00 or more, may no longer discriminate in the hiring of its religion faculty on the basis of religion. The only exception, according to the Department of Labor, might be a chaplain whose religious qualifications are regarded as essential to the performance of the chaplain's official duties.

Clearly such an Executive Order, until now scarcely known to the general public or to school administrators, must be seen as a direct invasion of government into religion and private education in the most sensitive area of school administration decision making. While no doubt the policy is predicated on the best of intentions on behalf of civil rights, namely the elimination of the continued and flagrant discrimination in school employment against certain religious minorities and those of particular national origins, the policy as now promulgated manifestly fails to take into account the basic right of denominational and religiously oriented schools, of whatever religious persuasion (Buddhist, Muslim, Christian, or Jewish), to preserve their religious identity. To suggest that all such schools, whether partially subsidized or with a Federal contract, may no longer discriminate on the basis of religion in the hiring of their facul-

(See, RELIGIOUS, page 8)

REPORT FROM THE CAPITAL—a bulletin published 10 months during the year by the Baptist Joint Committee on Public Affairs, 200 Maryland Ave., N. E., Washington, D. C. 20002. The purpose of this bulletin is to report findings on the interrelations between churches and governments in the United States. It affords church leaders a chance to understand developments, policies and trends affecting public policies and it affords public officials a chance to understand church structures, dynamics and positions. It is dedicated to religious liberty, to free and effective democracy and to equitable rights and opportunities for all.

The views of writers of material for *Report From The Capital* are not necessarily those of the Baptist Joint Committee on Public Affairs or its staff. The bulletin also provides for the sharing of views between leaders of the cooperating conventions and between leaders of various religious and traditions.

The Baptist Joint Committee on Public Affairs is a denominational agency maintained by the American Baptist Convention, Baptist Federation of Canada, Baptist General Conference, National Baptist Convention, National Baptist Convention, USA, Inc., North American Baptist General Conference, Progressive National Baptist Convention, Inc., Seventh Day Baptist General Conference, and the Southern Baptist Convention.

Executive Staff of the Committee: James E. Wood, Jr., Executive Director; John W. Baker, Associate Director in Charge of Research Services; and W. Barry Garrett, Associate Director in Charge of Information Services and Editor of *Report From The Capital*.

SUBSCRIPTION RATES—Individual subscription, $1.50 per year; Club rate for 10 or more, $1.00 each per year; Bulk distribution of 10 or more to a single address, $.75 each per year.

March 1973—Volume 28, Number 3

washington observations

news views trends

March 8, 1973

THIS YEAR WILL BE DECISIVE for federal education programs. Authorizations for most programs funded under the Elementary and Secondary Act of 1965 (ESEA) expire June 30. President Nixon proposes major changes to restructure federal aid programs for education, including $300 million for tax credits for aid to parochial schools.

EDUCATION IS ONE OF FOUR broad areas that the Administration proposes for its special revenue sharing approach. The other three are law enforcement and criminal justice, manpower training and urban community development. The President has proposed $6.9 billion to replace 70 programs in these four areas.

THE ADMINISTRATION PROPOSALS for Education Revenue Sharing would consolidate 30 categorical grant programs for elementary and secondary education into five broad areas: elementary and secondary education, federal education impact aid for students whose parents both live and work on federal property, education for the handicapped, vocational and adult education, and school lunch programs.

MANY OF PRESIDENT NIXON'S proposals will not have an easy time in Congress. Rep. Carl Perkins (D., Ky.) chairman of the House Education and Labor Committee and floor manager of the original ESEA bill, has introduced a bill (H. R. 69) that would amend and extend ESEA for 5 years. Rep. Albert Quie (R., Minn.), ranking minority member of the committee, held a press conference March 5 to announce plans to change the formula for distributing grants for educationally deprived children from one based on a low-income factor to one based on actual educational disadvantage of the pupil.

THE PERKINS BILL would expand the service and benefits available to nonpublic education. This includes such items as shared staff and services, loans of textbooks and library resources, and instructional equipment. The big question is: What will happen to Education Revenue Sharing funds when the decisions are made by state and local leaders, largely without strong federal guidelines?

JAMES E. WOOD, JR., Executive Director of the Baptist Joint Committee on Public Affairs, is scheduled to testify on March 27 before the House Committee on Ways and Means on tax reform proposals now before Congress. The subject of Wood's testimony will be "charitable contributions." Rep. Wilbur Mills (D., Ark.) is chairman of the House Ways and Means Committee.

PROCEDURE FOR TESTIMONY before a Congressional Committee usually calls for written copies in advance for Committee members. Time is then allotted to the witness who either reads the testimony, summarizes it and/or contributes additional comment in response to questions or in explanation of the written text. Wood has been allotted 10 minutes for his oral presentation.

Baptists File Brief with Supreme Court on Tax Credit Aid to Parochial Schools

WASHINGTON—The Baptist Joint Committee on Public Affairs in an *amicus curiae* (friend of the court) brief filed March 2, 1973 asked the Supreme Court of the United States to rule that "tax credit for tuition paid by parents to nonpublic schools" is a violation of the Establishment Clause of the First Amendment of the Constitution.

The brief, prepared by the research department of the Baptist Joint Committee, was double checked by the law firm Lucas, Selden, Friedman and Mann for legal form and accuracy. It was filed by Joseph B. Friedman, attorney for the Baptist Joint Committee as *amicus curiae*.

John W. Baker is the Associate Director of the Baptist Joint Committee in Charge of Research Services. Rosemary Brevard is his assistant.

The Baptist Joint Committee of which James E. Wood, Jr. is Executive Director earlier authorized its staff to file amicus briefs on matters on which the Committee has taken positions when they consider the subject to be of sufficient import.

This new brief is the fifth to be filed by the Baptist Joint Committee in cases involving church-state questions. Two were filed under the administration of Joseph M. Dawson, the Committee's first executive director and two during the administration of C. Emanuel Carlson, the Committee's second executive director. This most recent brief is the first to be filed during Wood's administration.

In 1946 the Committee filed a brief in *Everson v. Board of Education* on the subject of busing parochial school pupils. In 1949 it filed a brief in *McCollum v. Board of Education* on the subject of released time for religious education.

In 1970 a brief was filed in *Walz v. Tax Commission* on the question of taxation of church property. In 1971 the brief was on compulsory religion at military academies in *Anderson v. Laird* in the U. S. Court of Appeals for the District of Columbia.

The current brief is on the issue of tax deduction for tuition paid by parents for their children to attend parochial schools. The case is *PEARL v. Nyquist*.

The case now under consideration challenges a New York law which provides for a balloon tax deduction by parents paying parochial or nonpublic school tuition. This "tax deduction" was described by the District Court for the Southern District of New York as a "tax credit."

The New York law, which was ruled constitutional in a 2-1 decision by the District Court, provides for a graduated scale of tax deductions for parochial school parents based on adjusted gross income and the number of children in nonpublic schools. The maximum benefit a family can receive under this law ranges from $50 for one child to $150 for three or more children.

"It is the opinion of the Baptist Joint Committee on Public Affairs that the principle of religious liberty is jeopardized by the decision of the United States District Court for the Southern District of New York, dated October 2, 1972, which is on appeal in this case," the Baptist brief stated.

Five arguments against the New York tax credit were advanced by the Baptists in their brief.

1. The legislative purpose was to provide public aid to religious parochial schools.

2. The primary effect of the law "is to grant public aid to sectarian religion and its institutions."

3. The law provides for insufficient administrative controls and results in excessive political entanglement between government and religion.

4. The tax credit provided by the New York law constitutes "an unconstitutional public support by the government of the teaching of religion."

5. The law creates "a form of compulsory religion."

In New York 93.5 per cent of the students in nonpublic elementary and secondary schools are enrolled in church-operated and church-controlled schools. More than 90 per cent of these are Roman Catholic schools.

The Baptist brief concluded that, due to the overwhelming number of parochial pupils in nonpublic schools and due to the religious nature of these schools, "the principal beneficiary of this statute must be organized religious activity."

The brief asserted that "religious groups operate and control elementary and secondary schools for religious reasons." It pointed out that in addition to the Roman Catholic schools "a number of Protestant schools have been established so that parents might provide an education for their children which embodies prayer and Bible reading as an integral part of the school day."

In addition to its legal arguments the Baptists brief quoted an article, "Why Catholic Schools?," by Father Christopher O'Toole, published in the August 6, 1972 issue of *National Catholic Register*. Fr. O'Toole stated:

"The purpose of the parochial school is to permeate with the Faith and the spirit of the Gospels the total educative process. In a parochial school the teaching of religion, for example, is not simply just another subject to be learned and which is not taught in the public schools. No, the entire curriculum is to move forward in an atmosphere of faith in order to produce a pupil who knows, at least in an elementary way, how to relate all knowledge to its ultimate source —God himself."

Even the U. S. Supreme Court in an earlier decision, *Essex v. Wolman*, affirmed: "The basic purpose of denominational education is to foster and maintain the teachings of a denominational religion. The religious aspect of the curriculums must be the principal and dominant reason for the existence of such schools."

In the decision of the lower court in *PEARL v. Nyquist* the Court recognized that in this case "we are dealing largely with the same parochial school system" that was earlier dealt with. It listed the characteristics of the schools that would be beneficiaries of the New York law.

Such schools, according to the District Court, (a) impose religious restrictions on admissions; (b) require attendance of pupils at religious activities; (c) require obedience by students to the doctrines and dogmas of a particular faith; (d) require pupils to attend instruction in the theology or doctrine of a particular faith; (e) are an integral part of the religious mission of the church sponsoring it; (f) have as a substantial purpose the inculcation of religious values; (g) impose religious restrictions on faculty appointments; and (h) impose religious restrictions on what or how the faculty may teach.

For these reasons, the Baptist brief asserted that the New York law is a violation of the Establishment Clause of the First Amendment of the U. S. Constitution, which says, "Congress shall make no law respecting an establishment of religion." (The First Amendment is made applicable to the States by the Fourteenth Amendment.)

The Baptist brief concluded: "The aid to religious parochial schools comes from tax credit for tuition already paid and constitutes funds which are subject to state control. When public funds, which are collected from all taxpayers regardless of religious belief or lack of religious belief, are used to aid, either directly or indirectly, elementary or secondary schools which teach religion, all taxpayers are compelled to assist in the support of that teaching of religion.

Supreme Court, U. S.
FILED
MAR 2 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-694

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL., *Appellants*

—against—

EWALD B. NYQUIST, ET AL., *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS AS AMICUS CURIAE

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Brief Available

Copies of the *amicus curiae* brief filed with the U. S. Supreme Court in the tax credit case, *PEARL v. Nyquist*, by the Baptist Joint Committee on Public Affairs is available in limited quantities. The price is 50¢ per copy.

Write to the Committee at 200 Maryland Ave., N. E., Washington, D. C. 20002, with your remittance enclosed. Do not send stamps.

Nixon Plans Tax Credit Aid to Private Schools

(Continued from page 1)

economic package. The list, minus details, was in the third installment of President Nixon's State of the Union message, traditionally given at the beginning of each year.

Earlier when the 1974 budget went to Congress, the President included proposals to provide a tax credit of up to $200 a year per pupil for parents of children in nonpublic schools.

"These institutions are a valuable national resource, relieving the public school system of enrollment pressures, injecting a welcome variety into our educational process, and expanding the options of millions of parents," Nixon said in his State of the Economy message.

The President's views on finding some way to aid parochial schools are well known. This issue was prominent in his campaign last fall and he has said repeatedly that the government must help the ailing parochial school system.

The ultimate outcome of such legislation is subject to much debate in Washington. On one hand, the powerful chairman of the House Ways and Means Committee, Wilbur D. Mills (D., Ark.), supports the idea as a part of a larger tax package. He believes the plan is constitutional and will pass the House of Representatives.

"I back this type of aid, which goes to the parent and not to the school, because of all unsound financial condition the private schools are in. It is fair to give tax support to all schools, not just public schools," Mills said.

On the Senate Side of Congress the outlook for tax credit legislation is unsure. Sen. Sam J. Ervin (D., N.C.), the Senate's foremost constitutional lawyer, is strongly opposed to the idea.

Ervin said recently that such aid to parents in essence gives government money raised from all the people to benefit certain churches. Ervin accused President Nixon of lacking "devotion to the First Amendment" in his dedication to give public funds to parochial schools.

The Supreme Court, of course, will have the last word. The court has before it cases from Pennsylvania and New York that involve tax credits and tuition reimbursements for parents of private school children.

Cong. Mills has said that he himself would still back the tax credit plan, regardless of the Supreme Court ruling. However, a court ruling against such tax credits would weaken chances of passage in Congress.

A White House spokesman said, when asked what the situation would be if the court ruled against the current state tax credit laws, that "obviously, it makes a difference."

Regulations on Employment in Religious Agencies Finalized by Labor Department

Editor's note: The following news release from the U. S. Department of Labor should be read and studied in connection with the article by James E. Wood, Jr., Executive Director of the Baptist Joint Committee on Public Affairs, beginning on page 2.

WASHINGTON—U. S. Department of Labor rules and regulations to remedy religious and ethnic discrimination in employment by federal contractors became effective February 20, 1973.

The Guidelines affect more than 250,000 firms engaged in federal contract work, including contractors and subcontractors on federally assisted construction projects, and protect about one-third of the nation's workforce.

The regulations were published in the Federal Register on January 19, 1973, by the Labor Department's Office of Federal Contract Compliance (OFCC). They tell how to comply with requirements of Executive Order 11246, as amended, for promoting and insuring equal employment opportunity for all persons employed or seeking employment with government contractors and subcontractors without regard to religion or national origin.

The Guidelines say: "Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin."

Under the new regulations, federal contractors must determine whether members of various religious and ethnic groups are receiving fair consideration for job opportunities. In doing so, "special attention shall be directed toward executive and middle-management levels, where employment problems relating to religion and national origin are most likely to occur."

The Guidelines add: "Based upon the findings of such reviews, employers shall undertake appropriate outreach and positive recruitment activities . . . to remedy existing deficiencies."

Outreach and positive recruitment activities listed in the regulations include establishment of internal communications and procedures to ensure that the employer's equal employment commitment is being carried out; enlisting the assistance and support of all recruitment sources, including employment agencies, college placement directors, and business associates; and reviewing employment records to determine the availability of promotable and transferable members of various religious and ethnic groups.

Other required efforts include establishment of meaningful contracts with religious and ethnic organizations for advice, education, technical assistance and referral of potential employees; conducting recruitment programs in schools with substantial enrollments of students from various religious and ethnic groups; and advertising in religious and ethnic media.

Employers are not expected to undertake all of the listed activities. The Guidelines note: "The scope of the employer's efforts shall depend upon all the circumstances, including the nature and extent of the employer's deficiencies and the employer's size and resources."

The outreach and positive recruitment provisions in the Guidelines do not apply to employment problems of Blacks, Spanish-surnamed Americans, Orientals, or American Indians because they are covered by other OFCC regulations and procedures.

A separate section of the Guidelines requires an employer to accommodate to the religious observances and practices of an employee or prospective employee unless the employer demonstrates that he is unable to reasonably do so without undue hardship on the conduct of his business.

As part of this obligation, an employer must make reasonable accommodations to the religious needs of an employee or applicant who does not wish to work on his Sabbath or special religious holidays.

In determining the extent of an employer's obligations under this provision, the regulation provides that "at least the following factors shall be considered: (a) business necessity, (b) financial costs and expenses, and (c) resulting personnel problems."

Congresswoman Would Deduct Volunteer Work

WASHINGTON—A Democratic Congresswoman includes churches among the nonprofit organizations that would benefit by her bill to provide a federal income tax deduction up to $2,000 for voluntary services.

Rep. Ella T. Grasso (D., Conn.) introduced a bill (H. R. 3416) in Congress "to provide an additional itemized deduction for individuals who perform voluntary public service by working for certain organizations."

Mrs. Grasso, a Roman Catholic, specifically mentioned "church groups" among recognized public and private nonprofit organizations which use volunteer help that would be approved under the measure.

According to the bill a wide variety of tax-exempt public and private organizations would qualify for the voluntary public service work contributions. These would include many civic leagues, private or governmental public safety groups or organizations, police and fire departments, ambulance services and civil defense organizations.

Specifically described as an eligible organization would be "a nonpartisan group whose objectives relate to the promotion of human welfare indirectly through the advancement of electoral or legislative reforms."

"At this time," Mrs. Grasso said, "many public and private nonprofit organizations must continue their operations with small, overworked staffs. Passage of this bill would establish an appropriate way to thank and encourage these dedicated individuals."

Under the bill a person's deduction would be figured by multiplying the federal minimum wage or $2.00, whichever is greater, for a maximum of $2,000. A person to be eligible must contribute at least 50 hours of uncompensated work to the qualified organization.

If such a bill were enacted into law, it would provide a strong additional incentive for volunteer church workers in a wide variety of programs and to retired people to enhance their incomes by paying less taxes due to volunteer work contributed to their favorite organizations.

TAX CREDIT OPTIMISM

ST. PAUL, Minn.—The national president of Citizens for Educational Freedom (CEF) said here that 1973 stands as "the year of great promise" in efforts to push a federal tax credit law through Congress.

Catholic Hospitals Urged to Resist Abortion Change

WASHINGTON, D.C. (RNS)—The nation's Catholic hospitals have been urged to "challenge through judicial process" any matter related to the legality of abortion affecting their institutional services.

The executive committee of the Catholic Hospital Association (CHA) made the appeal in responding to the U. S. Supreme Court's recent decision overturning state abortion laws.

Sister Mary Maurita, R.S.M., CHA executive vice president, said that each Catholic hospital must first reaffirm itself through corporate resolution as being "unqualifiedly opposed to abortion."

"While times and circumstances and civil laws may change," she said, "we believe the right to life and the inviolability of the human person remain unchanged."

The CHA executive committee has recommended several "immediate" courses of action to challenge any state abortion legislation which does not recognize or make provision for the "constitutional right" of a Catholic hospital to provide services consistent with church doctrine. Among recommendations are the following:

- Request the right to be heard in legislative assemblies regarding any changes in the hospital licensing act, or any consideration of abortion.
- Challenge through judicial processes any matter regarding the legality of abortion.

Members of the CHA executive committee also recommended that careful attention be given to matters such as:

- State hospital association relationships and joint enterprises in which the hospital is involved.
- Contracts, agreements and other documents regarding shared hospital services, consolidation of services and facilities, etc.
- Contracts, agreements and commitments between separately incorporated Catholic hospitals and their sponsoring religious body.
- The desirability of coordinated action with agencies and other outreaches of the Church.

The Catholic Hospital Association represents 850 Catholic hospitals and extended care facilities throughout the U. S.

REFUSES ABORTION REVIEW

WASHINGTON—The U. S. Supreme Court has unanimously refused to reconsider its Jan. 22 ruling allowing abortion during the first six months of pregnancy and also sent cases involving anti-abortion laws in 11 states back to lower courts.

CHURCH IN WHITE HOUSE

WASHINGTON — Madalyn (Murray) O'Hair has filed suit in federal court against President Nixon, the treasurer of the U. S., the Senate and House chaplains and other Congressional officials for allowing religious services in the White House and the Capitol.

Acting as her own attorney, she accused Mr. Nixon of being the "central figure" in an effort to "make Christianity the official 'civil religion' of the United States." Specifically, she charged the President with holding religious services in the White House in violation of the First Amendment. (RNS)

Baptist Hospital Revises Abortion Policy

DALLAS (BP)—Baylor University Medical Center here, the second largest of the Southern Baptist-owned hospitals, has revised its policy to permit carefully screened pregnancy terminations during the first three months for reasons other than danger to the mother's life.

The decision, following the recent U.S. Supreme Court ruling said the policy revision would be "accompanied by intense emphasis on counseling and related activities."

Previously, Baylor had allowed only therapeutic pregnancy termination where the mother's life was in danger.

Under the new policy, the patient's physician and another Baylor staff physician, must approve the procedure and determine that it is "medically advisable."

After the first 12 weeks of pregnancy, previous rules will apply at Baylor. They basically state that a committee of at least three physicians must determine that continued pregnancy would endanger a mother's life.

The Baylor statement said:

"Since the decision of the Supreme Court to nullify Texas' law on termination of pregnancy, the officials of Baylor University Medical Center have engaged in extensive discusssion of the religious and moral as well as the medical and legal considerations involved.

"Consultation was obtained in each of these fields in an effort to arrive at an answer that recognizes the commitment of Baptists to preserve the value and dignity of human life and fulfills the medical center's obligations to patients and the public.

"After long deliberation, the medical center policy regarding interruption of pregnancy has been revised to permit certain specialists on the medical staff to perform these procedures during the first 12 weeks of pregnancy. The patient's decision for the procedure will be only one factor.

"In addition, affirmative judgment by the patient's physician and another Baylor staff physician that the procedure is medically advisable will be required. Termination of pregnancy after the first 12 weeks will require therapeutic justification and the same strict procedures will be followed as in the past.

"The medical and administrative officials and the governing board at Baylor University Medical Center approach this problem with deliberate concern about the deep beliefs and questions of conscience involved. A major basis for the new position is that when these procedures are done, they should occur in a hospital setting where the patient's life and health can be best protected and where the environment for the patients, physicians and others involved reflects concern for all facets of the problem rather than merely the legal and technical aspects.

"The change in policy at Baylor will be accompanied by intensified emphasis on counseling and related activities."

Senator, 'Civil Religion'

(Continued from page 1)

loose the fetters of injustice . . . to snap every yoke and set free those who have been crushed?

'Is it not sharing your food with the hungry, taking the homeless poor into your house, clothing the naked when you meet them, and never evading a duty to your kinsfolk?' (Isaiah 58:6-7)

"We sit here today, as the wealthy and the powerful. But let us not forget that those who follow Christ will more often find themselves not with comfortable majorities, but with miserable minorities.

"Today, our prayers must begin with repentence. Individually, we must seek forgiveness for the exile of love from our hearts. And corporately, as a people, we must turn in repentence from the sin that has scarred our national soul.

'If my people . . . shall humble themselves, and pray, and seek my face, and turn from their wicked ways, . . . then I will forgive their sins, and will heal their land.' (II Chronicles 7:14)

"We need a 'confessing church'—a body of people who confess Jesus as Lord and are prepared to live by their confession. Lives lived under the Lordship of Jesus Christ at this point in our history may well put us at odds with values of our society, abuses of political power, and cultural conformity of our church. We need those who seek to honor the claims of their discipleship—those who live in active obedience to the call . . . 'do not be conformed to this world but be transformed by the renewing of your minds.' (Romans 12:2) We must continually be transformed by Jesus Christ and take his commands seriously. Let us be Christ's messengers of reconciliation and peace, giving our lives over to the power of his love. Then we can soothe the wounds of war, and renew the face of the earth and all mankind."

Religious Nondiscrimination and Church Schools

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ties seriously threatens the continued religious integrity and the very existence of denominational and religiously oriented schools as such. The policy must be regarded as seriously defective because it is far too sweeping in its application and shows a complete lack of understanding concerning the character and rationale of denominational schools in the United States.

Furthermore, the policy of nondiscrimination of religion, as applied to denominational schools, fails to distinguish between those schools which simply maintain contracts with the Federal government for services rendered and those institutions which are partially supported or subsidized by Federal funds for the construction of buildings and the general operation of their school program. Even if one argues most vigorously for the axiom that public control and public interest should follow the appropriation of public funds, some distinction certainly should be made between those schools which simply negotiate contracts with the Federal government for government programs (e.g., R.O.T.C. and the training of Peace Corps volunteers), as a service to be rendered, and those schools which accept Federal funds for improving and upgrading their general educational program. The former does not constitute Federal aid or subsidy to the school, but rather is for the specific services rendered the government by the school, negotiated on a contractural basis. By no stretch of the imagination should such programs be viewed as Federal aid to the school itself. Such contracted programs are not even entered into primarily for the benefit of the school. Indeed, many private and church-related colleges in this country have in recent years maintained an R. O. T. C. program, for example, at some sacrifice to their standing in the eyes of their patrons and their student body. Certainly, R. O. T. C. programs on church-related college campuses have not generally enhanced either the popularity or prestige of these schools in the communities in which they are located or in the eyes of the students whom these schools seek to serve. In any event, whether of ultimate benefit to the school or not, such contracts with the Federal government on the part of denominational schools is payment for a specific government service to be rendered by the school.

To be sure, there may be those who would favor the complete elimination of religious discrimination in education throughout the United States, but that is not the issue here. Fundamental to our remaining a free society is the question of pluralism in religion and in education. While the government is not obligated financially to preserve pluralism in American religion or in American education, severe limits are needed to prevent the government's use of its power to proscribe the right to pluralism in religion and education. For the state to take the position that denominational or religiously oriented schools which have entered into a contract with a Federal agency may no longer preserve their religious identity is a denial of a basic civil right in itself. It is to call into question the meaning and substance of the First Amendment: to limit the authority and the power of government over religion. For the termination of religious discrimination in church schools inevitably will bring the elimination of the right of church schools to their religious identity.

Baptist College Case before Supreme Court

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a long time that Baptist college made other arrangements for a large portion of its financial needs.

According to Hunt's brief before the Supreme Court, Baptist College paid off a $2.5 million debt by a loan that was arranged otherwise than through the state bond issue.

The college then reduced its request to the state from $3.5 million to $1,250,000. This reduced amount would: (1) repay the college's current fund for a loan of $250,000 to its plant fund, (2) refund $800,000 in short term loans, and (3) complete a dining hall at a cost of approximately $200,000.

Robert McCormick Figg Jr., an attorney from Columbia, S.C., represented Hunt before the Supreme Court. The state of South Carolina was represented by Huger Sinkler of Charleston, S.C. The case is known as *Hunt v. McNair*.

Both the circuit court and the Supreme Court of South Carolina had earlier ruled that the S.C. Educational Facilities Act and the arrangement with Baptist College of Charleston do not violate either the South Carolina or the U.S. Constitutions.

Hunt then appealed his case to the U.S. Supreme Court, which on June 28, 1971 sent it back to the South Carolina Supreme Court to be argued again in the light of its recent decisions in *Lemon v. Kurtzman, Tilton v. Richardson, Earley v. Dicenso,* and *Robinson v. Dicenso.*

The South Carolina Supreme Court again upheld the act and its arrangement with Baptist College of Charleston. Now both the state and the Baptist College await the decision of the U.S. Supreme Court.

In his argument before the Supreme Court, Sinkler for the state of South Carolina denied that the state would be involved in close supervision of the financial affairs of Baptist College thus resulting in "excessive entanglement" between church and state. He also denied that the state was providing state aid to a sectarian institution, since no tax funds were involved in bond issues for private schools.

Sinkler conceded after a question by Justice W. J. Brennan, Jr., that the tax free bonds made possible a two per cent advantage to Baptist College in financing its indebtedness. Such aid, he continued, does not violate the separation of church and state. The reason for this, he pointed out, is that a "state may expend its funds in a manner which benefits sectarian institutions as an incident to the benefit conferred on society generally."

Attorney Figg argued on the other hand that the South Carolina law requires that the state sees to it that the Baptist college charge students fees that are sufficient to meet the bond payments. For this reason, he contended, the state authority would have to be closely involved in the financial operations and conditions at the college, and that, if it became necessary, would require the college to adjust its student fees and charges.

"The necessary result," he concluded, "is a excessive degree of involvement and entanglement of the state in the activities of the college in contravention of the religion clauses of the First Amendment."

Report from the Capital

APRIL 1973

Editorial

Churches Should Not Control Public Policy

There is a right way and there is a wrong way for churches to exercise their influence on public officials. Churches and their agencies cannot escape responsibility in public affairs. However, they should be especially careful in the manner in which they seek to affect the formation of public policy.

A church should not try to enforce its sectarian viewpoints on the general public through legislative, executive or judicial processes.

Even worse is the tendency in some quarters to use ecclesiastical authority against public officials to force them to behave in conformity with sectarian dogmas. A public official is in a position of public trust and is not a representative of his particular church. He is in a public position to serve the entire public, not to represent his church.

An illustration of the impropriety of ecclesiastical threats against legislators to force voting along particular church lines occurred last month in the Maryland legislature.

James E. Shaneman, executive director of the Maryland Catholic Conference, is the lobbyist in the Maryland General Assembly for the political and social arm of the Catholic Archdioceses of Washington, D. C., Baltimore, Md. and the Diocese of Wilmington, Del.

This Catholic lobbyist suggested that legislators in Maryland who are members of the Catholic church who vote for a proposed abortion bill could risk automatic excommunication from the church. He said that the risk of excommunication would apply particularly to a Catholic legislator who openly advocated passage of the bill, which would bring Maryland's law into compliance with the Supreme Court's decision in January that struck down most state laws limiting abortion.

Taking only a slightly less hard line, Msgr. James T. McHugh, head of the family life division of the U. S. Conference of Catholic Bishops, said that the way a Catholic legislator voted would depend on the way he viewed the proposed abortion bill.

If the Catholic legislator viewed the bill as "immoral", McHugh said, he should vote against it. However, "he could accept it if he considered it the first step toward tightening abortion regulations."

Both Shaneman and McHugh cited a pastoral letter written by the American Catholic bishops in February. The bishops rejected the Supreme Court decision on abortion. They declared: "Whenever a conflict arises between the law of God and any human law, we are held to follow God's law."

Catholic teaching holds that a woman

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Supreme Court Prayer Ruling Encouraged Bible, Religion Study in Public Schools

By W. Barry Garrett

Widespread misunderstanding and misinterpretation of the U. S. Supreme Court rulings on prayer and Bible reading in the public schools continues unabated. Both religionists and school administrators persist in saying that the Court took God out of the schools and forbade little children to pray. This is both a misstatement of what the Court did and a basic misunderstanding of prayer and religion.

As a result, many sincere people want an amendment to the U. S. Constitution "to put God back in the schools and to allow school children to pray." Some school administrators have gone "too far" in forming rules, which are not really in harmony with the Supreme Court ruling.

There are better ways to approach and solve the real problem of religion in relation to public education.

First, let us take a look at what the Supreme Court ruled in the prayer cases. These cases are Engel v. Vitale (1962) and Abington School District v. Schempp (1963), plus Murray V. Curlett.

The first case had to do with a New York policy whereby a 22-word prayer was authorized by the State school authorities and required to be recited in the schools each day. This was ruled unconstitutional "be-

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On Prayer in the Public Schools

By E. E. Hartsell

"The Supreme Court has taken prayer out of the public schools," the state representative cried in anguish as he appealed to the banquet crowd for support. Less than a week later the minister struck the same note of despair as he lamented the sad condition of our nation's youth.

No power exists that is strong enough to keep prayer out of the public schools—unless there be no "pray-ers." Wherever a Christian is, there prayer is—or can be. If there is no prayer in your classroom, Christian teacher, Christian student, it is not the fault of the Supreme Court or Madalyn Murray O'Hair. It is your fault. No man, no government, can control what goes on in your mind, your heart, your spirit. If you are a spiritual pauper who cannot pray and who cannot make the Spirit of Christ evident through your attitudes and your behavior, you alone are responsible.

Our Bill of Rights provides that the government shall not dictate to citizens of these United States concerning religion. Granted that some change in emphasis has occurred since 1776 from open, public recognition of God to timid, private devotion. (Given the existence of slavery and concomitant attitudes toward women's and children's rights, obviously some discrepancies existed even in the early days of our nation.) But is it the Supreme Court or the Constitution that has failed? I think not. Rather, I cannot escape the idea that it is the Christian who has failed, individually and collectively. It is the Christian who has allowed himself to be intimidated by the awesome responsibility thrust upon him by individual salvation, preferring the ease of authoritarian dogma to the pain of personal seeking. It is the Chris-

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