RELIGIOUS FREEDOM AMENDMENT TO THE CONSTITUTION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Oklahoma (Mr. ISTOOK) is recognized for 60 minutes as the designee of the majority leader.

Mr. ISTOOK. Mr. Speaker, tonight I am going to be talking about a very important issue that is coming before this House in approximately a month, that being the Religious Freedom Amendment.

Mr. Speaker, I will submit a copy of a detailed analysis of the proposed constitutional amendment which I will provide to the Clerk, to be printed and included in the RECORD.

The Religious Freedom Amendment, known as House Joint Resolution 78, is responding to the public's very valid concern for the last generation that the courts in the United States of America have become hostile to religion. They have placed barriers to religious expression which do not exist for other forms of speech for free speech.

A false standard has been created by the courts basically saying, well, if everyone is not unanimous in agreeing on some religious topic, then we ought to be censoring it, if it is something like a prayer in a public school during the school hours or the football game or at a graduation.

In the next 30 days or so, Mr. Speaker, all across America we are going to have students graduating from high school, and in some places from college, and they will usually want what has become an American tradition, or was until the Supreme Court interfered, namely having a simple prayer to begin or to close or both at a public school graduation.

In fact, it is a tradition. The earliest recorded public school graduation in the United States, according to the Supreme Court, featured a prayer. In fact, multiple prayers. But the Supreme Court has basically taken a stand and said if everybody does not agree, then we ought to censor it, because they say we do not want to have an establishment of religion created.

Or some people use a catch phrase, and I will talk about this more, Mr. Speaker, use a catch phrase of saying, well, it would violate the wall of separation between church and State, which is not a phrase found in the American Constitution. It is a phrase that has been put in by other people for other purposes and often, rather than quoting the Constitution itself, people cite that phrase as though it explained everything.

What does the Constitution say? ''Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.''

The Supreme Court rulings against school prayer and other religious issues have been provoking public outrage since 1962. We have not had a vote here in the House of Representatives since 1971 on a proposal to correct the Supreme Court by amending the Constitution to provide for voluntary school prayer, and to reinstate other protections in religious expression which used to be common in the U.S.A. until approximately 36 years ago.

Mr. Speaker, the text of the proposed amendment has been approved by the House's Subcommittee on the Constitution. It has been approved by the House Committee on the Judiciary. It is ready to come to this floor and will be coming to the floor soon.

Let me quote, Mr. Speaker. It reads thusly:

> To secure the people's right to acknowledge God according to the dictates of conscience: Neither the United States nor any State shall establish any official religion, but the people's right to pray and to recognize their religious beliefs, heritage, or traditions on public property, including schools, shall not be infringed. Neither the United States nor any State shall require any person to join in prayer or other religious activity, prescribe school prayers, discriminate against religion, or deny equal access to a benefit on account of religion.

And of course under the normal process it is proposed that two-thirds of the House approve this amendment, two-thirds of the Senate approve, and then during a seven-year window of opportunity it would require ratification by the necessary three-fourths of the State legislatures.

That, of course, is the process that was created by the Founding Fathers to amend the Constitution, and indeed it has been amended before to correct erroneous Supreme Court decisions. For example, the Dred Scott decision back in the middle of the last century provoked a lot of outrage with its decision that basically was in favor of slavery, and that was corrected by a later amendment to the Constitution.

Mr. Speaker, a lot of people today, and I think the media has a great deal to do with this misleading, because we will find in the press too a lot of people are told, well, the issue is separation of church and State.

Mr. Speaker, we could talk among ourselves and say, well, what does that term mean? But I think that it is instructive to look at what the Chief Justice of the United States Supreme Court, our current Chief Justice, William Rehnquist, has said about the use of this term, which he said has been used to mislead people about what the Constitution actually says and what the Founding Fathers actually intended when it comes to religious freedom.

Justice Rehnquist, our Chief Justice, has written in official Supreme Court opinion that the use of that term should be ''frankly and explicitly abandoned.'' Those are his words. ''It should be frankly and explicitly abandoned.''

Why? Because it has not been used to promote neutrality toward religion, but it has been used to promote hostility. Essentially, it has been used to say that if government is present, then religion must be absent. So if government comes into a situation, religion must be pushed out and pushed aside.

Mr. Speaker, when we have the growth of government where it is with us in every aspect of our lives today, in schools, in something involving health care, in so many bodies that are created as public bodies, and we are told, ''My goodness, this is a government-funded activity. You cannot have a prayer to open or close, or we feel hesitant if you involve your religious beliefs in sharing your opinion.''

For example, a first grade student in Medford, New Jersey, in the last year was told by a Federal judge that even though he won a contest, a reading contest, and could read whatever story he wanted, because he chose a story from the Beginner's Bible, the school said, ''Oh, no, you cannot read that at school,'' and the Federal judge said, ''That is right. You cannot read that at school,'' and cited as his mantra what Justice Rehnquist has condemned, separation of church and State.

In Florida, in Fort Myers, Florida, they said they wanted to have a course not teaching doctrine but teaching about religion. And so they were going to have aspects of the course that dealt with the Bible as history, which is something that is supposed to be expressly approved, many people think, as long as it is taught as history. But the Federal judge in Florida ruled that they could teach about the Old Testament as history, but they could not teach anything about the New Testament because not everybody believes in the resurrection. So the Bible even as literature was singled out by a Federal judge. Why? Because they are following the standards set by the U.S. Supreme Court, standards not of neutrality but, unfortunately, to promote hostility.

□ 2100

Our courts blaze a wayward trail because they use a broken compass. Let me tell you, it was in the case of Wallace v. Jaffree that Chief Justice Rehnquist made his remarks about his little catch phrase, ''separation of church and state.'' This was an opinion, it came down from the Supreme Court in 1985 in Alabama. Because they were so upset with the effort of the courts to strip prayer out of the public schools, they passed a law that said, let us have a moment of silence, a moment of silence at public schools. The U.S. Supreme Court ruled the moment of silence was unconstitutional because it could be used for silent prayer.

A lot of Americans are not aware of that, Mr. Speaker. They do not know that the Supreme Court has gone so far as to say if you have a moment of silence, that is unconstitutional, because people could be offering a silent prayer. Now, if that is not an outrage, Mr. Speaker, I do not know what is.

The Chief Justice was outraged by what five of the Justices did. It was a 5–4 decision. He was so outraged, and he wrote about it, and he talked about what they had said and the error of it.

For example, the originator of the phrase ''wall of separation between

church and state'' is usually said to be Thomas Jefferson. But as Chief Justice Rehnquist noted in his opinion, and I quote here, ''It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history; but unfortunately, the establishment clause has been expressly freighted with Jefferson's misleading metaphor for nearly 40 years. Thomas Jefferson was, of course, in France at the time the constitutional amendment known as the Bill of Rights was passed by Congress and ratified by the States.''

The person that originated that phrase was not involved in drafting the first amendment. So the Chief Justice said clearly in the Wallace v. Jaffree opinion, and I quote him again, ''The establishment clause did not require government neutrality between religion and irreligion, nor did it prohibit the Federal Government from providing nondiscriminatory aid to religion. There is simply no historical foundation for the proposition that the framers intended to build the wall of separation.''

As Justice Rehnquist said, the evil that they wanted to address was from proposals to establish an official national church, or an official religion, because we do not want that in the United States of America. But he said, the Congress clearly intended to have a positive attitude toward religion.

Then the Chief Justice said that this so-called wall of separation is actually what he labeled a blurred and distinct and variable barrier. He called it a metaphor based on bad history. In his words, quoting again, ''A metaphor based on bad history, a metaphor which is approved useless as a guide to judging, it should be frankly and explicitly abandoned.''

Now, Mr. Speaker, I go through all that talking about what the Chief Justice of the U.S. Supreme Court has written merely to try to get people to understand that the issue is freedom. The issue is religious freedom.

If someone wants to stand up in a school and together wants to say the Pledge of Allegiance, can they say the Pledge of Allegiance at a public school? Sure. There was a challenge to that a number of years ago. It came out of West Virginia. The U.S. Supreme Court wrote that no child can be compelled to say the Pledge of Allegiance. I agree with that. But, Mr. Speaker, they never gave a child who did not want to say it the right to censor and silence the classmates who did want to say the Pledge of Allegiance.

Mr. Speaker, that is the correct standard that needs to be followed when it comes to a prayer that people may want to offer in public school, a positive expression of hope and faith at the beginning of the day. Whether it be part of a devotional activity, whether it be done on a school basis or classroom basis, whatever they choose to implement, the issue is the freedom to do so.

Are we to say that, because someone has overly sensitive ears and they choose to be offended by an expression of faith, that, therefore, we must censor and we must silence those expressions? Or if there may be a chance that one prayer out of a million might be offensive, do we say that we silence a million prayers just to be sure that one particular offensive prayer is never uttered? We do not apply that standard of free speech. We say that something with which we may disagree is nevertheless protected.

Were we to say that you can censor people if you do not like what they are saying, Mr. Speaker, we would not have free speech in this country. How, then, can we say you can censor what someone is saying if it is a prayer in a public place and still claim to have freedom of religion?

No, Mr. Speaker, freedom of religion means that we accept those with whom we agree and those with whom we disagree. It means we look after the rights of the majority and the rights of the minority. We don't fall for this mistaken theory that the Bill of Rights is meant to protect only minorities and not protect the rest of us. It is meant to protect all of us with a standard of tolerance.

In the cases where the U.S. Supreme Court ruled against prayer in public schools, one of the dissenting Justices was Supreme Court Justice Potter Stewart; and he noted that, if we really believe in diversity, then we ought to say people can offer their prayers. We know there will be different prayers, because we follow a basic principle, Mr. Speaker. You do not have a prayer composed by government. The religious freedom amendment says absolutely not. You do not have an imposition of government to require prayer to be said, nor its content.

Who then selects a prayer or offers it? Well, we follow a very basic principle that is used in so many aspects of school, something we learned in kindergarten. It is called taking turns, and let different people have their turns, and let people be aware.

Yes, there are diverse ways in which people pray. There are different opinions. But do we expect our children to be isolated from those during their daily activities at school, and then, when they become an adult, suddenly they are supposed to understand, suddenly they are supposed to be tolerant of different opinions when they have been told for years that those are dangerous or damaging or must be silenced? No, Mr. Speaker.

As Justice Stewart wrote, in a society of compulsory attendance at public schools, to say that, during the school day, a child must be isolated from what is normal in everyday life is not neutrality. It is placing religion at an artificial and State-created disadvantage.

Mr. Speaker, prayers are normal. They are common. We begin each day in this House of Representatives with a prayer. The United States Senate, the other body, begins its meetings with a prayer. Chambers of commerce, civic clubs, Lion's, Kiwanis, PTA organizations, State legislatures, city councils, all sorts of groups open with a prayer. Yet, if it happens in a public school, they say that is to be condemned.

In the State of Alabama, there is an outrageous court order from a Federal judge that is covering the students there. Many students have been kicked out of school because the judge has issued a gag order against so much religious expression in the Alabama public schools, appointing monitors to make sure that something does not happen that he believes is wrong.

I want to read to you from part of the opinion that was rendered by Federal Judge Ira DeMent in Alabama just this last year. As requested by foes of public prayer, U.S. District Judge Ira DeMent, permanently enjoined the schools from this, and I will read to you what he said could not happen under penalty of law. This was what was banned: ''Permitting prayers, Biblical and scripture readings and other presentations or activities of a religious nature at all school-sponsored or school-initiated assemblies and events, including, but not limited to, sporting events, regardless of whether the activity takes place during instructional time, regardless of whether attendance is compulsory or noncompulsory, and regardless of whether the speaker, presenter, is a student, school official, or nonschool person.''

No matter what the occasion, if it involves a public school, whether it is from a student or anyone else, there better not be a prayer, whether it be in the classroom, a school assembly, a football game, a graduation, you name it.

He appointed court monitors. In fact, he recently issued an order saying all the teachers and administrative personnel from the school system have to come to special training sessions to hear what the judge's standards are to make sure that people do not mouth religious utterances in a public school.

Mr. Speaker, that is not free speech. That is not freedom of religion. That is oppression of religion masquerading, masquerading as constitutional law. Why do the courts do this?

Remember what the First Amendment says. Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. That last phrase is basically ignored by the Supreme Court and, therefore, by the inferior courts, because the Supreme Court has said, well, anything, anything that smacks of religion becomes suspect.

Therefore, even if you are not creating a church, you are not advocating an official set of beliefs, you are not telling people that we are going to have a hierarchy, or priesthood, or a church building, or a tithing, or doctrine, or theology or any of those things, nevertheless, if it is a simple prayer, that is going too far. That is

too close to an official establishment of religion. Mr. Speaker, that is using the establishment clause of the Constitution as a weapon to suppress the free exercise of religion.

One of the outrageous things, and there is plenty of them, one of the outrageous things in the Supreme Court decisions came in the graduation prayer case, the Lee v. Weisman decision, which came out of a public school graduation in Rhode Island; and in that case, Justice Kennedy wrote that a prayer must be assumed to be offensive. That is right. He said a prayer must be automatically assumed to be offensive. Those were his words, Mr. Speaker.

Do we automatically assume that anything else is not only offensive, but must be suppressed? We do not apply that to about anything else other than, I guess, pornography, Mr. Speaker. We say that you have to be silent about this because we find it to be offensive.

Now, if it is pornography, let us kick it out, and let us enforce the laws against it. But since when is a prayer or religious utterance considered to be automatically assumed to be offensive?

The Internal Revenue Service, and, you know, obviously, they are following the same rationale as Justice Kennedy, the Internal Revenue Service, in one of its major California districts, sent out a memo to its employees about 2 years ago. The memo said, in your personal work space or on your desk, you cannot have any sort of religious emblem or item. It may be a little nativity scene. No. It may be a star of David, no. It may be a Bible, no.

I wrote them, Mr. Speaker. I said, why are you doing this? The Internal Revenue Service wrote back to me, citing some different court cases. Frankly, Mr. Speaker, I think they went beyond them, but citing a court case, they said, items which are considered to be intrusive , such as religious items or sexually suggestive cartoons or calendars, were to be banned.

Mr. Speaker, that is the full list of what they said was offensive, to be banned; if it is religious, or if it is sexually suggestive, if it is pornographic. You see how the courts are equating the two, saying that something that is religious is offensive.

Mr. Speaker, that flies in the face of everything on which this country was founded and on which most Americans place their hope and faith and trust. It flies in the face of what we believe.

Mr. Speaker, I yield to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Speaker, I want to thank the gentleman from Oklahoma for his leadership and persistence on this issue in pushing us to get a House vote and to give us at least the opportunity to attempt to pass this constitutional amendment. I could not take any more of the examples. My outrage was rising. It is inconceivable that even a moment of silence is illegal because people might be thinking about prayer.

□ 2115

The danger in our society, if we keep backing away from this moral premise, is if we ever do get a moment of silence, the kids will be thinking about stock market reports instead of a prayer. And is that really going to be better for America if we lose this idea that there is a power higher than us?

I find it extremely offensive that in class, and I agree with the gentleman's allusion to this. It is not clear where the law exactly is on a lot of this. In fact, school districts have been intimidated for fear of lawsuits and, probably because of that, have gone farther than they need to go. But currently in America we are in a situation where a teacher probably could talk about Native American religions but, boy, she better be careful if she mentions Jesus Christ.

A teacher could probably post on the wall, Desiderata was big back when we were in college, to God, whoever he may be but, boy, if they put the 23rd Psalm up there or the 10 Commandants, that might poison these poor little kids.

It is one thing if they have a book of astrology or magic spells on a desk, but what if it is a Bible? Woe be to that teacher, because these kids might pick up something that has a moral base.

Now if the kids in the hall want to talk to other kids about marijuana or how that works, or crack or how that works, as long as they are not selling drugs, they can talk about drugs all day. But if they want to talk to another child about eternal salvation, they will probably go down to that principal's office, may even, as a friend of my son's did, get expelled from school for raising the question. Not aggressively pushing it, for raising the question of eternal salvation because it could make somebody feel bad.

You can wear a Black Sabbath T-shirt, a mockery of the Sabbath and all this kind of thing, but if you wear a religious T-shirt, you might be evangelizing. Not that all this crappy rock music stuff is evangelizing or the drug hints or the hats that you can find in many stores in the mall with the marijuana weed on it or other types of drugs, that is not evangelizing. But, boy, if you have any religion on your T-shirts or symbols that could make other kids feel slightly intimidated, you can be reprimanded.

What are we coming to? I don't understand how we have gotten in this situation in the country. It is why so many people are despairing. It is why we have to take the extraordinary step that the Founding Fathers have given us to go to a constitutional amendment.

Quite frankly, we can pass laws here in Congress, and the courts do not seem to care. If we just pass laws without amending the Constitution, we are totally at their mercy to continue this what I believe is nonsense in these rulings.

Mr. ISTOOK. I think the gentleman has made some excellent points. Yet I want to give a lot of credit to the American people. We are a generation beyond now the original decisions in 1962, and people have not given up.

It is not just the public opinion polls, because they consistently, for 36 years, show that 75 percent or more of the American people support a constitutional amendment to make it possible to have prayer in public schools or a nativity scene on public property or whatever it might be, so long as we are not establishing an official church or a national religion or saying that somebody has precedence because their religion is better than somebody else's. We do not do that.

And the American people haven't given up because, as the gentleman knows, there is a lot of civil disobedience that goes on. There are people that are still having prayer, in some cases in public schools or at football games or at school graduations, often because the ACLU has not gotten around to their town yet.

But the moment that the ACLU does come in, or some of the other groups that work with them and bring these lawsuits around the country, groups like Americans United for Separation of Church and State or People for the American Way, these are groups that are typically involved with the ACLU and these lawsuits to suppress religious expression because it makes some people uncomfortable.

Well, as we know, it is common for someone to say something with which someone else may disagree, and we are supposed to be taught to be tolerant, but they are teaching them to be intolerant. But yet the American people keep trying.

We have something called the Equal Access Act, and that means that before school starts or after school kids have been able to get together in Bible clubs, although they have problems with them there. They are not permitted the same rights as other school clubs. They cannot meet during the hours once school starts until school is out for the day. Other clubs can meet during the day in different set-aside time but not the Bible clubs. Or they can have a faculty adviser but not the Bible clubs. Or they can be recognized in the yearbook and other things as other groups are, but the Bible clubs are typically excluded.

I looked through my high school annual recently. I graduated from high school in Texas in 1967. There is Fellowship of Christian Athletes and Youth for Christ, but in many places today those are considered suspect and they have to be handled with care. Yet clubs for any other purpose, as the gentleman mentioned, are routinely approved.

So some people say, well, the fact that we have Bible clubs being formed at school or kids having prayer before or after school in their groups of their own initiative, that is not a symbol of the fact that there is nothing wrong, because there are things wrong. It is a

symbol of the great desire of the American people and how they are always looking for a way.

But why should we say that in classrooms where, as the gentleman mentioned, they may be talking about drugs, they may be talking about sex, they may be talking about all sorts of different alternate life-styles, but if somebody gives a religious perspective or says we ought to be able to start our days with prayer just like the U.S. Congress does, oh, no, we cannot do it, and people are threatened with arrest.

I have to tell my colleague another horror story here. In Galveston, Texas, Santa Fe High School, a Federal judge was persuaded that, since the initiative came from students, he said, well, okay, you can have a prayer at graduation, but I will have a U.S. Marshal there, and if anybody mentions the name of Jesus Christ, they can be arrested and be held accountable to me.

So it was not enough that they tried to squeeze out the ability to have some semblance of prayer. The judge wanted to control it. And how offensive that is to so many people.

I know we have people of different faiths. We will pray different ways. But we learn. We learn from our differences.

Mr. SOUDER. If the gentleman will yield, it is almost, well, it is not almost inconceivable, it is inconceivable when we have gangs, we have drug problems all over our country, we have teachers getting raped in the hallways, and we are concerned about stamping out anybody talking about Jesus Christ.

In 1983 and '84, I cannot remember which year, when then Congressman Dan Coats, I was working on his district staff, was working on the equal access bill, we actually had a series of problems come up in the school district that my kids were in that helped provide some of the fodder that led to the passage of the equal access bill, including a series of rules that the administration did not mean for the parents to get ahold of, which included not allowing any religious affiliated instructors or teachers or ministers to go on school grounds during the day.

The way this came about is one rural high school, the student who got in trouble at school asked to talk to his pastor. The pastor came into the school, and that led to a banning of pastors going into the school during the school day.

The church that I grew up in had a children's home. Many of those people who worked as house parents were lay pastors. And the question is, could they go on to school grounds? No, they were banned under this rule. It was absurd. You could not use the school for after hours if you had any religious affiliations.

This whole prayer question. A whole series of type of things led to many of these changes, supposedly covered by equal access. But we have backslid.

I want to use one other personal example. For anybody who, by any stretch of the imagination, thinks that I am a liberal, this will get rid of that impression. I mean, there are issues where I disagree with the majority of my conservative friends, and tomorrow on the amendment of the gentleman from California (Mr. FRANK RIGGS) and other things on affirmative action, it is one area where I have a disagreement. But, for the most part, I am very conservative; and my roots are very conservative.

I grew up in the Apostolic Christian Church of America. It is a very fundamentalist church. When we join that church, we do not have infant baptism. We believe in the age of accountability, and we commit our lives to Jesus Christ. When we do, we agree to accept certain guidelines of that church. When we accept those guidelines, we are expected to follow them.

One of the guidelines is that we do not go to movies. That was a difficult thing, I think it was my junior year in high school, because the school decided to go to the Sound of Music. Now, the church rule was not PG films or G films, it was no movies. That meant that I had to go sit alone in a classroom while the rest of the kids went to see Sound of Music.

I did not file an objection to stop everybody else in the school because I was isolated, because my religious beliefs were a minority and somehow I was going to be eternally damaged or even temporarily damaged because I was singled out, because other kids made fun of me because of my church, because I was extra conservative. I had to go sit alone.

The small school that I grew up in has a lot of Amish around it. The Amish do not believe in taking public showers. Therefore, often they were excused from gym or had to sit there or did not shower if they had to go to the gym class. But the school did not cancel gym classes. And in this particular school 12 percent of the kids were Amish. Twelve percent was not considered a significant enough minority to change the behavior of the rest of the school around it.

There needs to be a sensitivity. And I have to say I never ran into a teacher who mocked my religious beliefs. I ran into plenty who questioned my religious beliefs and were curious about them or told me they did not think they were very sound even biblically, but nobody mocked my beliefs.

And, quite frankly, because I had to go through experiences much, quite frankly, like other minorities have gone through in different ways, I had to decide to give in or actually firm up my beliefs.

In fact, to use a reverse example, the Communist party, in their indoctrination, used to send new recruits onto the street to try to spread their doctrine. And when they were attacked, they learned the beliefs better than if they did not have to defend them.

I learned more about the principles, not all of which I agree with today; but, at the same time, I learned to understand even why rules were there that I did not agree with because I had to execute them and I had to execute them in a period where I was the only one or sometimes one of only three who held that position.

I did not go to my senior prom because I did not dance. And I was senior class president, and I was supposed to speak at the senior prom. They had printed up the programs with my name in it. I told them I am not going to go. It was embarrassing, and it was difficult as a senior. It was difficult in many of these years to go through that personal discipline of being different than everybody else. But I did not ask everybody else to change because they were not like me.

The problem we have in America right now is that, if there are a few people who do not like what the majority of the people like, they feel they have a right to stop them from their practice of religious freedom, which, quite frankly, is the fundamental belief that America was founded on; that we were going to have free exercise of religion; that we were going to be able to worship God as we saw fit; that in America we had a fundamental belief in this Congress, in this body, in the Christian holy trinity.

Now, we have more diversity in America today, but it is still the preponderant belief. All our laws, as Francis Schaeffer said, are really echoes and remnants, if not direct outgrowth, of old testament law and of the Judeo-Christian tradition. If we lose that foundation as a country, we are lost.

What we are trying to do, and what the gentleman has tried to do in his leadership with this religious liberty amendment, is to allow free practice. We could make a case that our Founding Fathers, with their State establishment of religion, which they did not ban, different States had State religions, intended it to go far more. They just did not want one national religion. They believed in aggressive promotion of religious values.

We are not asking that anymore. In America, we are down to saying, can we not wear a T-shirt; can we not put a Bible on our desk; can we not talk to other people about our religious faiths? This is how far we have gone in America. This is the least we can do. Not the most we can do. It is the least we can do for our children in our schools is to allow them free exercise of religion.

We are not trying to impose anything here. Now we have the reverse. The minority is imposing on the majority.

Mr. ISTOOK. I think the gentleman makes some excellent points. The first amendment's first protection, the Bill of Rights, the very first thing is freedom of religion. That is the first thing the Founding Fathers put in the bill of rights. And yet now, this doctrine that the courts have adopted is, as the gentleman has illustrated, it is encouraging people not only to be thin-skinned

but to seek to control the behavior of others under the guise of freedom. It is a topsy-turvy philosophy.

We need to recognize that the intolerant person is not the one who wants to be able to say a prayer. The intolerant person is the one who insists on stopping it and bringing down the weight and power and might of the Federal Government through the Federal courts to stop people from simple religious expression such as a prayer.

□ 2130

The cases go on. There was another case in Texas where a minister that had an antidrug program was banned from presenting it in public schools not because there was anything religious about his presentation. But simply because he was a minister. In Colorado, a teacher was fired, and the courts upheld the firing, for reading a Bible during the class reading time when the students were told, ''This is reading time. Read whatever you want to read.'' And while the students read when they wanted to read, he read his Bible, and he was fired because he was told, ''You cannot do that,'' and he insisted upon doing it. And the courts said that was okay?

You take symbols. In San Francisco, California, in a city park for more than 60 years there has been a large cross. Even during FDR's days when Franklin D. Roosevelt was President of the United States, in a national address he praised that as a great example and monument. And the Supreme Court a year ago said it has got to go.

There have been similar cases in Hawaii and Eugene, Oregon, saying we should not have those on public property. And yet, if we will pull out a dollar bill, on the back of the dollar bill is the Great Seal of the United States and the stars on the Great Seal, the 13 stars, are arranged in the form of the star of David. And we have plenty other religious references.

Mr. SOUDER. If the gentleman would further yield, behind us on the wall is Moses. All the other lawgivers are pointing to the side.

Mr. ISTOOK. We have a couple Popes on the wall of the House Chamber.

Mr. SOUDER. Moses is looking straight on the Speaker's chair. We know, and our Founding Fathers knew, where our laws were derived from.

Mr. ISTOOK. If we look right above the Speaker's chair, above the Speaker's chair and the flag are emblazoned the words ''In God we trust,'' which we also find on our currency. There are people that find that offensive. Does that mean we should take it off?

Mr. SOUDER. It is important to know these were not additions after the Republicans took over Congress in 1994. They have been here under Republicans, they have been here under Democrats, because we have a unified tradition in America that this is our cultural heritage, it is our spiritual heritage, it is the foundation our country is built on.

Mr. ISTOOK. And the religious freedom amendment is intended to protect these to say that the standard ought to be the same as it is for the Pledge of Allegiance. If they do not want to say it, that is fine, but that does not mean that they can stop other students that may want to have a prayer in public school.

Take the Supreme Court's decisions on nativity scenes, the Allegheny v. Pittsburgh ACLU case from the Supreme Court, where they said they cannot have a nativity scene or a Jewish menorah, they were both covered on public property there, because there was not in the same line of sight secular emblems, Santa Claus, plastic reindeer, and so forth.

In Jersey City, New Jersey, gosh, over 30 different religions have been permitted by Mayor Bret Schundler to put their religious emblems on City Hall property, but they got sued over the nativity scene. And the judge said, well, they have done it for the other religions, that is fine, and they put out a manger scene, and they have put here secular emblems, Santa Claus, the plastic reindeer, Frosty the Snowman, but it is still not good enough because the nativity scene is just too powerful, and it has got to go. So that was another Federal court ruling this last December. Outrageous. But it comes from the U.S. Supreme Court's case and the Allegheny case.

Now, do my colleagues know what I am really waiting on? The Supreme Court says, well, they can't have religious emblems unless they balance them with a secular emblem, and even then they say the religious emblems are too powerful. But I have never seen them say they cannot have secular emblems unless they balance them with religious emblems. Are we going to say they cannot have a Frosty the Snowman unless they also have Mary and Joseph?

Let us get real, my colleagues. Let us quit being so thin-skinned. Let us make the standard where the religious freedom amendment says, which is what Justice Rehnquist said, it is what the Founding Fathers intended. We do not want an official religion. We will not have an official religion in the United States of America. That is inconsistent with freedom of religion. But suppressing expressions of religious heritage or tradition or belief or a prayer on public property, that is also inconsistent with our beliefs in America. So let us correct these court decisions.

Mr. SOUDER. Perhaps my colleague had not heard, we cannot refer to him as Santa Claus. It is just Claus. ''Santa'' is, of course, ''saint'' in Spanish, so we really should not say that. And I am waiting for it to be called Patrick's Day rather than St. Patrick's Day. It has a little bit of religious overtones. We have to be so careful in our society anymore.

Mr. Chairman, at the end of this particular special order, I would like to insert into the RECORD an article. It is actually a book review in this week's Weekly Standard magazine by Richard Neuhaus, one of the tremendous Christian writers in this country who wrote ''Religion in the Public Square.'' He has a review of John Noonan's new book ''The Luster of Our Country, the American Experience of Religious Freedom.'' I would like to insert this review into the RECORD at the end of this special order.

He makes two points in this review that, in fact, one of the reasons some people want to suppress religious freedom and free exercise is that, in fact, it is a danger to the State; that there have been a number of efforts in this country rooted in religious freedom, the abolition of slavery, the war against polygamy, the prohibition of alcohol, and the civil rights movement under the leadership of Martin Luther King, that really forced changes in our political system.

Furthermore, he points out in this book, he has whole chapters to four contrasting case studies. The French Revolution's affirmation and betrayal of the American idea of religious freedom; the American imposition of the idea on a defeated Japan; Russia's current and deeply flawed efforts to incorporate the idea; and the American influence in the Second Vatican Council's teaching on religious liberty.

In other words, in societies where they have not followed our pattern of religious freedom, they have developed problems. And because we allowed it, religious freedom, in fact, drove the system and changed the system.

One other thing that I would like to insert into the RECORD also following this article is a cover story in this week's U.S. News about James Dobson. This article is not directly on this subject but touches on some of the problems of this country that are occurring because of the lack of responsiveness.

I know the gentleman from Oklahoma (Mr. ISTOOK) has been in some of these meetings, as well as our friend, the gentleman from Colorado (Mr. BOB SCHAFFER) in the chair. We have some differences as to how to approach this, but what we understand is that Dr. James Dobson has been a spokesman and has been a mentor to many of us in his family issues and how he has done this, and he is speaking for a lot of our supporters and millions of people in America when he says that he is frustrated and he is frustrated with the types of thing that the gentleman from Oklahoma has been talking about tonight and I have been talking about when he says in here, and he is speaking for many people when he said that he cares about the moral tone of the Nation. ''I care about right and wrong. I have very deep convictions about absolute truth.''

And he says, had he stayed simply on family themes, he could have moved with ease through all denominations and in both political parties. But he has started to speak out because he is

concerned about the general thrust and direction of our society that causes some heartburn in our party, causes some heartburn in Members of Congress, such as the gentleman from Oklahoma and myself.

At the same time, we understand why this article says ''a righteous indignation,'' because that is what many people in America feel right now. They do not understand what in the world is wrong with the government. The examples that my colleague has given defy common sense.

Mr. ISTOOK. Mr. Speaker, I think the gentleman is making the point that we cannot separate values and principles and moral standards from the religious beliefs which gave them birth and gave them life and give them meaning.

If we look at the original founding document of this Nation, the Declaration of Independence, there is a very well-known clause in that. Many people only read it partway. But I am speaking of the clause that says, ''We hold these truths to be self-evident that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men.''

Now, if we look at what the Founding Fathers wrote, Mr. Speaker, we see that they say our rights did not come from the State, they did not come from the Federal Government, they did not come from the State government, they did not come from a local government, they did not come from a king, they do not come from an emperor, our rights come from God. ''We hold these truths to be self-evident. We are endowed by our Creator with certain inalienable rights.''

And what is the purpose of government according to the Declaration of Independence? To secure these rights, to secure the rights which come to us from God. That is what the Founding Fathers wrote they believed was the purpose of government, to protect our God-given rights.

I must question, if we cannot acknowledge the author of our rights, if we cannot acknowledge the origin of our rights, if we cannot express belief in He who created our rights, for which government was created to protect those rights, if we cannot do those things, can we stay believers and true persons to those beliefs and to the principles on which this Nation was founded? If we abandon the source of this Nation, we abandon its principles.

Mr. Speaker, the religious freedom amendment is intended to protect these rights which are in jeopardy. It has not gone without notice across the world that even though we enjoy great religious freedom in the United States of America, but let us not measure it by what we have left. Let us look at what has been taken away by these and other court decisions.

They have been chipping and chipping and chipping away at our rights. Are we then to be satisfied because we still have something left, or must we recognize the process of this chipping away, of this diminishing, of this fencing in of our rights and our freedom and our precious religious heritage? Are we to accept this false notion that, as government expands, religion must shrink to maintain a separation between church and state, because we live in the era of expanding government, and if that is the philosophy, then expansion of government necessitates a shrinking of religion?

Mr. Speaker, that is not the philosophy in which our Founding Fathers believed. That is why I quoted Chief Justice Rehnquist on that, and many other things to this effect can be found in their writings. We want to have a positive attitude toward religion, but make sure that we never embark upon anything that would create any official religion or any official church or any official faith for the United States of America. But the severity of this problem in the USA has been noted around the world.

I want to read a statement from Pope John Paul II, which he issued this past December, just 5 months ago. He was greeting the new American Ambassador to the Vatican, and Pope John Paul II spoke these words to the new American Ambassador: ''It would truly be a sad thing if the religious and moral convictions upon which the experiment was founded could now somehow be considered a danger to free society such that those who would bring these convictions to bear upon your Nation's public life would be denied a voice in debating and resolving issues of public policy. The original separation of church and state in the United States was certainly not an effort to ban all religious conviction from the public sphere, a kind of banishment of God from civil society.''

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Mr. Speaker, it is time that we take notice and that we take action. We will have the opportunity on the floor of this House within approximately a month to vote on the Religious Freedom Amendment. It has been approved by the Subcommittee on the Constitution, by the Committee on the Judiciary, it has over 150 Members of Congress who are cosponsors of it. I hope even more will add their names to it.

I hope, Mr. Speaker, that those all across the country who are aware of this will contact their Member of Congress. I hope they will say to their Member of Congress, ''We need to protect our religious freedom, we need to reverse the attack upon prayer in school and our other religious freedoms, we need the Religious Freedom Amendment, and we expect our Members of Congress to support it.'' Members of Congress need to hear that message.

Our children in public school need to be free to have a simple message of hope and faith in their school day, and let them be aware that yes, there are some differences in how some people pray and we have some differences among us that reflect some of our different faiths. But yet we are united, we are united by our common beliefs that almost all Americans share.

That certainly was part of the beliefs of the Founding Fathers, that we owe our existence to God, and if we do not recognize God and if we do not do it freely and openly and consistently and yes, daily, Mr. Speaker, then how long can we expect the blessings of the Lord to continue with us and with our families and with our beloved Nation? We need that freedom which has been under attack by the courts.

Let me share with you once again, Mr. Speaker, the words of the Religious Freedom Amendment which would become a part of the Constitution, not to replace the First Amendment but to supplement it, to be side-by-side with it. The Religious Freedom Amendment states as follows:

> To secure the people's right to acknowledge God according to the dictates of conscience: Neither the United States nor any State shall establish any official religion, but the people's right to pray and to recognize their religious beliefs, heritage or traditions on public property, including schools, shall not be infringed. Neither the United States nor any State shall require any person to join in prayer or other religious activity, prescribe school prayers, discriminate against religion, or deny equal access to a benefit on account of religion.

Those are the simple words, that is the simple language which will correct these things which we have been discussing, which will correct these wayward court decisions, which will give the Supreme Court a better compass than the one which they have been following.

Mr. Speaker, it is long overdue. We should have had this vote decades ago. I am so grateful to be an American, to live in a land where the American people have not lost their faith, but they need to be free to express it. With faith comes value, with faith comes principles, with faith comes morals, with faith comes strength, and with faith comes the blessings, the blessings of liberty which we seek to secure for ourselves and for our posterity.

DETAILED AND LEGAL ANALYSIS OF THE RELIGIOUS FREEDOM AMENDMENT, HOUSE JOINT RESOLUTION 78

(By U. S. Congressman Ernest J. Istook, Jr.)

THE RELIGIOUS FREEDOM AMENDMENT (HOUSE JOINT RESOLUTION 78)

''To secure the people's right to acknowledge God according to the dictates of conscience: Neither the United States nor any State shall establish any official religion, but the people's right to pray and to recognize their religious beliefs, heritage or traditions on public property, including schools, shall not be infringed. Neither the United States nor any state shall require any person to join in prayer or other religious activity, prescribe school prayers, discriminate against religion, or deny equal access to a benefit on account of religion.''

BACKGROUND

The Religious Freedom Amendment, House Joint Resolution 78, responds to the public's

valid concern that our courts have become hostile to religion, placing barriers to religious expression which do not exist for other forms of free speech.

A false and impossible standard of unanimity has been created, saying that if a single person objects to a prayer or other religious expression, then an entire group must be silenced and censored. This is the exact opposite of free speech. Free speech exists only when people have a right to say something with which others disagree.

For over 36 years, court decisions have harmed religious freedom in America; the Religious Freedom Amendment (RFA) is intended as the solution, because the courts have left no other remedy than to amend the Constitution. Over 150 Members of the House of Representatives are co-sponsoring the RFA. It also is supported by a broad coalition that includes Christian groups, and Jewish groups, and Muslim groups. Support ranges from America's largest black denomination, the National Baptists, to the Salvation Army, Youth for Christ, and the country's largest Protestant group, the Southern Baptist Convention, and many more.

Supreme Court rulings on school prayer and other religious issues have provoked public outrage since 1962. Throughout the last 36 years, public opinion polls consistently show about 75% or more of the American public want a constitutional amendment supporting prayer in public schools.

Not since 1971 has such a constitutional amendment been voted upon in the House of Representatives.[1] The Senate conducted votes in 1966,[2] 1970,[3] and 1984.[4] Obviously, none of those succeeded. Additionally, related votes not involving a constitutional amendment have ranged from efforts to limit the jurisdiction of the federal courts, to equal access proposals, to riders on appropriations bills. (These efforts are described in detail in a 1996 report by the Congressional Research Service.[5]) In 1997, on March 4th, the House approved legislation (HCR 31) to promote display of the Ten Commandments on public property, despite Supreme Court rulings to the contrary. It prevailed by 295–125, a 70% margin. It was, however, only a resolution of support, not changing any statutes or court decisions, much less changing the Constitutional language which the courts have misconstrued.

TEXT OF THE RFA

The RFA will end 27 years of inaction by the House on a constitutional amendment, by adding to our Constitution this language:

''To secure the people's right to acknowledge God according to the dictates of conscience: Neither the United States nor any State shall establish any official religion, but the people's right to pray and to recognize their religious beliefs, heritage or traditions on public property, including schools, shall not be infringed. Neither the United States nor any State shall require any person to join in prayer or other religious activity, prescribe school prayers, discriminate against religion, or deny equal access to a benefit on account of religion.''[6]

H.J. Res. 78 also includes the normal protocol for submitting this text to the states for ratification, with a seven-year limit on that process.

ABOUT ''SEPARATION OF CHURCH AND STATE''

The phrase ''separation of church and state'' is a term whose usage has been officially condemned by the Chief Justice of the Supreme Court, William Rehnquist, and with good reason. He labels it a ''mischievous diversion of judges from the actual intentions of the drafters of the Bill of Rights. . . . a metaphor based on bad history, a metaphor which has proved useless as a guide to judging.'' Rehnquist then stated his conclusion: ''It should be frankly and explicitly abandoned.''[7]

The term ''separation of church and state'' has been frequently used not to promote official neutrality toward public religious expression, but to promote hostility. Essentially, it suggests that whenever government is present, religion must be removed. Unfortunately under this philosophy, because government today is found almost everywhere, the growth of government dictates a shrinking of religion. ''Separation'' becomes a euphemism for ''crowding out'' religion.

A proper analysis should center on the actual text of the Constitution, but too often the language of the Constitution is ignored, and is replaced with a focus on the catch-phrase ''separation of church and state.'' It is cited almost as a mantra, often in an effort to foreclose further discussion, and without critical analysis of what the phrase actually might mean. That phrase is not found in the Constitution; yet it commonly is erroneously treated as the standard measuring stick for religious freedom issues.

A wrongful focus on this term inevitably becomes antagonistic to religion, because its premise is that wherever government exists, religion must be pushed aside, to maintain the ''separation.'' Since American government today is far, far larger than in the days of our Founding Fathers, or than in any other era,[8] its expansion automatically crowds out religious expression. When government enters, religion must exit. Our courts are blazing a wayward trail because they use a broken compass, a fact noted by dissenters on the Supreme Court. Chief Justice Rehnquist has decried the phrase as a ''misleading metaphor'' which the Court has followed ''for nearly forty years.''[9]

After reviewing at great length both the extra-Constitutional origin of the phrase, and the history of the development of the First Amendment itself, Chief Justice Rehnquist in Wallace v. Jaffree, 472 U.S. 38 (1985) condemned the reliance on the phrase ''separation of church and state''. Among his comments:

''The evil to be aimed at, so far as those who spoke were concerned [in the Congress which approved the First Amendment], appears to have been the establishment of a national church, and perhaps the preference of one religious sect over another; but it was definitely not concern about whether the Government might aid all religions evenhandedly.

* * * * *

''It would seem from this evidence that the Establishment Clause of the First Amendment had acquired a well-accepted meaning: it forbade establishment of a national religion, and forbade preference among religious sects or denominations. Indeed, the first American dictionary defined the word ''establishment'' as ''the act of establishing, founding, ratifying or ordainin(g,'') such as in ''[t]he episcopal form of religion, so called, in England.'' 1 N. Webster, American Dictionary of the English Language (1st ed. 1828). The Establishment Clause did not require government neutrality between religion and irreligion nor did it prohibit the federal government from providing non-discriminatory aid to religion. There is simply no historical foundation for the proposition that the Framers intended to build the ''wall of separation'' that was constitutionalized in Everson.

* * * * *

''Our recent opinions, many of them hopelessly divided pluralities, have with embarrassing candor conceded that the ''wall of separation'' is merely a ''blurred, indistinct, and variable barrier,'' which ''is not wholly accurate'' and can only be ''dimly perceived.'' [Citations omitted.]

* * * * *

''But the greatest injury of the ''wall'' notion is its mischievous diversion of judges from the actual intentions of the drafters of the Bill of Rights. . . . The ''wall of separation between church and State'' is a metaphor based on bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned.

* * * * *

''The Framers intended the Establishment Clause to prohibit the designation of any church as a ''national'' one. The Clause was also designed to stop the Federal Government from asserting a preference for one religious denomination or sect over others. Given the ''incorporation'' of the Establishment Clause as against the States via the Fourteenth Amendment in Everson, States are prohibited as well from establishing a religion or discriminating between sects. As its history abundantly shows, however, nothing in the Establishment Clause requires government to be strictly neutral between religion and irreligion, nor does that Clause prohibit Congress or the States from pursuing legitimate secular ends through nondiscriminatory secular means.''

The Religious Freedom Amendment reflects Rehnquist's analysis as Chief Justice of the Supreme Court, and corrects the decisions he criticizes.

Catch-phrases such as ''separation of church and state''[10] have had a chilling effect in modern America because government has expanded into almost every area of life. If the church must be segregated from government, then government's entry into any activity is a de facto expulsion of religion from that area. The severity of the problem was noted by Pope John Paul II, on greeting the new American ambassador to the Vatican in December, 1997, when he stated, ''It would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society, such that those who would bring these convictions to bear upon your nation's public life would be denied a voice in debating and resolving issues of public policy. The original separation of Church and State in the United States was certainly not an effort to ban all religious conviction from the public sphere, a kind of banishment of God from civil society.''

HOW WILL THE RFA CHANGE THE OUTCOME OF PREVIOUS SUPREME COURT DECISIONS?

As noted in numerous examples, some of which follow, the RFA reflects the opinions expressed by many Supreme Court justices prior to the Court's detours in recent years, and also reflects the dissenting opinions of many Justices during this period. (Often these were 5–4 decisions, meaning the dissenters were but a single vote short of being a majority.) The RFA effectively incorporates (or re-incorporates) their arguments into the Constitution.

The following are some of the key decisions which are affected:

ENGEL V. VITALE

—The threshold case of Engel v. Vitale[11] held that government may not compose any official prayer or compel joining in prayer. This portion of Engel would remain intact. However, that portion of Engel which precluded students from engaging in group classroom prayer even on a voluntary basis would be corrected by the RFA.[12]

ABINGTON SCHOOL DISTRICT V. SCHEMP

—Abington School District v. Schemp[13], to the extent that it prohibited the composition

or imposition of prayer by an entity of government, would remain the law under the RFA. But to the extent that Abington broadly permits the Establishment Clause to supersede the Free Exercise Clause, it would yield to the standard enunciated in Justice Stewart's dissent:

''It is, I think, a fallacious oversimplification to regard these two provisions as establishing a single constitutional standard of ''separation of church and state,'' which can be mechanically applied in every case to delineate the required boundaries between government and religion. We err in the first place if we do not recognize, as a matter of history and as a matter of the imperatives of our free society, that religion and government must necessarily interact in countless ways. Secondly, the fact is that while in many contexts the Establishment Clause and the Free Exercise Clause fully complement each other, there are areas in which a doctrinaire reading of the Establishment Clause leads to irreconcilable conflict with the Free Exercise Clause.''

WALLACE V. JAFFREE

—The prohibition on silent prayer in public schools, incorporated into Wallace v. Jaffree[14], would be corrected by the RFA. Silent prayer (as well as vocal prayer) would be legitimized, so long as there was no government dictate either to compel that it occur, or to compel any student to participate.

As Chief Justice Burger stated in his dissent in Wallace v. Jaffree:

''It makes no sense to say that Alabama has ''endorsed prayer'' by merely enacting a new statute ''to specify expressly that voluntary prayer is one of the authorized activities during a moment of silence, . . . To suggest that a moment-of-silence statute that includes the word ''prayer'' unconstitutionally endorses religion, while one that simply provides for a moment of silence does not, manifests not neutrality but hostility toward religion.

* * * * *

''The notion that the Alabama statute is a step toward creating an established church borders on, if it does not trespass into, the ridiculous. The statute does not remotely threaten religious liberty; it affirmatively furthers the values of religious freedom and tolerance that the Establishment Clause was designed to protect. Without pressuring those who do not wish to pray, the statute simply creates an opportunity to think to plan, or to pray if one wishes . . .''

In Justice Potter Stewart's dissent from Abington, he found permitting school prayer is a necessary element of diversity:

''. . . the duty laid upon government in connection with religious exercises in the public schools is that of refraining from so structuring the school environment as to put any kind of pressure on a child to participate in those exercises; it is not that of providing an atmosphere in which children are kept scrupulously insulated from any awareness that some of their fellows may want to open the school day with prayer, or of the fact that there exist in our pluralistic society differences of religious belief.''

LEE V. WEISMAN

—Graduation prayers (so long as not prescribed by government) would be freed of the prohibition in Lee v. Weisman, 505 U.S. 577 (1992). Justice Kennedy wrote in that case that the normal expectation of respectful silence (which is expected for so many other school programs), became coercion when a rabbi offered a graduation prayer, because it creates ''pressure, though subtle and indirect, . . . as real as any overt compulsion.''

The RFA takes issue with Justice Kennedy's view, and instead embodies the views of the four Justices who dissented to this 5–4 decision. Whether at a graduation or other school setting, the RFA incorporates the conclusions of these four Justices (Scalia, Rehnquist, White and Thomas) that ''hearing'' is not ''participating'' and ''hearing'' is not ''joining'' in prayer, and thus there was no coercion to pray.

The Court never explained how expecting respect for a rabbi's prayer at graduation is worse or more ''coercive'' than expecting courtesy and quiet for non-religious school presentations, or for the Pledge of Allegiance which was also a part of the graduation ceremony. The majority, though, turned its back on neutrality by holding that expecting courtesy and tolerance is coercive, even though seeking respect for non-religious speech was normal and permitted. But because Lee V. Weisman transmuted simple listening into ''participation'', the Religious Freedom Amendment instead requires something greater than this before an activity is deemed to be an infringement of rights. The RFA applies a simple common-sense standard that makes prayer an expressly-permitted activity, so long as actual joining-in and/or prescribing of prayer are not required. Listening is not joining and is not participating and is not coercion.

In dissenting to Lee V Weisman's 5–4 ruling, Justice Scalia called the new ''psychological coercion'' standard ''boundless, and boundlessly manipulable''.[15] He noted that prayer at school graduations had been standard since the first known graduation from a public high school, in Connecticut in July 1868.[16] Just as the RFA now does, Justice Scalia and the other three dissenting justices distinguished between being present and actually joining in a prayer. As these four justices wrote (at 636):

''. . . According to the [majority opinion of the] Court, students at graduation who want ''to avoid the fact or appearance of participation,'' . . . in the invocation and benediction are psychologically obligated by ''public pressure, as well as peer pressure, . . . to stand as a group or, at least, maintain respectful silence'' during those prayers. This assertion-the very linchpin of the Court's opinion—is almost as intriguing for what it does not say as for what it says. It does not say, for example, that students are psychologically coerced to bow their heads, place their hands in a Durer-like prayer position, pay attention to the prayers, utter ''Amen,'' or in fact pray. . . . It claims only that students are psychologically coerced ''to stand . . . or, at least, maintain respectful silence.'' . . . The Court's notion that a student who simply sits in ''respectful silence'' during the invocation and benediction (when all others are standing) has somehow joined—or would somehow be perceived as having joined—in the prayers is nothing short of ludicrous.''

The standard of Lee v. Weisman's bare 5–4 majority has been dangerous, because it declares that simple exposure to religious speech (like exposure to pornography) is so inherently damaging that people must be protected from it. In the majority opinion, Justice Kennedy wrote (at 505 U.S. 594), ''Assuming, as we must, that the prayers were offensive . . .''. Even pornography is granted a chance to be measured against prevailing community standards; but prayer is assumed automatically to be offensive. Lee v. Weisman's subjective standard permits a lone ''offended'' individual to silence all others in a public place, thereby censoring their religious expressions.

The effect of this ruling was to create the dangerous notion of a new ''freedom from hearing'' right which is superior to others' express free speech rights under the First Amendment. This is especially insidious and chilling when it is used for prior restraint of religious speech. It also perpetuates the notion that an offense to a few must be corrected, even if doing so gives offense to the vast majority. As Justice Kennedy noted (505 U.S. 595), ''for many persons an occasion of this significance lacks meaning if there is no recognition, however brief, that human achievements cannot be understood apart from their spiritual essence.'' But he found that interest immaterial, so long as any one person was offended. The four dissenters took a view much more in keeping with respecting the rights of all, and not just of a few. They noted that, in trying to avoid offense to one student and one parent, the Court's anti-graduation prayer ruling ignored the fact that it was giving offense to all the other students and parents. They stated (at 505 U.S. 645):

''The reader has been told much in this case about the personal interest of Mr. Weisman and his daughter, and very little about the personal interest on the other side. They are not inconsequential. Church and state would not be such a difficult subject if religion were, as the Court apparently thinks it to be, some purely personal avocation that can be indulged entirely in secret, like pornography, in the privacy of one's room. For most believers it is not that, and has never been. Religious men and women of almost all denominations have felt it necessary to acknowledge and beseech the blessing of God as a people, and not just as individuals, because they believe in the ''protection of divine Providence,'' as the Declaration of Independence put it, not just for individuals but for societies; because they believe God to be, as Washington's first Thanksgiving Proclamation put it, the ''Great Lord and Ruler of Nations.'' One can believe in the effectiveness of such public worship, or one can deprecate and deride it. But the longstanding American tradition of prayer at official ceremonies displays with unmistakable clarity that the Establishment Clause does not forbid the government to accommodate it.''

Lee v. Weisman, in discussing the tradition of graduation prayer, also included an interesting note that the practice was part of the first known American graduation ceremony. As it noted (at 505 U.S. 635):

''By one account, the first public high school graduation ceremony took place in Connecticut in July 1868—the very month, as it happens, that the Fourteenth Amendment (the vehicle by which the Establishment Clause has been applied against the States) was ratified—when 15 seniors from the Norwich Free Academy marched in their best Sunday suits and dresses into a church hall and waited through majestic music and long prayers.''

Under the pretense of promoting tolerance, our courts have thus been used to promote censorship. The RFA corrects this, protecting the rights of both minorities and majorities. The Constitution and the Bill of Rights were intended to protect each and every one of us, not merely some of us.

STONE V. GRAHAM

—The ability to post the Ten Commandments on public property (as an expression of religious beliefs, heritage or traditions of the people), prohibited by Stone v. Graham,[17] becomes protected under the RFA, although there would be neither a mandate nor a guarantee that it would be proper under all circumstances. But Stone v. Graham's automatic prohibition on such a display would be ended.

Stone's majority decision expressed concern that posting the Ten Commandments would ''induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments.''[18] But, in dissent, Chief Justice Rehnquist noted:[19]

''The Establishment Clause does not require that the public sector be insulated from all things which may have a religious significance or origin. . . . Kentucky has decided to make students aware of this fact by demonstrating the secular impact of the Ten Commandments.''

Chief Justice Rehnquist then quotes from a 1948 opinion[20] by former Justice Jackson:

''. . . Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. . . . I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's peoples.''

LEMON V. KURTZMAN

—Lemon v. Kurtzman[21] and its subjective three-pronged test have often been used to achieve a desired result rather than to guide an analysis. The Lemon test would necessarily be revised, because a ''purely secular'' objective would no longer be compulsory. Recognition of religious heritage, tradition or belief would be a proper objective, so long as it did not rise to the level of promoting a particular faith.

ALLEGHENY V. ACLU

—The case of County of Allegheny v. ACLU, Greater Pittsburgh Chapter,[22] would be brought back into line with Lynch v. Donnelly.[23] (Both were 5–4 decisions.) The so-called ''plastic reindeer'' test for holiday symbols on public property would no longer be decisive. Lynch permitted display of a government-owned Nativity scene, whereas Allegheny restricted the display of a private creche on public property, citing a need for better visual ''balance'' with secular emblems. It would be no more compulsory to add secular items to a religious display than to require adding religious symbols to ''balance'' purely secular displays.

A truer test would consider whether symbols of differing faiths were afforded similar opportunity for display during their special seasons. The proper test would be whether government sought to establish an official religion, rather than outlawing traditions from a public forum.

The Religious Freedom Amendment would correct the Supreme Court's bias that secular symbols, regardless of how perverse, are constitutionally-protected for public display,[24] whereas religious symbols are considered suspect. The intent of the RFA is to re-establish true neutrality, by affording religious expression the same equal protection as other expression, rather than the pretense of neutrality that too often exists in name only.[25] The carryover of true neutrality would extend to other aspects of once-common but now-suppressed reflections of beliefs, heritage and traditions. School holiday programs would not feel the pressure to limit songs to ''Frosty the Snowman'' or ''Rudolph the Red-Nosed Reindeer''. The carols of Christmas, the hymns of Thanksgiving, the songs of Hanukkah, and those of other holidays and other faiths would be welcome. Tolerance and understanding would be promoted, rather than avoided. The standard would be that reflections of faith, meaning minority faiths as well as majority faiths, are clearly permitted, so long as it does not progress into advocating or promoting any particular faith.

SECTION-BY-SECTION REVIEW OF THE RFA

Preamble: ''To secure the people's right to acknowledge God according to the dictates of conscience: . . .''

The preamble has a purpose. As former Chief Justice Story described the nature of a constitutional preamble, ''Its true office is to expound the nature and extent and application of the powers actually conferred by the Constitution, and not substantively to create them.''[26] The preamble to H.J. Res. 78 serves principally to indicate intent, to assist in interpreting the substantive provisions.

The concept of this particular preamble is attributed chiefly to Forest Montgomery, legal counsel for the National Association of Evangelicals. There is nothing unique or unusual, however, to have constitutional language which expressly mentions God. Such language is the rule, and not the exception, in our state constitutions.

Critics of this mention of God should review the constitutions of our 50 states. Through these, the American people have freely embraced attitudes very different from those expressed by the U.S. Supreme Court. All fifty of our states [27] have adopted express and explicit mentions of God in their constitutions or preambles. The attached Appendix details the express language, from each of the states.

In Alaska, the constitution states that its citizens are ''grateful to God and to those who founded our nation . . . , in order to secure and transmit to succeeding generations our heritage of political, civil and religious liberty''. In Colorado, theirs reads, ''with profound reverence for the Supreme Ruler of the Universe.'' Idaho states, ''grateful to Almighty God for our freedom,'' which is the identical phrase used by California, and Nebraska, and New York, and Ohio, and Wisconsin. Pennsylvania phrases it as ''grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance.''

Some go even farther. Maryland's Article 36 declares ''the duty of every man to worship God.'' Maryland's constitution further states that nothing in it shall prohibit references to God or prayer ''in any governmental or public document, proceeding, activity, ceremony, school, institution, or place'' and declares that those things are not considered to be an establishment of religion. Virginia's refers to the ''duty which we owe to our Creator'' and to the ''mutual duty of all to practice Christian forbearance, love and charity.''

These references to God are typical of our state constitutions.

Just as America adopted ''In God We Trust'' as our national motto, the states have mottoes, often incorporated on their state seals. Arizona's seal states, ''Ditat Deus'', meaning ''God Enriches.'' Florida's seal states, ''In God We Trust.'' Ohio doesn't put it on a seal, but proclaims its motto, ''With God, All Things Are Possible.''[28]

The Religious Freedom Amendment echoes the philosophy found in our state constitutions, namely that faith guided the creation of America's common principles and ideals, and faith is at the core of preserving them. It tracks the essence of the Declaration of Independence, wherein our Founding Fathers proclaimed that our rights come not from government, but from God, declaring, ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights; that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men.''

The Religious Freedom Amendment also applies a phrase common to many of the original state constitutions: ''according to the dictates of conscience''. Virginia used it in 1776 as part of its Declaration of Rights, proclaiming, ''all men are equally entitled to the free exercise of religions, according to the dictates of conscience.'' It appeared with slight variations in the original constitutions of Delaware, New Jersey and North Carolina (all 1776), Vermont (1777), Massachusetts (1780) and New Hampshire (1784). Today, this phrase of ''according to the dictates of conscience'' is echoed in the constitutions of 28 states—Arkansas, Connecticut, Delaware, Georgia, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia and Wisconsin.

It must always be stressed that the Religious Freedom Amendment is not intended to override the First Amendment's prohibitions on establishing any religion as a state religion and on creating official status for any set of beliefs. The RFA would not do this. The preamble's inclusion of the phrase, ''according to the dictates of conscience,'' is the first of multiple protections within the Religious Freedom Amendment to safeguard the rights of religious minorities.

The term ''according to the dictates of conscience'' does not, however, protect lewd behavior under the claim or pretense of religion. Although worded in absolutist fashion, the First Amendment nevertheless yields when necessary to avoid ''substantial threat to public safety, peace, or order''.[29] The courts have determined that free exercise of religion is not a license to disregard general statutes on behavior, such as those against advocating violent overthrow of the government,[30] outlawing polygamy [31], use of illegal drugs[32], prostitution[33], and even snake-handling[34]. The right to free speech does not permit shouting ''Fire!'' in a public theater[35], or wanton and intentional libel and slander[36]. Free speech does not give students a right to interrupt and usurp class time to speak whenever they want about whatever they want. Neither does the RFA. The RFA would not permit or sanction disruptive behavior by those wishing to pray or to speak about religion. It does not open public schools to anyone who might wish to enter to bring in their own religious message. Trespass remains trespass. The RFA simply permits religious openness by those students who have a right (and usually a legal obligation) to attend school.

''The people's right'' is a right held both by individuals and as a collective group. The RFA does not, however, create a mechanism for government officials to begin dictating wholesale inclusion of religious symbols for constant or incessant display on public property, because they would remain bound by the First Amendment's prohibition against establishing an official religion via government! The RFA simply shifts the boundary, away from exclusionism and into greater accommodation, but stops well short of actual endorsement of religion. It provides a check upon the court challenges which have erroneously equated and confused accommodation and recognition with endorsement.

The RFA would correct the trend of using the Establishment Clause to run roughshod over the Free Exercise Clause. The First Amendment consciously established a tension by stating not only what government could not do, but also stating what the people could do. Our courts have instead used it

to halt voluntary religious expressions by citizens, individually and collectively, whenever government has some connection.

Because the scope and intrusiveness of government into all aspects of American society has grown so rapidly, it has become all-pervasive, making it a rare occasion when there is no presence of government. Accordingly, the judicially-created ''wall of separation'' has become a moving wall. As the presence of government constantly expands, this standard crowds out opportunities for religion to be present and to flourish. As shown by the recent ruling in City of Boerne v. Flores, Archbishop[37] even a church's ability to have room to seat its worshippers is subjected to government control. This was never the intention of our Founding Fathers.

The RFA's preamble stresses our shared belief that government should accommodate and protect religious freedom, but it simultaneously stresses that government should not and must not dictate in regard to religion. By concluding with the safeguard of ''according to the dictates of conscience,'' the preamble assures that as it protects religious expression in public places, it nevertheless cannot be used to dictate expression or non-expression of beliefs, nor can it be used to favor one religious faith over another.

Protecting religious expression: ''Neither the United States nor any State shall establish any official religion, but the people's right to pray and to recognize their religious beliefs, heritage or traditions on public property, including schools, shall not be infringed. . . .''

NEVER AN OFFICIAL CHURCH

This phrase draws a clear boundary beyond which government cannot go. No public property occasion which recognizes religious beliefs, heritage or tradition, and no such exercise of the right to pray shall rise to the level of denoting any religion as official. This follows the intent of the drafters of the First Amendment, as understood by now-Chief Justice William Rehnquist and related in his opinion in Wallace v. Jaffree:

''The evil to be aimed at, so far as [its drafters] were concerned, appears to have been the establishment of a national church, and perhaps the preference of one religious sect over another, but it was definitely not concern about whether the Government might aid all religions evenhandedly.''[38]

Government should accommodate America's faiths, and the emphasis they have always received in this nation's life, but should not be promoting any one faith in particular. For example, the RFA would not permit government to proclaim officially that the United States is a ''Christian nation'', nor a ''Jewish nation,'' ''Muslim nation,'' nor that of any other particular faith. But the supposed accommodation under current rulings is typically a pretense, the functional equivalent of no accommodation at all.

The proper standard of accommodation was described by then-Chief Justice Warren Burger, in his dissent to Wallace v. Jaffree, 472 U.S. 38, at 90:

''The statute [permitting a moment of silence, and thus silent prayer, in Alabama's public schools] ''endorses'' only the view that the religious observances of others should be tolerated and, where possible, accommodated. If the government may not accommodate religious needs when it does so in a wholly neutral and noncoercive manner, the ''benevolent neutrality'' that we have long considered the correct constitutional standard will quickly translate into the ''callous indifference'' that the Court has consistently held the Establishment Clause does not require.

''The Court today has ignored the wise admonition of Justice Goldberg that ''the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.''

The language to permit religious expression on public property is the first corrective segment of the RFA; the second is the portion dealing with non-discrimination.

The text of the RFA uses the two-part structure employed by the First Amendment, intended to balance freedom from state-imposed religion (via the so-called Establishment Clause, ''Congress shall make no law respecting an establishment of religion . . .'') with freedom of religion (via the so-called Free Exercise Clause, ''or prohibiting the free exercise thereof''). The RFA likewise echoes the prohibition on an official religion, then follows it with language clearly indicating that the intent is not to restrict religion, but to maximize it. The RFA's terms are necessarily more explicit than the First Amendment, as a necessity to correct court rulings of recent years.

The RFA reflects former Chief Justice Warren Burger's comments about how government should accommodate expressions of religious tradition, heritage and belief. As he wrote in Lynch v. Donnelly, 465 U.S. 668, at 675 (1984) (and before Lynch was undercut by a later 5–4 ruling):

''[t]here is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789'' and that there are ''countless . . . illustrations of the Government's acknowledgment of our religious heritage and governmental sponsorship of graphic manifestations of that heritage.'' These included, in part:

''—invocations of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders;

''—George Washington's designation of a religiously-toned Thanksgiving, which 80 years later was made a national holiday;

''—the designation of Christmas as a national holiday and the grant of paid leave to public employees on that day;

''—Presidential proclamations commemorating other religious events, such as the Jewish High Holy Days;

''—Usage of ''In God We Trust'' as a national motto, and on coins and currency;

''—Display of religious paintings in publicly-supported art galleries [to which he could have added the religious overtones of many of the depictions in Statuary Hall in the U.S. Capitol itself].''

WHO ARE ''THE PEOPLE''?

The word ''people'' was purposefully chosen rather than specifying simply ''a person's right'' or ''every person's right'' to pray, and to recognize religious tradition, heritage or belief. In speaking of ''the people's right'', the RFA embodies ''people'' in both the individual and the collective meaning of the word. This is consistent with the dual usage already employed by Constitutional references to ''the people.''

In its Preamble, the Constitution opens with ''We the People'', thus referring to the collective conduct of the American people acting to create their government.

The First Amendment uses an obviously collective sense of ''people'' when it proclaims ''the right of the people peaceably to assemble, and to petition the government for a redress of grievances.''

The Fourth Amendment employs it to indicate individual rights in protecting ''The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.''

The Ninth and Tenth Amendments make obvious reference to the collective rights of the people, using their instrumentality of government, in specifying that ''The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'' and that ''The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.''

PROTECTING KEY DECISIONS

The RFA is also intended to preserve and protect the precedential value of Supreme Court decisions favorable to religious freedom and to even-handed treatment of religion, namely Marsh v. Chambers, 463 U.S. 783 (1983) and Rosenberger v. Rector and Visitors of the University of Virginia, 115 S. Ct. 2510 (1995). Without the RFA, the future of these precedents is problematical, because they are isolated exceptions to the trends of the Supreme Court in other religious freedom cases. Their viability and precedential value is subject to sudden change by the Court, absent the RFA.

The RFA also cements the precedent of another series of Supreme Court decisions, relating to government providing of benefits to students who are in parochial schools. That ruling, in the 5–to–4 decision in Agostini v. Felton, is discussed as part of the ''benefits'' clause of the RFA, later in this document.

Marsh v. Chambers, 463 U.S. 783 (1983), by 6–to–3 upheld the constitutionality of prayers by a government-paid chaplain, at the opening of legislative sessions.[39] Rosenberger by a 5–to–4 Court margin directed that when a public university funded other student publications, it could not refuse to assist one with a Christian association.

These decisions in Marsh v. Chambers and Rosenberger v. Rector are protected by the Religious Freedom Amendment, guarding them from the vagaries of back-and-forth shifting margins on the Supreme Court.

PROTECTING RIGHTS OF THE PEOPLE

H.J. Res. 78 does not seek to protect religious rights simply by restricting the power of government; it also proclaims an affirmative right of the people themselves. The Bill of Rights and other Constitutional amendments have likewise used both approaches to establish and protect rights of the people.[40] The Religious Freedom Amendment expressly declares the rights of the people, to make its intent clearer to the courts. (But, as previously noted, the absolutist statement of an affirmative right does not impede reasonable requirements for the time, place and manner of speech. For example, the RFA does not give a student any right to disrupt class by spontaneously offering a prayer, just as the First Amendment does not give them any right to disrupt class by spontaneously launching into any other form of speech.)

''Public property'' as used in the RFA is synonymous with ''government property'', but is not limited to real estate. In a proper case, it can for example address public property such as a city seal which contains a depiction of a community's heritage, traditions or beliefs. Thus, the limiting test is to assure that any role of government does not go beyond recognizing religious belief, heritage or tradition, and avoids becoming the promoting of any religion. The RFA does not repeal the Establishment Clause of the First Amendment, but interacts with it, restoring the former balance between the Establishment Clause and the Free Exercise Clause. Use of public property to go beyond the Equal Access Act, to go beyond recognition and into promotion of a religion would continue to run afoul of the Establishment Clause of the First Amendment.

Protecting individual conscience and minorities: ''. . . Neither the United States nor

any State shall require any person to join in prayer or other religious activity, [or] prescribe school prayers . . .''

The RFA does contain any language to overturn the First Amendment's prohibition on establishing an official religion, neither expressly nor impliedly. Nevertheless, it contains protective language as an extra safeguard to assure this. The RFA echoes the pattern of the First Amendment, with both a prohibition on establishing an official church, coupled with guarantees intended to assure maximum religious liberty.

No school prayer (nor any religious activity) could ever be mandatory; the RFA explicitly makes this clear. It demonstrates an abundance of caution and concern for religious freedom for all, in particular for any who may be in a minority in their area. It does not permit a large group to muzzle or suppress a small group; it does not permit a small group to muzzle or censor a large group. Nor does it permit anyone to compel prayer or other religious conduct by those who do not wish to participate.

Neither the federal nor state government could prescribe prayer. This covers both principal definitions of ''prescribe''. It could not ''prescribe'' prayers, in the sense that it could not direct that they occur; under the RFA, that initiative properly comes from students. Nor could government ''prescribe'' prayer, in the sense that it could not dictate the content of prayer.

This language reinforces the ''according to the dictates of conscience'' protection of the RFA's preamble.

The RFA effectively endorses and follows the standard applied by the Supreme Court in West Virginia State Board of Education v. Barnette.[41] There, the Court correctly ruled that no child could or should be compelled to say the Pledge of Allegiance. However, the Court did not create a right for an objecting student to prohibit their classmates from saying the Pledge.

Providing equal protection: ''. . . [Neither the United States nor any State shall] . . . discriminate against religion, or deny equal access to a benefit on account of religion.''

ENDING DISCRIMINATION AGAINST RELIGION

Religious symbols and religious behavior are treated by current court decisions as being automatically suspect when they occur on public property, or in association with a government activity or program.[42] But unlike the standard on religion, secular symbols, behavior, or activity are not pre-burdened. This discriminatory dual standard is prohibited by the RFA. The amendment does not prohibit positive accommodation of religion, such as non-profit tax treatment, but focuses instead to bar discrimination against religion.

The Congressional Research Service reported recently on 30 instances of federal statutes and regulations which assure that government does not subsidize religious practices of receiving organizations. But CRS also found an additional 51 federal statutes and regulations which disqualify religious organizations or adherents from neutral participation in generalized government programs.[43] This discrimination needs correction.

There is a growing recognition that faith-based programs can succeed, winning results even when other programs cannot, to combat crime and violence, teen pregnancy, welfare dependency, recidivism, and other social problems. To disqualify them because of their religious component not only violates the notion of neutrality, but denies assistance to a great many Americans.

NEUTRALITY REGARDING BENEFITS-PROTECTING FRAGILE PRECEDENTS

The ''benefits'' provision of the RFA reflects and protects (among other policy decisions) two recent Supreme Court decisions. Both were decided by 5–4 margins, in an area where the Court still shifts back-and-forth, unless the RFA provides an anchor to preserve these fragile rulings.

The first of these protected holdings is Rosenberger v. Rector and Visitors of the University of Virginia, 115 S.Ct. 2510 (1995), holding it impermissible viewpoint discrimination to exclude student religious publications from the University's general subsidy of student publications. The Court concluded that free speech itself was threatened if religious speech were singled out for different treatment:

''The governmental program at issue is neutral toward religion. Such neutrality is a significant factor in upholding programs in the face of Establishment Clause attack, and the guarantee of neutrality is not offended where, as here, the government follows neutral criteria and even-handed policies to extend benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.''

The RFA also reflects the philosophy embodied—by a bare margin—in Agostini v. Felton, No. 96–552 (June 23, 1997). Agostini by 5–4 reversed a prior ruling on the same issue (a ruling in Aguilar v. Felton, 473 U.S. 402 (1985)), which likewise was decided by 5–4). The Court justified the reversal because the Court had also reversed two prior opinions on crucial points. Those cases likewise turned on margins of 5–4 in one instance[44] and also 5–4 in the other![45] What the Court gives, the Court can take away tomorrow, especially on 5–4 decisions! The RFA protects these important decisions from such judicial schizophrenia.

In Agostini v. Felton, the Supreme Court ruled that New York City may use federal Title I funds to provide special teachers on the premises of parochial schools, to give supplemental and remedial instruction to disadvantaged children.[46]

The Court opined that there were sufficient safeguards to assure that sectarian schools would not have a profit motive to provide religious instruction. It added:

''First, the Court has abandoned *Ball*'s presumption that public employees placed on parochial school grounds will inevitably inculcate religion or that their presence constitutes a symbolic union between government and religion. *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 12–13. No evidence has ever shown that any New York City instructor teaching on parochial school premises attempted to inculcate religion in students. Second, the Court has departed from *Ball's* rule that all government aid that directly aids the educational function of religious schools is invalid. Other Establishment Clause cases before and since have examined the criteria by which an aid program identifies its beneficiaries to determine whether the criteria themselves have the effect of advancing religion by creating a financial incentive to undertake religious indoctrination. Cf. e.g., *Witters*, supra, at 488; *Zobrest*, supra, at 10. Such an incentive is not present where, as here, the aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis.''

NEUTRALITY REGARDING BENEFITS-PROTECTING CURRENT POLICIES

In addition to the Supreme Court precedents of *Rosenberger* and of *Agostini*, the ''benefits'' provision of the RFA protects other current policy. For example, the RFA's ''benefits'' provision protects these existing programs: Over a billion dollars each year in federal grants goes to Catholic Charities USA for various social services, ranging from shelters for the homeless, to aid to refugees and to unwed mothers. Over a billion dollars each year is spent on GI Bill education benefits, over $7-billion to federal Pell Grants to students, $23–billion a year in federally-guaranteed student loans, and $17-billion a year in direct lending to students, all of which may be used at private and church schools, as well as at public schools.

The RFA does not permit any appropriation or other funding for religious activities. Government funding for a religious purpose would still be banned by the prohibition on official religion found both in the First Amendment and in the RFA. However, once a government program was established, to accomplish a governmental purpose, participants could not be disqualified on the basis of religion or religious affiliation.

Other illustrations of the current problem (and the not-clearly-settled law in light of 5–4 Supreme Court rulings):

—Although the case was ultimately settled, the Federal Communications Commission denied a federal grant to Fordham University, because its campus station included a religious program on Sunday mornings. The federal district court[47] sided with the FCC that Fordham was disqualified by supposed church-state considerations. The RFA will prevent such injustices in the future.

—Provisions of state constitutions have been used to deny using general benefit programs when there was any connection with a religious institution. Again, the RFA will rectify this, because it applies at both the federal and the state levels.[48]

—After the Oklahoma City bombing, it was reported that HUD attorneys almost denied nearby churches the ability to receive bombing repair money, on the same basis as other damaged property, because of ''separation of church and state'' concerns. Again, the RFA protects the ability to participate on an equal and non-discriminatory basis.

The ''benefits'' language does not guarantee any benefit to any person or group. Instead, it assures ''equal access'' *if and when* some benefit is made available for a permitted governmental purpose. For example, the RFA does not create a program of vouchers for education. *If* and when a unit of government chose to create them, however, the RFA would simply assure that all individuals and private entities are afforded equal access to them. This is the identical standard already utilized in federal student loan programs and the G-I Bill.

Private institutions, including those affiliated with churches, should be permitted to participate under the same standards as public institutions. For example, neither the University of Notre Dame nor Boston College are disqualified from federal education programs for being Catholic, nor is any other school disqualified on the basis of religion. This is a proper standard which has proven workable, which should be applied uniformly, and which should be protected from the uncertainty of the Supreme Court rulings in this area.

CONCLUSION

Rather than promoting understanding, recent decades of current Supreme Court decisions have promoted the opposite. A correct standard of tolerance would accept the benefits of listening respectfully to other views, rather than using the courts to silence them.

As four current Supreme Court justices have expressed:[49]

''. . . nothing, absolutely nothing, is so inclined to foster among religious believers of various faiths a toleration—no, an affection—for one another than voluntarily joining in prayer together, to the God whom they all worship and seek. Needless to say, no one should be compelled to do that, but it

is a shame to deprive our public culture of the opportunity, and indeed the encouragement, for people to do it voluntarily. The Baptist or Catholic who heard and joined in the simple and inspiring prayers of Rabbi Gutterman on this occasion was inoculated from religious bigotry and prejudice in a manner that cannot be replicated. To deprive our society of that important unifying mechanism, in order to spare the nonbeliever what seems to me the minimal inconvenience of standing or even sitting in respectful nonparticipation, is as senseless in policy as it is unsupportable in law.''

The wayward state of Supreme Court decisions has been decried by Chief Justice Rehnquist:

''George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of ''public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God.'' History must judge whether it was the father of his country in 1789, or a majority of the Court today, which has strayed from the meaning of the Establishment Clause.''[50]

The American people have never accepted the Supreme Court's extra burdens levied against school prayer and against religious freedoms during the past 36 years. It has been 27 years since this House has acted upon the necessary constitutional amendment to correct this, and the time to remedy that is now. The Religious Freedom Amendment should be adopted.

APPENDIX

References to God in State Constitutions & Preambles

Alabama—''invoking the favor and guidance of Almighty God''

Alaska—''grateful to God and to those who founded our nation . . . in order to secure and transmit succeeding generations our heritage of political, civil, and religious liberty''

Arizona—''grateful to Almighty God for our liberties''

Arkansas—''grateful to Almighty God for the privilege of choosing our own form of government, for our civil and religious liberty''

California—''grateful to Almighty God for our freedom''

Colorado—''with profound reverence for the Supreme Ruler of the Universe''

Connecticut—''acknowledge with gratitude, the good providence of God''

Delaware—''Through Divine goodness, all men have by nature the rights of worshipping and serving their Creator according to the dictates of their own conscience.''

Florida—''being grateful to Almighty God for our constitutional liberty''

Georgia—''relying upon the protections and guidance of Almighty God''

Hawaii—''grateful for Divine Guidance''

Idaho—''grateful to Almighty God for our freedom''

Illinois—''grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors''

Indiana—''grateful to Almighty God for the free exercise of the right to choose our own government''

Iowa—''grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings''

Kansas—''grateful to Almighty God for our civic and religious privileges''

Kentucky—''grateful to Almighty God for the civil, political, and religious liberties we enjoy''

Louisiana—''grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy''

Maine—''acknowledging with grateful hearts the goodness of the Sovereign Ruler of the universe in affording us an opportunity, so favorable to the design; and imploring God's aid and direction in its accomplishments, do agree''

Maryland—''grateful to Almighty God for our civil and religious liberty''

Massachusetts—''acknowledging with grateful hearts, the goodness of the great Legislator of the Universe, in affording us, in the course of His providence, and opportunity''

Michigan—''grateful to Almighty God for the blessings of freedom''

Minnesota—''grateful to God for our civil and religious liberty''

Mississippi—''grateful to Almighty God, and invoking blessings of freedom''

Missouri—''with profound reverence for the Supreme Ruler of the Universe, and grateful for His goodness''

Montana—''grateful to Almighty God for the blessings of liberty''

Nebraska—''grateful to Almighty God for our freedom''

Nevada—''Grateful to Almighty God for our freedom in order to secure its blessings''

New Hampshire—''unalienable right to worship God according to the dictates of conscience''

New Jersey—''grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure . . .''

New Mexico—''grateful to Almighty God for the blessings of liberty''

New York—''grateful to Almighty God for our Freedom''

North Carolina—''grateful to Almighty God, the Sovereign Ruler of Nations''

North Dakota—''grateful to Almighty God for the blessings of civil and religious liberty''

Ohio—''grateful to Almighty God for our freedom''

Oklahoma—''Invoking the guidance of Almighty God''

Oregon—''to worship Almighty God''

Pennsylvania—''grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance''

Rhode Island—''grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors''

South Carolina—''grateful to God for our liberties''

South Dakota—''grateful to Almighty God for our civil and religious liberties''

Texas—''Humbly invoking the blessings of Almighty God''

Tennessee—''to worship Almighty God''

Utah—''Grateful to Almighty God for life and liberty''

Washington—''grateful to the Supreme Ruler of the Universe for our liberties''

West Virginia—''Since through Divine Providence we enjoy the blessings of civil, political and religious liberty . . . reaffirm our faith in and constant reliance upon God . . .''

Wisconsin—''grateful to Almighty God for our freedom''

Wyoming—''grateful to God for our civil, political, and religious liberties''

Vermont—''to worship Almighty God''

Virginia—''. . . duty which we owe to our Creator . . . mutual duty of all to practice Christian forbearance, love, and charity''

FOOTNOTES

[1] Although the Judiciary Committee in 1971 refused to report any of several proposed prayer amendments, a discharge petition sponsored by Ohio Rep. Wylie successfully compelled a floor vote. Thereafter, on November 8, 1971, the language voted upon read, ''Nothing contained in this Constitution shall abridge the right of persons lawfully assembled, in any public building which is supported in whole or in part through the expenditure of public funds, to participate in voluntary prayer or meditation.'' The vote was 240–162, falling 28 votes short of the necessary two-thirds majority needed, of the 402 House Members who voted.

[2] Sen. Dirksen of Illinois led the effort which promoted this language, ''Nothing contained in this Constitution shall prohibit the authority administering any school, school system, educational institution or other public building supported in whole or in part through the expenditure of public funds from providing for or permitting the voluntary participation by students or others in prayer. Nothing contained in this article shall authorize any such authority to prescribe the form or content of any prayer.'' A vote on September 19, 1966, resulted in a 51–36 favorable vote to substitute this for other text, but the final vote of 49–37 was nine votes short of the two-thirds needed.

[3] During floor action on the proposed Equal Rights Amendment, Sen. Baker of Tennessee proposed adding this text to the ERA, ''Nothing contained in this Constitution shall abridge the right of persons lawfully assembled, in any public building which is supported in whole or in part through the expenditure of public funds, to participate in nondenominational prayer.'' By 50–20, the text was added to the then-pending ERA. However, this plus another successful amendment, to exempt women from the military draft, were seen more as anti-ERA maneuvers than anything else, and final passage of the ERA (with this language added) was blocked at that time.

[4] A Reagan Administration initiative, S.J. Res. 73, was revised in committee to read, ''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.'' On March 20, 1984, the vote on this language was 56–44, falling 11 votes shy of the two-thirds needed.

[5] ''School Prayer: The Congressional Response, 1962–1996'', by David M. Ackerman, Legislative Attorney, American Law Division, October 16, 1996.

[6] This differs slightly from the language of H.J. Res. 78 as originally introduced. As introduced, the RFA read as follows:

''To secure the people's right to acknowledge God according to the dictates of conscience: The people's right to pray and to recognize their religious beliefs, heritage or traditions on public property, including schools, shall not be infringed. The government shall not require any person to join in prayer or other religious activity, initiate or designate school prayers, discriminate against religion, or deny equal access to a benefit on account of religion.''

[7] Excerpted from Chief Justice Rehnquist's dissent in Wallace v. Jaffree, 472 U.S. 38 (1985).

[8] For example: Government runs most schools, with laws to compel attendance, and requires taxes to support those schools, even from those who pay to send their children to private schools. Charitable works, once the primary domain of the religious sector, now are dominated by government programs. The largest portion of American health care is paid in some way by a unit of government. Government runs most of the public welfare system, and massive quantities of public housing.

[9] Rehnquist commented at great length in his dissent to the graduation prayer case of Wallace v. Jaffree, 472 U.S. 38 (1985):

''Thirty-eight years ago this Court, in Everson v. Board of Education, 330 U.S. 1, 16 (1947) summarized its exegesis of Establishment Clause doctrine thus: 'In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.' Reynolds v. United States, [98 U.S. 145, 164 (1879)].'

''This language from Reynolds, a case involving the Free Exercise Clause of the First Amendment rather than the Establishment Clause, quotes from Thomas Jefferson's letter to the Danbury Baptist Association the phrase 'I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State.' 8 Writings of Thomas Jefferson 113 (H. Washington ed. 1861).

''It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history, but unfortunately the Establishment Clause has been expressly freighted with Jefferson's misleading metaphor for nearly forty years. Thomas

Jefferson was of course in France at the time the constitutional amendments known as the Bill of Rights were passed by Congress and ratified by the states. His letter to the Danbury Baptist Association was a short note of courtesy, written fourteen years after the amendments were passed by Congress. He would seem to any detached observer as a less than ideal source of contemporary history as to the meaning of the Religions Clauses of the First Amendment.''

Chief Justice Rehnquist thereafter presents a detailed account of the actual history of the development of the First Amendment's language on religious freedom.

[10] Although it is the most-often used, this is not the only catch-phrase that is used to mislead in debate on these issues. The terms of ''state-sponsored'' prayer, and of ''captive audience'' are also misused often.

The term ''state-sponsored'' prayer is invoked to include situations when a school or government official simply permits prayer to occur, even when student-initiated. Thus, in the 1997 Alabama federal court ruling, Chandler v. James, CV–96–D–169–N (Middle District of Alabama), U.S. District Judge Ira Dement (at pages 7 & 8) permanently enjoined the schools from ''permitting prayers, Biblical and scriptural readings, and other presentations or activities of a religious nature, at all school-sponsored or school-initiated assemblies and events (including, but not limited to, sporting events), regardless of whether the activity takes place during instructional time, regardless of whether attendance is compulsory or noncompulsory, and regardless of whether the speaker/presenter is a student, school official, or nonschool person.''

The ''captive audience'' notion is never used to express concern for the majority of students, who are required to be in school, yet required to leave their normal religious expressions behind while they are there—which is the largest segment of their waking day. As Justice Potter Stewart noted in his dissent in Abington v. Schemp, ''a compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion.''

[11] Engel v. Vitale, 370 U.S. 421 (1962).

[12] The pertinent portion of Engel stated, ''Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment.'' To this Justice Stewart wrote in dissent, ''With all respect, I think the Court has misapplied a great constitutional principle. I cannot see how an ''official religion'' is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation.''

[13] Abington School District v. Schemp, 374 U.S. 203 (1963).

[14] Wallace v. Jaffree, 472 U.S. 38 (1985).

[15] at 505 U.S. 632.

[16] at 505 U.S. 635–636.

[17] Stone v. Graham, 449 U.S. 39 (1980).

[18] at 449 U.S. 42.

[19] at 449 U.S. 45–46.

[20] McCollum v. Board of Education, 333 U.S. 203 (1948).

[21] Lemon v. Kurtzman, 402 U.S. 603 (1971).

[22] County of Allegheny v. ACLU, Greater Pittsburgh Chapter, 492 U.S. 573 (1989).

[23] Lynch v. Donnelly, 465 U.S. 668 (1984).

[24] In R.A.V., Petitioner v. City of St. Paul, Minnesota, 505 U.S. 377 (1992), the Supreme Court held that a ''hate crimes'' law banning cross-burnings and Nazi swastikas was unconstitutional on its face. In National Socialist Party v. Skokie, 432 U.S. 43 (1977), the Court upheld the right of neo-Nazis to parade with swastikas and anti-Semitic literature through the midst of a predominantly Jewish community.

[25] Justice Potter Stewart's dissenting comments in Abington v. Schemp provide an apt description of true neutrality, in contrast with the antagonism that can masquerade as neutrality. As he wrote, ''It might also be argued that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time. With all its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases. For a compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion.''

[26] Story, Joseph, Commentaries on the Constitution of the United States (1833), Sec. 462.

[27] In testimony given in 1997 by Rep. Istook regarding the RFA, it was indicated that five states lacked a reference to God in their state constitutions. This was inaccurate. Corrective research indicates that the five 'missing' states—New Hampshire, Oregon, Tennessee, Vermont and Virginia, in fact do refer expressly to God in their state constitutions.

[28] Just as litigation is pending on many other fronts, challenging prayers at schools, graduations, football games, etc., it is also happening over the Ohio motto. Ohio is being sued to block any further use of this motto.

[29] Sherbert v. Verner, 374 U.S. 398 (1963)

[30] Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) holding it is not protected to advocate ''imminent lawless action if likely to incite or produce such action''. See also 18 United States Code, Sec. 2385, being the criminal code's prohibition of advocating violent overthrow of the government and related offenses.

[31] Reynolds v. United States, 98 U.S. 154 (1878)

[32] Olsen v. Drug Enforcement Administration, 878 F.2d 1458 (D.C. Cir. 1989), cert. den., 494 U.S. 906 (1990); United States v. Rush, 738 F.2d 457 (1st Cir. 1984), cert. den., 470 U.S. 1004 (1985); and United States v. Middleton, 690 F.2d 820 (11th Cir. 1982), cert. den., 460 U.S. 1051 (1983).

[33] Tracy v. Hahn, 940 F.2d 1536 (9th Cir. 1991).

[34] Pack v. Tennessee, 527 S.W. 2d 99 (Tenn. 1975), cert. den., 424 U.S. 954 (1976).

[35] Schenck v. United States, 249 U.S. 47, 52 (1919), wherein Justice Holmes wrote, ''The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic.''

[36] New York Times v. Sullivan, 376 U.S. 254, 279–280 (1964); Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967).

[37] City of Boerne v. Flores, Archbishop, 521 U.S. ———, 1997 WL 345322, June 25, 1997.

[38] Wallace v. Jaffree, 472 U.S. 38 (1985).

[39] A similar standard was enunciated in dissent by Justice Potter Stewart in Engel v. Vitale, who wrote that school prayer was not an ''official religion,'' but simply an effort ''. . . to recognize and to follow the deeply entrenched and highly cherished spiritual traditions of our Nation—traditions which come down to us from those who almost two hundred years ago.'' Justice Stewart then elaborated with numerous references to the statements and conduct of the Founding Fathers.

[40] The First Amendment prohibits Congress from making any law ''respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,'' etc. The Second Amendment says the affirmative right ''of the people to keep and bear arms shall not be infringed.'' The Fourth Amendment sets forth ''the right of the people'' against unreasonable searches and seizures, and then limits the government's ability to issue warrants, except for probable cause. The Fourteenth Amendment gives citizenship to all persons born or naturalized in the U.S., then restricts the states with equal protection and due process requirements. These and other examples illustrate the duality of protections, both by establishing affirmative rights of the people, and by restrictions upon the conduct of government.

[41] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)

[42] There is also lack of balance regarding which symbols are treated as suspect. Typically, only symbols of a majority faith, such as a Christian cross, are ordered to be removed. Yet many other emblems are used as symbols of different faiths. The thirteen stars on the Great Seal of the United States remain arranged as a Star of David, a symbol of the Jewish faith. Banning all symbols of a religion also becomes problematic because they are so numerous, and often are also used for other purposes. The swastika is a condemned symbol of Nazism to most, but also is a sacred symbol for many Hindus. A hammer is a symbol of Norse mythology, and small hammers were often worn on necklaces, akin to the practice of Christians wearing a cross pendant. Kites have religious symbology in Japan. Beetles (scarabs) are religious symbols for Egyptian sun worship. A spokesman for Americans United for Separation of Church and State has even mentioned (although perhaps not seriously) banning witches from school Halloween displays, because of possible religious significance.

[43] March 18, 1996, report from American Law Division, Congressional Research Service.

[44] Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993), holding that providing a sign-language interpreter for parochial school students was not a First Amendment violation. As noted in Agostini v. Felton, the Supreme Court in Zobrest ''abandoned Ball's presumption that public employees placed on parochial school grounds will inevitably inculcate religion or that their presence constitutes a symbolic union between government and religion.''

[45] School District of the City of Grand Rapids v. Ball, 473 U.S. 373 (1985) had held it unconstitutional for a public school district to provide special supplemental classes at public expense to students located at places leased from private religious schools. It was not a ''pure'' 5–4 decision, in the sense that some justices concurred in part while dissenting in part. One key part of Bell was later reversed in the Zobrest case, once again by a 5–4 ruling. Another part of the 5–4 ruling of Bell was later reversed by the Court in Witters v. Washington Dept. of Services for the Blind, 474 U.S. 481.

[46] Despite discussing other grounds as dispositive, the Agostini decision was clearly motivated by a desire to permit the government to escape the $100–million expense of providing state facilities adjacent to the religious schools, so the teaching would not be on the grounds of a church school. It can be questioned whether the 5–4 majority was acting to protect religious freedom, or to protect government purse strings.

[47] Fordham University vs. Brown, 856 F. Supp. 684 (D.C.Cir., 1994), appeal dismissed per stipulation 94–5229 (D.C.Cir., Jan 5, 1996).

[48] In Witters v. Washington Department of Services for the Blind, 474 U.S. 481 (1986), although the federal constitution (by a 5–4 Supreme Court ruling) was not used to deny vocational rehabilitation funds to an individual who desired to become a pastor, the state constitution was ultimately used to block this.

[49] Scalia, Rehnquist, White and Thomas, in their dissent in Lee v. Weisman, at 505 U.S. 646.

[50] Wallace v. Jaffree, 472 U.S. 38 (1985)

GOVERNING GOD

A JUDGE'S REFLECTIONS ON RELIGIOUS FREEDOM

(By Richard John Neuhaus)

Since his appointment to the Ninth Circuit Court of Appeals in 1986, John Noonan has provided ample evidence that he is one of the most distinguished minds in our federal judiciary. Earlier, as a law professor at Berkeley and the author of major studies on the connections between religion and law, he demonstrated that he is, above all, a historian of ideas. That demonstration continues with his most recent work, The Lustre of Our Country, which is a personal summing up of Noonan's reflections on what he believes to be America's most innovative and audacious contribution to world history—the free exercise of religion.

The book's title comes from Noonan's hero, James Madison, for whom ''the whole burden of freedom was carried by the formula of free exercise.'' The First Amendment's commitment to the free exercise of religion, Madison wrote, ''promised a lustre to our country.'' That commitment is expressed in merely sixteen words: ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.''

But the interpretation of those words, more than any other aspect of contemporary jurisprudence, has cut to the heart of our understanding of the American experiment. Although his tone is generally irenic, Noonan leaves no doubt that the courts—and the Supreme Court in particular—have made a hash of the Religion Clause under the rubric of ''church-state law.''

An egregious error entrenched itself in the 1950s when the courts began speaking not of the Religion Clause but of two Religion Clauses—the no-establishment clause and the free-exercise clause. Predictably, the error has been compounded again and again as the ''two clauses'' have been pitted against each other, almost always to the detriment of free exercise. But as Noonan notes,

we are dealing with two prepositional phrases of one clause. ''The first phrase assumed that establishments of religion existed as they did in fact exist in several of the states; the amendment restrained the power of Congress to affect them. The second phrase was absolute in its denial of federal legislative power to inhibit religious exercise.'' Over time, state establishments disappeared and the First Amendment was ''incorporated'' to apply also to the states, but always it should have been evident that there is one Religion Clause, devoted to the end of the free exercise of religion. No establishment is a stipulated means to serve that end. The jurisprudence of the last half century, however, has tended to turn the means into the end, repeatedly declaring that any connection, no matter how benign, between government and religion is a forbidden ''establishment.'' The result is a court-imposed governmental indifference to religion that results in de facto governmental hostility to religion.

In regulating the activities of government, Noonan notes, the courts frequently pretend that they are not themselves part of government. But in fact, they are that part of the government that assumes that ''the courts themselves are sacred.'' ''Performing these tasks that they have determined to be allotted them by the First Amendment, the courts unself-consciously place themselves above any church or creed.'' And this is precisely what Madison was determined to avoid by declaring that citizens had a ''prior obligation'' and ''natural right'' to acknowledge a sovereignty higher than the sovereignty of the state. The genius of his innovation was to insist that, with respect to the exercise of that obligation and right, the government has no legitimate ''cognizance.''

The Founders were keenly aware that the free exercise of religion was qualitatively different from religious tolerance. ''Tolerance,'' writes Noonan, ''is a policy, an acceptance of religious difference because it's more trouble than it's worth to eliminate it, a prudential stance of wise statesmen. It is something else to inscribe in fundamental law an ideal of freedom for the human activity most potentially subversive of the existing order.''

The free exercise of religion is most potentially subversive because it proclaims a sovereignty that ''stands against the sovereignty of the state.'' Writes Noonan, ''Each individual's religion 'wholly exempt' from social control? No qualifications whatever on the right and duty to pay homage to God as one sees fit? Surely, in the heat of battle, Madison exaggerates! No, his theological premises compel these radical conclusions.''

The last point touches on a matter central to Noonan's argument, namely, that the free exercise of religion is, in the main, a religious achievement. This is explicitly proposed against the received wisdom that religious freedom—usually construed as tolerance—is the achievement of the secular Enlightenment against religion. In carrying this point, Noonan the historian is on impressive display.

The Lustre of Our Country is oddly contrived. It begins with an engaging autobiographical sketch of the Catholic author coming of age under the shadow of Puritan Boston. Noonan then examines the limits and contradictions embodied in the Puritan idea of religious freedom, to which he contrasts Madison's ''original insight.'' A chapter is devoted to a fictional letter ''discovered'' by Noonan, written by Tocqueville's younger sister, who argues that her brother was right to view religion as ''the foremost institution'' of American democracy, but wrong in claiming that the ''separation of church and state'' is, in fact, the American reality. Employing various literary techniques, sometimes eccentric but always fascinating, Noonan retells key cases in which the Supreme Court has tied itself into knots by regulating religion, with the result that it ends up in ludicrous efforts to adjudicate the sincerity and truth of religious claims—exactly the claims that Madison declared to be none of the government's business.

On the ''subversive'' dimension of free exercise, Noonan recalls four ''crusades''—the abolition of slavery, the war against Mormon polygamy, the prohibition of alcohol, and the civil-rights movement under the leadership of Martin Luther King Jr. Curiously, he does not include a fifth crusade, that against the abortion license of *Roe* v. *Wade*, on which he has written elsewhere with great persuasive effect. In all this, Noonan leaves no doubt that the free exercise of religion is an idea potentially dangerous to the state. Yet Madison and most of the other Founders believed that the entire constitutional order, this novus ordo seclorum, was contingent upon taking that risk. Noonan worries that we Americans, with the courts in the lead, may now have lost our nerve for it. Implicit in that loss of nerve, he suggests, is an acceptance of Durkheim's view that religion is essentially a function of society, something to be used and tolerated to the extent that it serves ''the sacred society.''

Nonetheless, Noonan is by no means ready to give up. For all the missteps along the way, the American commitment to the free exercise of religion is still, he insists, a ''success.'' Against what he views as the false humility of many Americans, he urges a forthright acknowledgment that religious freedom is this country's foremost contribution to the world's understanding of just government. In advancing that claim, he devotes chapters to four contrasting case studies: the French Revolution's affirmation and betrayal of the American idea of religious freedom; the American imposition of the idea on a defeated Japan; Russia's current and deeply flawed efforts to incorporate the idea; and the American influence in the Second Vatican Council's teaching on religious liberty.

The Lustre of Our Country is erudite and instructive, frequently whimsical and typically wise. Yet I expect that other readers will share my frustration with aspects of its argument. At times, Noonan seems to conflate freedom of religion with freedom of conscience. There are similarities, to be sure, there are also big differences. Freedom of conscience is easily reduced to radical individualism, ending up with what Noonan rightly deplores as the courts' common depiction of religion as a private aberration, to be tolerated insofar as it does not interfere with government purposes. This conflation also invites the subsuming of religious freedom into constitutional guarantees of freedom of speech and other provisions that ignore religion's necessarily subversive witness to a higher sovereignty. Noonan is apparently unhappy with the Supreme Court's recent striking down of the Religious Freedom Restoration Act—a decision that many viewed as tantamount to a repeal of the Religion Clause—but he offers no suggestion of other legislative remedies for judicial hostility to religion, a matter of some importance, as Congress is now working on another effort to produce such legislation.

Throughout the book, the reader is provoked to speculate about the assumptions underlying Noonan's judicial philosophy. He is clearly a ''textualist,'' and also an ''originalist,'' in his devotion to the radical intention of those responsible for the First Amendment. Yet at other time she seems to want judges to act as philosopher kings. His epilogue proposes ''Ten Commandments'' for people who deal with religious freedom, including the admonition that ''you shall know that no person, man or woman, historian or law professor or constitutional commentator or judge, is neutral in this matter.'' Fair enough. Noonan is right to insist that, where religion is concerned, imagination and empathy are required. ''Can a judge be a pilgrim?'' he asks. He answers in the affirmative. But as a judge, he should strive to read the law, to be objective, and, yes, to be neutral. Safety from judicial usurpation rests not so much in having judges who are better philosophers as in having judges who recognize that, as Madison would say, there are questions beyond their ''cognizance.''

Both suggestive and problematic is Noonan's persistent drawing of parallels between judicial interpretation and John Henry Newman's theory of ''the development of doctrine.'' In this connection, he offers an extended treatment of the development of Catholic teaching on religious freedom at Vatican Council II. Clearly, Noonan has no use for the exponents of a ''living Constitution,'' who declare, in effect, that the Constitution is dead because it means whatever the courts say it means. Just as clearly, there are parallels between what judges do and what church councils do. Both are involved in trying to comprehend a ''sacred text'' as it relates to current problems and understandings.

A crucial difference, however, and a difference on wishes Judge Noonan addressed more directly, is that church councils—at least in the Catholic understanding of things—are promised the guidance of the Holy Spirit.

But let me not leave the wrong impression. The questions and arguments provoked by The Lustre of Our Country testify to its great achievement. Judge Noonan understands, as very few judges and constitutional scholars do, the founding genius of the American experiment. He understands those sixteen words in the First Amendment—and persuasively explains why they continue to be this country's most innovative, audacious, and promising contribution to the world's understanding of the right ordering of political society.

[From U.S. News & World Report, May 4, 1998]

A RIGHTEOUS INDIGNATION

JAMES DOBSON—PSYCHOLOGIST, RADIO HOST, FAMILY-VALUES CRUSADER—IS SET TO TOPPLE THE POLITICAL ESTABLISHMENT

(By Michael J. Gerson)

On March 18, in the basement of the Capitol, 25 House Republicans met with psychologist James Dobson for some emotional venting. But this was not personal therapy; it concerned the fate of their party. Dobson, long on loyal radio listeners and short on patience, was threatening, in effect, to bring down the GOP unless it made conservative social issues, including abortion, a higher legislative priority. ''If I go,'' he has said, ''I will do everything I can to take as many people with me as possible.''

In the audience sat some of Dobson's closest ideological allies. Rep. Steve Largent of Oklahoma, a former star football player, was a volunteer speaker for Dobson's organization, Focus on the Family, from 1990 to 1993. He credits this with ''sparking my interest in public policy.'' Rep. James Talent of Missouri, years before, had pulled off the highway and prayed along with Dobson on the radio to become a Christian. ''He is the instrument through which I committed my life to Christ. It is the single most important thing that has ever or will ever happen to me.''

But for over two hours, until nearly midnight, House conservatives confronted Dobson about his indiscriminate attacks on the

Republican Party, asking credit for achievements he had ignored. At one point the wife of a congressman, in tears, explained how Dobson's broadside had hurt their family, inviting harsh questions from friends. An emotional Dobson, according to one witness, responded, ''I'm so sorry I hurt you.''

Sobered, Dobson canceled planned meetings with the *New York Times* and the *Washington Post*, where he would have laid out his threat to leave. But in the next two weeks, he sent lengthy, public letters renewing the threat, which hangs in the air like distant thunder at the Republican picnic.

This conflict dramatizes a growing gap between grass-roots conservatism and governing conservatism, between the raised expectations of activists and the weary realism of legislators. It reveals a party that may be crumbling, not at its periphery but at its center, among its most loyal supporters. And it may be signaling a major shift in the attitudes of Christian conservatives toward politics.

Many Republicans are taking Dobson's divorce threats very seriously. House Speaker Newt Gingrich has hosted several meetings with other House leaders to discuss Dobson's specific demands, which include defunding Planned Parenthood, requiring parental consent for abortions, and eliminating the National Endowment for the Arts. House Majority Leader Dick Armey has asked subcommittee chairmen to explore how Dobson's agenda could be advanced. But Dobson will not be easily appeased. Of the assurances he has been offered that his issues will be taken seriously, he says: ''We've got to see the proof. . . . If they will not change, I will try to beat them this fall.''

HIS FOCUS

Dobson is a central figure in Republican politics because he is the central figure in conservative Christianity. His radio and TV broadcasts are heard or seen by 28 million people a week. A core audience of 4 million listens to his *Focus on the Family* radio show every day. That gives him a greater reach than either Jerry Falwell or Pat Robertson at the height of their appeal. Dobson's most popular books have sold more than 16 million copies, and his other tracts and pamphlets have sold millions more. His organization, Focus on the Family, has a budget five times the size of the Christian Coalition's and gets so much mail it has its own zip code. His mailing list of over 2 million is one of the most potent organizing tools in the religious world.

But the 62-year-old Dobson is not a preacher or political activist. He is a psychologist, and his authority comes from an ability to connect with people right at the level of their problems. ''His family advice is simply helpful, and he has a reputation for absolute integrity—standing for something and sticking to it,'' says Prof. John Green of the University of Akron, an expert on the religious right.

The effect is completed by the slight drawl of a country doctor, a radio voice that is at once effortless and authoritative. Its influence seems to surprise even him. ''My voice is a friendly voice that comes into the home each day, somebody they know, somebody many of them trust. And it does become a king of friendship. It's a strange thing. I have a lot of women especially who write me and say, 'My father was not a father to me. . . . You've become a father to me,' which is interesting when you consider I've never met them.''

Dobson is very much the son, grandson, and great-grandson of Nazarene evangelists, a denomination known both for moral sterness—no movies or makeup—and for the emotional openness of the camp meeting. This is the evangelicalism of the quivering lip, the arm around the shoulder, the lump in the throat, the easy tear. Though he might resent the comparison, Dobson displays a Clinton-like emotional connection, particularly with women, who make up the vast majority of his audience. He accepted the Nazarene faith at the age of 3 and never rebelled against it, though, like many of his generation of Nazarenes, he abandoned its more rigid prohibitions against pop culture.

As an only child, Dobson was ''spoiled rotten,'' recalls old friend Mike Williamson. ''His family doted over him.'' And Dobson developed a particularly close relationship with his father, who combined the moral rigor of a preacher with the softer traits of an artist. (He was a serious painter.) ''He was a gentle man, a kind man, an easy touch, but outraged toward sin,'' Dobson says. ''He had an abhorrence of that which offended God, and a lot of what I feel today reflects that.''

Dobson might have been expected to go into the ministry himself. But Nazarene ministry must be inspired by a very special calling from God, and Dobson never felt it. He went instead to a Nazarene school in California, Pasadena College, and then to the graduate program in psychology at the University of Southern California. There he found himself interested in the science of child development, and he spent 14 years as a professor of pediatrics at the USC School of Medicine and 17 years on the attending staff at Children's Hospital at Los Angeles.

In the middle of his career, Dobson was hungry for broader influence on the issue he cared about most: child rearing. He hired an agent and began lecturing. And he also published a book in 1970 titled Dare to Discipline. It sold 3 million copies and established his national reputation. Dobson, who has written 15 other books, is a critic of permissive parenting. He stresses the idea that kids need boundaries to develop self-esteem and self-confidence. Children's behavior can be conditioned by the judicious use of rewards and punishments. He believes spanking is permissible, but only between 18 months and 8 years, and never by anyone with a history of abuse or a violent temper. But he also argues that rules without relationship lead to rebellion. So parents, while firm, should be emotionally accessible to their children.

Dobson stresses the need for fathers to be fully engaged in the life of their family, in contrast to the distant breadwinners of the past. His film on the subject, Where's Dad?, had a profound effect, for example, on Rep. Frank Wolf of Virginia. ''That film, that day, changed my life. After that, I never went to a political event on Sunday, not when asked by George Bush or Ronald Reagan. I dedicated myself to spending more time with [the children]. My kids joke about B.D. and A.D.—before Dobson and after Dobson.''

The psychologist's method is a mix of traditional parenting, biblical insights, and basic psychology—a traditionalism humanized by common sense and flexibility. His advice to a mother and 12-year-old daughter fighting bitterly over whether the young girl should be allowed to shave her legs: ''Lady, buy your daughter a razor!'' His counsel on masturbation: ''Attempting to suppress this act is one campaign that is destined to fail—so why wage it?'' He urges discipline for big issues and tolerance on the smaller stuff.

When demand for Dobson as a speaker began to steal time from his own two children, he quit his job at Children's Hospital of Los Angeles in 1977 and started his radio program. Two years later, he summarized his parenting views in a seven-part Focus on the Family video series, which has now been seen by 70 million people. Rapid growth carried the ministry through five headquarters buildings and from California to Colorado Springs, where 1,300 people work in the $113 million enterprise.

Focus provides answers to those seeking advice. It is also the center of a pro-family culture that is a kind of parallel universe to mainstream popular culture. There are monthly magazines for pre-schoolers, grade schoolers, teen boys, and teen girls. Glossy, frank, and helpful, they have articles like ''Battle of an Anorexic,'' ''Back-to-School Fashion,'' and ''Spiritual Growth Boosters.'' Other magazines go to single parents, teachers, physicians, and pastors. Focus's second-most-popular production—after Dobson's daily radio program—is Adventures in Odyssey, a children's radio drama with moral story lines that is carried on over 1,500 radio stations. There are women's seminars and ''Life on the Edge'' seminars, designed to help parents and teens communicate about the challenges of adolescence. A new abstinence video, titled No Apologies, combines MTV production techniques, biblical values, and the explicitness of an Army VD training film. Teens who have already had sex are urged to be ''recycled virgins.'' It is countercultural, urging children to rebel against the slipshod moral world around them by displaying virtue.

Most of the Focus operation, which receives up to 12,000 letters, calls, and E-mails every day, is occupied with ''constituent service.'' In one pile of counseling requests at a random Focus cubicle, a long-distance trucker asks how to keep his family together when he is always gone; a woman deals with a miscarriage; a divorced man asks if it is OK to remarry. Prototype responses, drawn from Dobson's vast output of advice, guide counselors. All incoming letters are stored by computer, so the next time these people write, the dialogue will pick up where it left off. Focus does not just answer mail; it maintains relationships. Some hard cases are referred to licensed counselors. Some people are offered temporary financial help. They deal with one or two suicide threats a week.

Dobson's reach grows each day. At a recent weekly meeting of the Focus ''cabinet''—Dobson plus his senior executives—there were reports on the translation of Focus broadcasts into Zulu. On how three Central and South American countries were putting Focus abstinence material into their public schools. On how Adventures in Odyssey is now one of the top five radio programs in Zimbabwe. On how 500 state-owned radio stations in China are about to begin the Focus broadcast.

When it comes to the business of helping people, Dobson the empathetic extrovert has a reputation as an intimidating micromanager. No one, no matter how long or loyal their service, is exempt from confrontational scrutiny. ''I saw people who had given blood [serving] him come out of his office weeping,'' says a former employee. ''He believes so strongly in his rightness.'' Another former employee says ''the pace [at Focus] is unbelievable. But everyone has to appear perfectly happy.''

At the center of it all is a man who does not lack confidence. He tells a story about his ill father, who prayed for three days and nights without sleep that his time on Earth would be extended so he could finish his work as a minister. At dawn, Gold told him he was going to reach millions around the world—not through himself but through his son. The next day Dobson's father suffered a major heart attack; he died in a few weeks. ''I saw for the first time,'' says Dobson, ''why [Focus on the Family] seemed charmed—beyond my ability and beyond my intelligence,

my academic knowledge, my ability to communicate.'' This is the person who has chosen to test his influence against the Republican Party. He does not describe his actions as those of a man moved by grubby ambition; he sees it as a calling.

POLITICS AND PROPHECY

Dobson was once positioned to be a more conservative version of Joyce Brothers. ''If I had simply stayed on those [family] themes, I could have moved with ease through all denominations in both political parties. But I care about the moral tone of the nation, I care about right and wrong. I have very deep convictions about absolute truth.''

His sense of political urgency has come in stages. Convinced that his and his followers' views were not being given voice in Washington, he created in 1982 an advocacy group, the Family Research Council. But it was purposely designed to keep him one step removed from direct political involvement. Gary Bauer, a key aide in Ronald Reagan's White House, now runs the group, and he is supposed to be the partisan lightning rod, allowing Dobson to focus, as it were, on the family.

But Dobson, in the past several months, has become so dissatisfied with conservatives' performance in Congress that he wants to become more directly and personally involved in politics. ''He has watched the manipulation of the religious right for the last decade,'' argues his close friend Charles Colson. ''He feels a sense of betrayal and responsibility for stewardship of the great silent majority.''

He is particularly intolerant of those who share his views but not his driving sense of urgency. So he has developed a habit of targeting allies with footnoted letters showing that Dobson can at times slip over the line between righteousness and self-righteousness. When Ralph Reed, then the head of the Christian Coalition, was insufficiently critical during the last election of Colin Powell for his support of abortion rights, Dobson wrote to Reed: ''Gary Bauer and I have discussed your recent statements and considered the need to distances ourselves from you. . . . Some of the politicians with whom you have made common cause . . . would seal the fate of [unborn children] and sacrifice millions more in years to come. I will fight that evil as long as there is breath within my body.'' Commenting on Dobson's tendency to attack allies, conservative columnist Cal Thomas argues, ''You begin to marginalize yourself, saying, I am the only true believer. Soon you are left only with your wife, then you begin to look at her funny. All of a sudden, you're Ross Perot.'' When confronted with the charge, Dobson responds: ''I guess it irritates me when people who know what is right put self-preservation and power ahead of moral principle. That is more offensive to me, in some ways, than what Bill Clinton does with interns at the White House.''

Dobson is not the kind of traditional conservative who has a keen appreciation of the limits and complexities of politics. He is a moralist and a populist, demanding rapid, immediate progress to fit a flaming moral vision: ''If you look at the cultural war that's going on, most of what those who disagree with us represent leads to death—abortion, euthanasia, promiscuity in heterosexuality, promiscuity in homosexuality, legalization of drugs. There are only two choices. It really is that clear. It's either God's way, or it is the way of social disintegration.''

Some conservatives dismiss this as an impractical philosophy for a governing party since progress emerges by small steps. Other conservative critics fear that Dobson's increased partisanship might undermine the generally nonpartisan good works of Focus on the Family. Still others warn that his walkout strategy will only result in the election of Democrat Dick Gephardt as House speaker. Dobson's response: ''It is never wrong to do what's right. And you stand for what's right whether it is strategic or not.''

The fact that Dobson has struck a chord among conservative activists may be signaling an important shift of political styles in evangelicalism. There are at least three of those tendencies to be considered: priest, kingmaker, prophet. From the 1950s to the 1970s, Billy Graham performed a priestly function as minister to the ministers of state. His role was to legitimize power and to use his access to present the Christian Gospel, which was his primary goal. Personal contact and influence were paramount. In the 1980s, culminating in the rise of Pat Robertson and the Christian Coalition, the goal shifted from legitimizing power to exercising power—the role of kingmaker. Robertson, the son of a senator, understood the give and take of coalition building and the need for a place at the table.

But the pragmatism of the religious right is under serious question, particularly in the wake of the coalition's embrace of Republican Bob Dole in the last presidential election, which many in the movement argue was a compromise too far. University of Akron's Green compares Dobson to an Old Testament prophet ''speaking truth to power.'' It is a designation Dobson accepts: ''I really do feel that the prophetic role is part of what God gave me to do.''

And that frames the questions for his supporters: Do Christian activists want to be players or prophets? Insiders who accept inevitable compromises, or outsiders who hold on to higher standards?

THE NEXT MOVE

Dobson has rejected the idea of becoming a political candidate himself or trying to create a third party. This leaves him with two options. The conventional choice is for Dobson to intervene directly in Republican primaries on the side of social conservatives. This would require, in Dobson's words, ''periodic leaves of absence'' to protect the nonprofit status of Focus on the Family. Bauer's political action committee has already scouted 40 races where Dobson might throw his weight on the side of a candidate. After the congressional elections, Dobson would determine how to have the maximum impact in the 2000 presidential campaign. Bauer himself is considering a presidential run and covets Dobson's endorsement.

But Dobson is also actively considering ''going nuclear'' against the GOP leadership. Instead of working through primaries in the summer, Dobson would urge social conservatives to abandon Republicans in November—to stay at home or vote for third parties—with the goal of ending the GOP majority in Congress. ''It doesn't take that many votes to do it. You just look how many people are there by just a hair, [who won their last election by] 51 percent to 49 percent, and they have a 10- or 11-vote majority, I told [House Majority Whip] Tom DeLay, 'I really hope you guys don't make me try to prove it, because I will.'" One senior Republican official says he has identified six districts in which Dobson could ''turn the tide'' against the GOP candidate, Dobson muses about delivering this message by ''getting a stadium with 50,000 seats and having Chuck Colson and Phyllis Schlafly and Alan Keyes and Gary Bauer and myself fill it at a strategic times. That get the attention of Republican leaders.''

Some Republican insiders believe the effect of either approach—working within the party or working against it—would be much the same. Bauer's political action committee's fervent support for a conservative candidate in a recent California congressional special election helped elevate the abortion issue. Party leaders believe this allowed Democrat Lois Capps to win in the moderate district. They fear that if Dobson intervenes on behalf of social conservatives in other contests, similar results will follow. As for the nuclear option, the mood of many Republicans is frustrated resignation that Dobson will always be on the attack against the GOP. ''It wouldn't matter how many hoops of fire we jump through, it is never enough for him,'' complains one party official. That strategist and others say majority parties have a responsibility to govern, and that means muting ideological fervor at times. It is hard to imagine this official and Jim Dobson in the same party—and it may be increasingly hard for Dobson to imagine that as well.

SCOURGE OF ILLEGAL DRUGS AGAIN UNDER ATTACK

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Indiana (Mr. SOUDER) is recognized for 60 minutes.

Mr. SOUDER. Mr. Speaker, the gentleman from Oklahoma is once again to be commended for his leadership on this issue. There is no doubt that the number one fundamental problem in this country is the breakdown of character, the breakdown of the value system, the principled foundations of this country and the resultant breakdown partly, directly, the two things go in tandem, of families as well.

The number one outgrowth that we are seeing in this country is the problem of drug abuse: drugs of all types, marijuana, cocaine, heroin, alcohol, tobacco, but in particular what we have been focusing on is this explosion among our youth of the narcotics, of marijuana, heroin, cocaine, crack, methamphetamines and other artificial stimulants. Tonight we are going to spend some time discussing this issue.

It is a relatively historic night. Tomorrow we are going to have our first pieces of legislation, what will be a comprehensive multi-week, hopefully multi-month, year and up to three years extended start of a battle on drugs. We have done piecemeal legislation over the last few years but we have not had the concentrated effort that we will see starting as of tomorrow.

We have a needles bill in front of us tomorrow to ban the use of giving free needles to heroin addicts with taxpayer dollars. We have in the higher education bill an amendment relating to taking back student loans if students abuse drugs while they are on a government subsidized loan requiring them to go into treatment programs, and I have a second amendment on drug testing. It is the start.

We are also having announcement of a major initiative and Republican effort later this week. The number one person behind this is our Speaker.