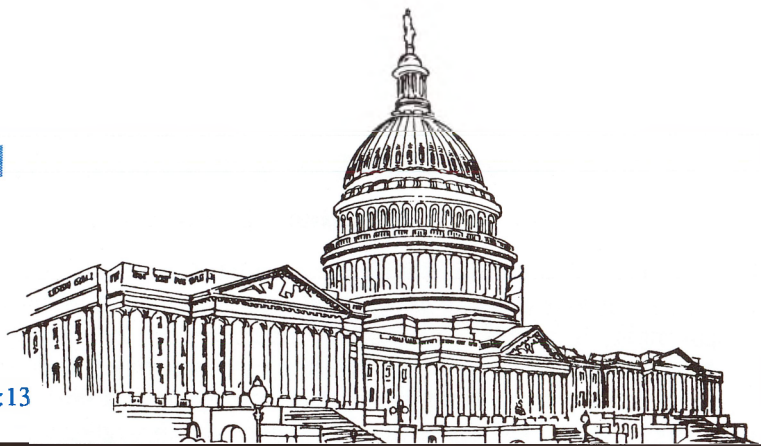


SALT



"You are the salt of the earth" Matthew 5:13

Washington Newsletter, Christian Life Commission, Southern Baptist Convention

Vol. 4, No. 5, 1994

CLC: *Let the students pray*

By Michael Whitehead
General Counsel

When Newt Gingrich announced his intention to have a vote in the House of Representatives on a voluntary school prayer amendment by July 4, 1995, critics pounced on it like a pack of hungry dogs after a soup bone. Hysterical headlines warned of federally mandated prayer drafted by Congress and led by teachers.

But Gingrich had said voluntary prayer.

Somber sound-bites predicted the demise of both religion and education. School prayers will be powerless and pathetic, bad for "real" religion. Or they will be powerful and parochial, bad for pluralistic, public education.

But Gingrich had said voluntary prayer.

President Clinton initially said he might support a voluntary school prayer amendment, but he would have to look at it. The next day, he said he was misunderstood, that he had been talking about a statute for a moment of silence, not a constitutional amendment. He said he opposed even student-led classroom prayer as being "inherently coercive" because of our "religious diversity."

But Gingrich had said voluntary prayer.

The first draft of a proposed amendment by Rep. Ernest Istook, R.-Okla., states: "Nothing in this constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or by any

State to participate in prayer. Neither the United States nor any State shall compose the words of any prayer to be said in public schools."

Several observations should be made about this proposal in contrast to the media hype surrounding it:

- **The proposal does not mandate prayer in schools, but permits it, if students choose to initiate it and schools accommodate it.** It expressly prohibits government requiring, composing or leading in prayer.

- **It is framed only in terms of limitation on government, primarily federal government.** The United States Constitution would no longer be an

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New Congress: What to expect after change

Part one of a two-part series

By James A. Smith
Director of Government Relations

The Republican electoral landslide victory in November which has resulted in GOP control of both houses of Congress will result in a significant change in approach and outcome for some moral, social and religious liberty issues.

Although there has been a revolution in Congress, it would be inaccurate and unwise to assume that President Clinton will not continue to impact the public policy agenda by legislation or executive

actions. It would seem, however, that the change in Congress has already begun to alter the President's agenda.

Within weeks after the election the President directed the head of the National Institutes of Health to reject federal funding of the creation of human embryos for research purposes.

Additionally, President Clinton has announced support for a middle-class tax cut for families in his "middle-class bill of rights."

In this article and the following edition of *Salt*, we will survey how the

CLC moves to new location

The Christian Life Commission's Washington office has a new home.

The CLC office remains on Capitol Hill. The mailing address now is 505 Second St. NE, Washington, DC 20002. The new phone number is (202) 547-8105; the facsimile number is (202) 547-8165.

The CLC staff occupies a portion of the three-story townhouse while renovation is being done on the remainder of the building.

new Congress will address critical moral, social and religious liberty issues of concern to Southern Baptists. This article focuses on abortion.

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Being Pro-life in Election '94

By Richard D. Land

The 1994 election results have been tabulated, examined and reviewed. Of the many conclusions analysts have drawn from the election results, one of the most important has been given comparatively little attention. Pro-life candidates for office and their supporters won a victory of historic and sweeping dimensions.

The overwhelmingly pro-life results led analyst Ray Kerrison of *The New York Post* to conclude: "The United States is rapidly, astonishingly and mercifully revolting against abortion. The election result is only one sign of the new climate taking hold, but its impact is a blockbuster.... America is yearning to go back to basics.... Not one single pro-life incumbent senator, member of the House or governor of either party was defeated by a pro-abortion challenger. But pro-life challengers defeated nearly 30 hard-core pro-abortion incumbents. If these results had been reversed, they would have been Page One news across the country."

In fact, when the election results are examined in detail, there is even more reason for encouragement. Pro-life challengers and opponents of government-funded abortions defeated pro-abortion incumbents in 29 congressional races, two U.S. Senate races and two gubernatorial elections. In races where there was no incumbent, pro-life candidates won 37 congressional and eight Senate seats and four gubernatorial races. Altogether, as Wanda Franz, president of the National Right to Life Committee shared with me, in the new Congress there will be a net gain of 40 pro-lifers in the House and six in the Senate.

On Nov. 9, the Wirthlin Group released a post-election poll of actual voters which greatly helps to explain the sweeping pro-life electoral victories. The Wirthlin poll revealed that the abortion issue was a priority issue in determining how 27% of voters cast their ballots. Of those 27%, one-third (9%) voted pro-abortion and two-thirds (18%) voted pro-life. That means that pro-life candidates enjoyed an average 9% advantage in total votes cast, which is enough of a shift to win most elections in the U.S., other factors being approximately equal. It is not only moral and right to be pro-life, in election '94 it paid off at the polls. So much for the widely disseminated myth that being pro-life leads to disaster and defeat at the ballot box.

These extremely encouraging pro-life election results are part of a larger phenomenon of conservative and evangelical Christians becoming more involved in the public policy and electoral process. Numerous exit polls showed that "evangelical Christians" made up 25% of the voting public, according to *The Washington Post*. A Christian Coalition exit poll revealed that 33% of voters identified themselves as "religious conservatives." There is strong evidence to support the fact that nearly two-thirds of such self-identified voters cast pro-life ballots whenever their particular races allowed them to do so.

Pro-life supporters should be gratified and encouraged by such tremendous victories. The pro-life message is taking hold in America in demonstrable ways. However, much remains to be done. Pro-lifers need to give thanksgiving to God for the progress that has been achieved and then rededicate themselves for the many battles that lie ahead before the sanctity of *all* human life is fully restored in America. But, as Winston Churchill said in the midst of another titanic struggle between right and wrong and good and evil, "This is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

They said it

"With breezy frankness voters have said approximately this: Something is amiss when a government that does not adequately deliver the mail delivers condoms to children. That is, government often is incompetent at basics and offensive regarding matters that are none of its business." – **Columnist George Will** in *The Washington Post*, Nov. 10.

"If this were Germany, we would call it fascism. If this were South Africa, we would call it racism. Here we call it conservatism." – **Jesse Jackson** about conservative Christians as reported in the Dec. 6 *New York Post*, according to *The Washington Times*.

"We are, the pro-choice community, one of the few groups that the Clinton administration has kept its commitments to, to date." – **Pamela Maraldo**, president of Planned Parenthood Federation of America, according to *The New York Times*, Aug. 3.

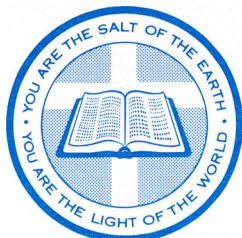
"The abortion clinic has become the most sacred, protected shrine in our nation. We have become a nation that idolizes the slaughter of our own children." – **Operation Rescue National Director Flip Benham** after federal marshals were deployed to abortion clinics following Paul Hill's slaying of an abortion doctor and his bodyguard in Pensacola, Fla.

"We have let the culture dictate who we are. The early church was counter-cultural. What they believed was so radical people who looked in from the outside were amazed and in awe." – **Thom Rainer**, dean of Billy Graham School of Missions, Evangelism and Church Growth at Southern Baptist Theological Seminary, according to *The Birmingham News*.

Salt is the public policy newsletter of the Christian Life Commission. The CLC is the moral concerns, public policy and religious liberty agency of the Southern Baptist Convention. For information, contact the Christian Life Commission, 505 Second St. NE, Washington, DC 20002, (202) 547-8105.

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Right amendment needed to guard student freedom

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excuse for schools or judges to prohibit prayer by private citizens. Students and local school boards may still decide not to have classroom prayer, based on state constitutions or local considerations, but officials could not pass the buck to James Madison and the framers of the first amendment.

• **It does not purport to reverse the 1962 and '63 decisions of the Supreme Court banning government-mandated prayer and Bible reading.** Most Americans, including Southern Baptists, do not want government officials dictating religious exercises. We support this view of the separation of church and state. On the other hand, the vast majority of Americans, including Southern Baptists, want liberty for their students to pray. An April 1994 Wirthlin poll shows more than 78 percent support. Most people do not want the "wall of separation" used as a barrier to student prayer in the classroom, lunchroom, gym or commencement hall. They reject any notion of the "wall" which equates separation of church and state with separation of religious speech from public life.

• **It assumes that government does not necessarily "sponsor or endorse" everything government permits.** One school teacher refused to permit a second grader to show a video of herself singing "Jesus Loves Me" at church during a show-and-tell period on "what makes me feel good about myself." Another school in St. Louis refused to permit a student to bow and pray over his food in the school cafeteria. Schools and judges often mistake accommodation for endorsement.

The theory that all student-led classroom prayer is "school organized" and inherently coercive, and, thus, unconstitutional, is not supported by the 1962 and '63 decisions or later precedents. The Supreme Court held that pervasive government involvement mandating, composing or leading the prayer sent an inherently coercive message to students, especially in an elementary school, which

could not be avoided by letting students opt out of the prayer. Even in the 1992 graduation prayer case, *Lee v. Weisman*, the Court focused on the "pervasive involvement" of school officials in planning and prescribing the prayer.

When the Court upheld the Equal Access Act in the 1990 *Mergens* case, Justice O'Connor emphasized, "[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise clauses protect" [496 U.S. 226, 250 (1990)]. Evangelicals have worked for three decades, through legislation and litigation, to get school officials and lower court judges to understand and respect this crucial difference. The job has not been made easier by religious groups which side with secular groups like the American Civil Liberties Union in calling "organized" prayer illegal. But organized prayer is legal—as in equal access club meetings, where students do the organizing.

If the Court agreed with this view, it could have written a one-sentence opinion at any time in the last 30 years: "Any audible prayer by any person, including students, on school premises, during compulsory attendance hours, is illegally organized and unconstitutionally coercive." For some reason, the Court has never done so.

Nonetheless, school lawyers and trial judges often still do not get it. A clear statement of students' rights to religious expression is necessary to dispel the *de facto* hostility which has developed toward religion in public schools.

• **It is not a "moment of silence" amendment.** We already have the right to remain silent. That is in the Fifth Amendment. This proposal would protect the right of prayer and religious expression, *out loud*, so long as it was not materially disruptive of the school program. This amendment certainly would permit some local school boards to adopt a "moment of silence" policy, while others might go further. But a "moment of silence" amendment would not be worth the labor.

• **The draft needs to be clarified so as to expressly protect prayers and other religious expression by students, which we have been assured is Istook's intent.**

• **It assumes that a constitutional prayer amendment is necessary and worthwhile.** The Christian Life

Commission believes a constitutional amendment, properly drafted, may be the most effective way to restore and protect the liberty of America's public school students to initiate or lead in prayer or other religious expression. We endorse the concept, without yet endorsing any particular language.

We would trust students, not the Supreme Court or Congress, to devise specific policies and practices that will be acceptable in their communities. We would let God, not church-state experts, judge the quality of the resulting student prayers, whether worthless or powerful. Let the students pray!

We would trust the American people to express their will through their representatives. The bill must be first approved by two-thirds of each house of Congress and then by three-fourths of the state legislatures. The public debate about the issues of student religious liberty and whether local boards may find ways to accommodate student religious expression will be good for religion and for education. We support the right of the people to debate and to vote on these issues.

The CLC is studying the language of numerous proposals which are being floated in the current national debate. The CLC will be working with other religious liberty organizations to find acceptable language. We will seek to influence this debate to protect student religious liberty without sacrificing Baptist principles of church-state separation and freedom of conscience.

We do not consider the proposal to be "tinkering with the Constitution," as some have alleged. We do consider the violation of student rights by judges and school officials to be far more serious than mere "tinkering." The constitutional text is not sacred. It is the rights contained in the Constitution that are vital. If the current words do not adequately preserve these rights from "tinkering" by public officials, then the statement of rights should be made more particular. That is how we came to have a First Amendment in the first place. Baptists insisted then, as they do now, on the clearest possible language to protect religious expression from government coercion.

Great changes not expected on abortion policy

(Continued from Page 1)

It is difficult to understate how badly the abortion lobby has been set back by the changes in Congress. However, it is also difficult to gauge to what degree the new Congress will be willing to reinstate pro-life policies negated by early actions of President Clinton or to pass legislation which results in greater protection for unborn human life.

Shortly after the 1992 presidential election, confident predictions were made by the abortion lobby that the Freedom of Choice Act, forbidding all regulations and restrictions on abortion throughout the United States, would become law soon. The abortion lobby also sought repeal of the Hyde Amendment, which prohibits federal funding of abortion, and inclusion of abortion in health reform legislation.

To date, the abortion lobby has not achieved any of these goals, although the Hyde Amendment was altered to allow funding for abortions in the case of rape and incest.

The pro-life movement can be expected to seek the renewal of the Hyde Amendment restoring the traditional exception of life of the mother only. Although Congress only intended to permit abortions in the cases of rape and incest, the Clinton administration's

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regulation *requires* states to fund these exceptions. This interpretation has caused considerable turmoil in states which had statutory or constitutional prohibitions on taxpayer funding of abortion.

The Freedom of Choice Act was dead by the fall of 1993, about the time the abortion lobby shifted its attention to health care reform. Pro-abortion organizations believed they could achieve both the repeal of the Hyde Amendment and effectively pass FOCA-type policy through the health care reform legislation. These goals were also not realized, and health care reform legislation stalled in Congress in the fall.

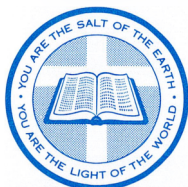
While it would seem highly unlikely that FOCA can be revived in the near future, it is still possible that the new

Congress will want to take up some type of health care reform. This legislation will need to be watched for its impact on abortion and related sanctity of human life concerns.

Although there are more pro-life members in the new Congress, it remains unclear whether President Clinton's pro-abortion executive orders will be repealed. Those orders permitted federal funding of fetal tissue experimentation, tax-funded abortion counseling, abortions at overseas military installations, tax funding for international family planning organizations which perform or promote abortion as a method of birth control, and cleared the way to bring RU 486 to America.

With the possible exceptions of strengthening funding prohibitions or adopting popular regulations like parental consent, abortion policy is likely not to change much in the next Congress. There will not be an avalanche of legislation passed protecting unborn human life. Nor will the pro-abortion movement see much of its legislative agenda adopted.

It is important to keep in mind any legislation adopted by Congress must ultimately be signed by the President. Unfortunately, with the most recent exception regarding human embryo research, the President could be counted on in his first two years to faithfully execute the agenda of the abortion lobby. This prospect greatly tempers any visions of a pro-life revolution in the next Congress.



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