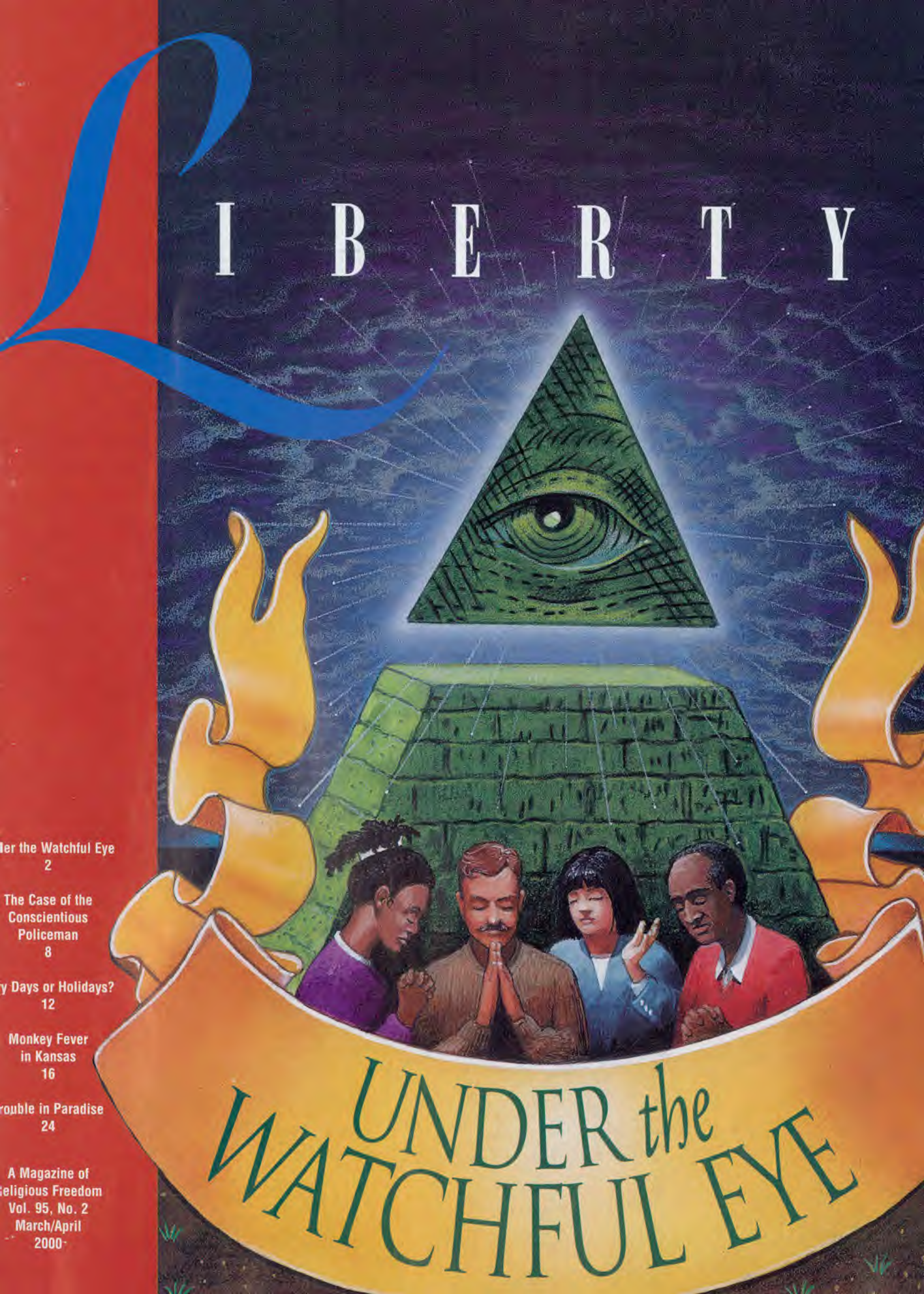
LIBERTY



UNDER the WATCHFUL EYE

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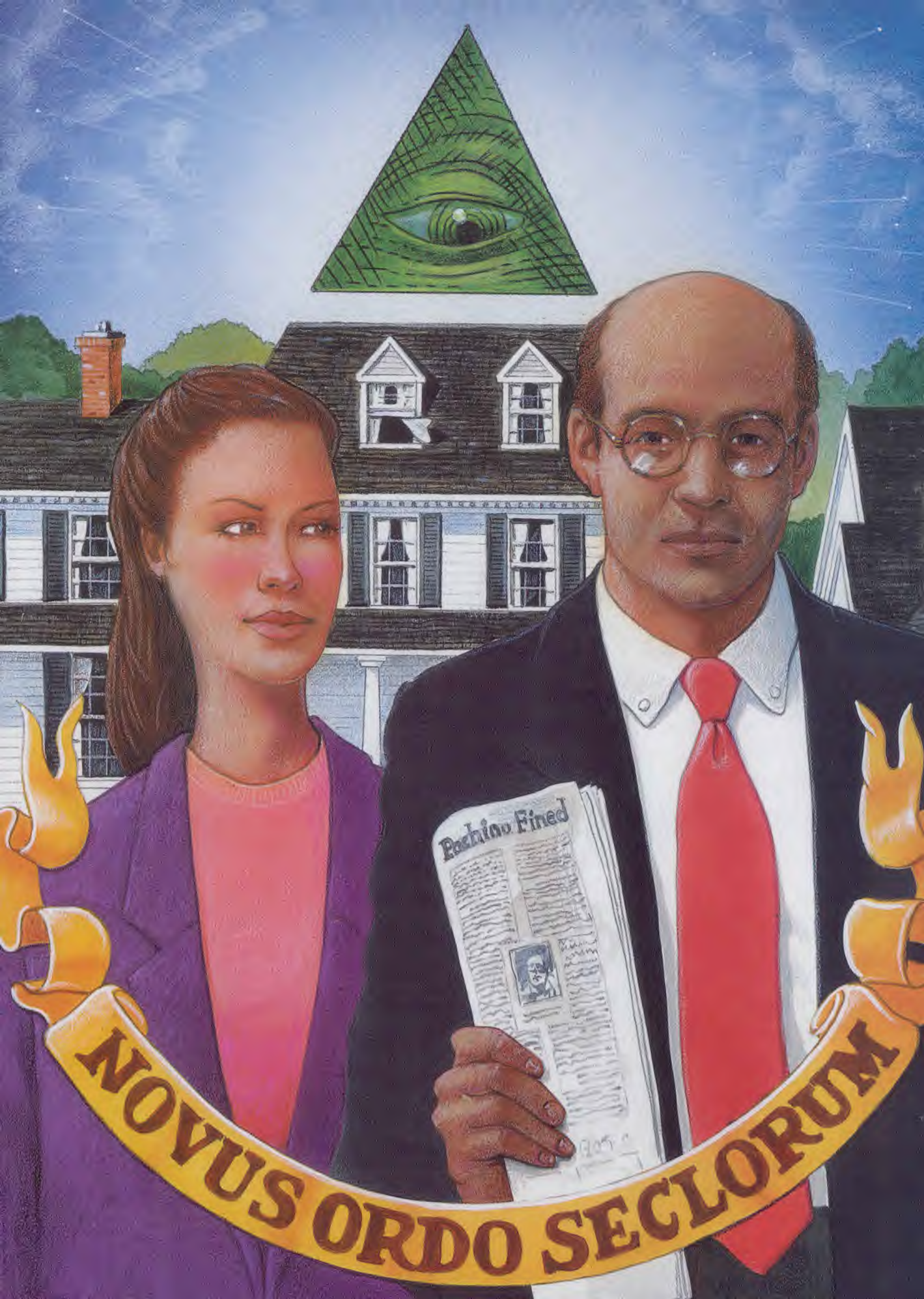

Pachino Fined
NOVUS ORDO SECLORUM

In recent years there has been a lot of talk about prayer in school, but little about prayer in the home. Perhaps this silence has masked a real erosion of freedom in this "cradle of faith." ▲ The U.S. Constitution does indeed afford students the right to pray while at school, so long as it is not state-sponsored or required. Many advocates of student-led prayer have fought to ensure this right. But who is fighting to ensure the rights of those individual citizens who want to gather in private homes to pray? Why don't we hear as much about prayer in homes as we do in schools? One reason may be that most of us take for granted our right to the free exercise of religion in our homes, and see a clear need to fight for the right to freely exercise our religion in public places such as schools. It seems only logical that the same laws protecting students who gather to pray in schools also protect individuals who gather to pray in their homes. However, officials in Baltimore County didn't see it that way. ▲ County officials believed that Seth and Lisa Pachino had violated a zoning code by operating a religious institution out of their home. On April 13, 1999, the Pachinos were issued a citation for failure to obtain a change of occupancy permit. Then at a June 15 Baltimore County code enforcement hearing, code enforcement supervisor James Thompson testified that "the citation was issued based upon the complaint of the Pachinos' neighbor, Michael Kuntz, and based upon newspaper articles concerning the activities of the Pachinos." ▲ Mr. and Mrs. Kuntz live adjacent to Seth and Lisa Pachino in a single-family residential neighborhood in Owings Mills, Maryland. According to the Associated Press story (printed August 5, 1999, by the *Capital*, a local newspaper of Annapolis, Maryland), Mr. Kuntz first took his complaint to the homeowners association. "Ethel Barrish, president of the Worthington Park Homeowners Association, said Mr. Kuntz complained to the association about the [worship] services before filing his complaint with the county, but won no support from the group. 'The board believes that it is outrageous and ridiculous to try to tell someone that they can't have prayer meetings or any other kind of group meetings in their home.'" However, Mr. Kuntz did win the support of Baltimore County officials who, according to the article, fined the Pachinos $1,000 after sending a series of warning letters. ▲ At the hearing Mr. Kuntz complained

By KATHERINE B. WALTON

UNDER *the* WATCHFUL EYE

Free Exercise of Religion in the Home?

Katherine B. Walton is a freelance journalist with a longtime interest in religious liberty. She writes from Annapolis, Maryland.

about large numbers of people attending services at the Pachinos' and gave as evidence photos showing numerous cars parked at the Pachinos' property. In addition, Mr. Kuntz presented local news articles that indicated Seth Pachino's desire to form an Orthodox synagogue in Owings Mills. But the Pachinos' attorney, Thomas J. Gisriel, showed that the facts presented at the hearing did not prove the Pachinos were operating a religious institution. Therefore, they did not violate the Baltimore County zoning code BOCA §107.1, which requires a change of occupancy permit to allow the use of a building for religious worship.

Although the Pachinos admitted to using the newspaper articles to attract others to attend the worship services in their home, Gisriel proved that Mr. Kuntz's complaints about parking and attendance were unfounded. In a June 28 post-hearing memorandum as directed by Stanley J. Schapiro, the code official hearing the case, Gisriel wrote, "Uncontradicted testimony stated that the maximum number of attendees at the prayer meetings is 15. Usually the gathering is less. While it is the intention of the Pachinos to form a minyan, a gathering of 10 men necessary for certain prayers under the Jewish tradition, the meetings have failed to attract enough participants to form a minyan on a number of occasions. The prayer meetings are gatherings of Sabbath-observant Jews who, for religious reasons, do not drive on the Sabbath. Thus, parking for the prayer meetings is generally not an issue."

Gisriel showed how other home minyanim operate in Baltimore County and are listed in Jewish publications in the county without citation from Baltimore County zoning officials. Furthermore, he pointed out, it is understandable for Mr. Pachino to want a Jewish synagogue in Owings Mills. "It is a long walk from Owings Mills to Pikesville, where the nearest Jewish synagogue is located," remarked Gisriel. But wanting to have a synagogue near his home does not mean Mr. Pachino intended to convert his home into a religious institution. Unfortunately, at a time when more and more people are commuting to their churches or places of worship, fewer and fewer people are empathetic to such a religious practice as walking to church. And more and more residential communities are fighting to keep churches from being built in their neighborhoods (see "Not in My Neighborhood," *Liberty*, September/October 1999, pp. 24-27).

Although it seems ludicrous for private individuals to be questioned about religious activities in their home, the Pachinos admitted that religious worship takes place in their home. "Mr. Pachino testified that he prays three times daily in his home. He reads the Bible regularly in his home," wrote Gisriel, who went on to explain how religious services are common and expected in a Jewish dwelling (e.g., upon the death of an individual, it is customary for a Jewish family to sit shivah, which involves religious worship, in the home).

Religious services in the home are clearly not unique to Jewish families.

Nevertheless, religious services in the home are clearly not unique to Jewish families. Gisriel's memorandum points out that "the Christian sacrament of last rites is often administered in a home. Christians gather in their homes for prayer, including the praying of the rosary. The celebration of the Mass in a residence is a regular occurrence, especially for those unable to travel. . . . None of these activities require a change of occupancy permit to allow use of the building/dwelling for religious worship." Gisriel then cited two cases, *Ballard v. Supervisor of Assessments of Baltimore County*, 269 Md. 397 (1973) and *Miles v. McKinney*, 174 Md. 551 (1938). In the first case the court had to consider whether property used by a consecrated bishop as both his residence and a church should have tax-exempt status as a church. In the second case the court had to consider whether a property used as both a church and a residence should be considered a church in the context of determining the proper location of a gasoline station, which could not be located within 300 feet of a church. In both cases the courts ruled that the property had to be wholly or primarily used for religious purposes in order to be characterized as a church/religious institution or building used for religious worship. "The [Baltimore County] code speaks of 'buildings for religious worship,' not buildings in which religious worship takes place," wrote Gisriel.

The Pachinos' attorney also pointed out constitutional issues to be considered by the zoning administrative officials. He argued that the citation issued by the county officials violated the Pachinos' right to free exercise of religion. "The action of the county zoning enforcement officials in this matter directly regulates the exercise of religion in the home and as such is a violation of the First Amendment to the United States Constitution and Article 36 of the Maryland Declaration of Rights," he asserted. "In relevant part, the First Amendment of the United States Constitution states: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .' Article 36 of the Maryland Declaration of Rights states in relevant part that '. . . no person ought by any law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State.'"

Accordingly, Gisriel concluded that "the citation issued in this matter is not the exercise of a religiously neutral regulation applied to religious activities, such as a regulation barring gatherings of a large number of people unless they comply with the fire code. The direct object of the citation and the interpretation of the county in this matter is religious worship.

"All parties conceded that other gatherings in the home, such as social parties celebrating Hanukkah or a social gathering to celebrate a child's birthday, are permissible. It is only the gatherings at the home for the purpose of religious worship which are objectionable to the county zoning enforcement officials."

Gisriel explained that the Free Exercise Clause of the First Amendment mandates that government (1) not interfere with, burden, or deny the free exercise of a legitimate religious belief; or (2) demonstrate a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause.

It was clear that the Baltimore County officials did not prove a governmental interest that outweighed the Pachinos' First Amendment interest allowing gatherings in their home for religious worship. Gisriel noted, "Maryland is called the Free State because of its longstanding tradition and practice of religious freedom and tolerance."

The Pachinos' attorney also established that the county officials' enforcement activity violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. "Baltimore County zoning officials treat gatherings in the home for religious worship differently from gatherings in the home for other purposes. The county acknowledged at the hearing that it does not regulate gatherings in a dwelling for social purposes. Thus, the Hanukkah party at the Pachino home was unobjectionable, as was the gathering at their home for the celebration of their daughter's first birthday. Similarly, there was no objection to the gathering at the Kuntz home for Mother's Day. Testimony indicated that gatherings for each of these celebrations generated more parking and more crowded conditions than the prayer meetings at the Pachino home."

The Baltimore County officials did not prove a governmental interest that outweighed the Pachinos' First Amendment interest allowing gatherings in their home for religious worship.

The Pachino case is a clear example of why the Religious Liberty Protection Act, HR 1961, was passed in the U.S. House of Representatives on July 15, 1999. At the invitation of Congressman Henry Hyde, chair of the House Judiciary Committee, Clarence Hodges, the religious liberty director of the North American Division of the Seventh-day Adventist Church, testified at the congressional hearings on this bill. Hodges spoke in favor of the bill. He emphasized the need to protect churches, church schools, and individuals from religious discrimination that is sometimes practiced by zoning boards, government employers, and other agencies.

Section 3.b.1 of the Religious Liberty Protection Act deals with the enforcement of constitutional rights and limitations on land

use regulations. Parts B and C under this section are as follows:

"(B) No government shall impose or implement a land use regulation in a manner that does not treat religious assemblies or institutions on equal terms with nonreligious assemblies or institutions.

"(C) No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination."

In a phone interview, the Pachinos' attorney remarked, "I presented two options at the hearing: either (1) Baltimore County officials misinterpreted the zoning code; or (2) the zoning code was unconstitutional. According to legal documents and testimony from the Baltimore County code inspector, the following factors are considered in determining whether a religious institution is being operated:

- The frequency of the religious activity.
- The existence of dues-paying members and compensated employees, such as a rabbi.
- The presence of school buses at the building.
- Exterior evidence that the property was operating as a religious institution.
- Whether the religious gathering was referred to by an organizational name.

Happily, on August 4, 1999, Schapiro, the code official hearing the case, ordered that the citation be dismissed. He wrote that "the testimony indicated that almost none of these criteria were present in this case except for reference to the gathering by an organizational name. Certainly, having an occasional prayer meeting with personal friends and acquaintances does not establish that a premise is being utilized for the operation of a religious institution. Indeed, the facts presented in this case suggest that the residence is utilized as a dwelling by residents who from time to time invite guests to join them in personal worship consistent with the central tenets of their faith. Such activity does not establish a violation of county law."

Obviously Schapiro concluded that county officials misinterpreted the zoning code law and accepted the first option that Gisriel presented. "Baltimore County zoning officials had crossed the line," said Susan Smith, of the American Civil Liberties Union of Maryland. She went on to say that the ACLU was watching the case but saw no need to get involved, since the Pachinos had competent counsel.

Clearly the Pachinos had an excellent attorney. But what about individuals who don't know their rights or are unable to obtain competent counsel? What if the Pachinos had complied with the series of warning letters from the Baltimore County officials?

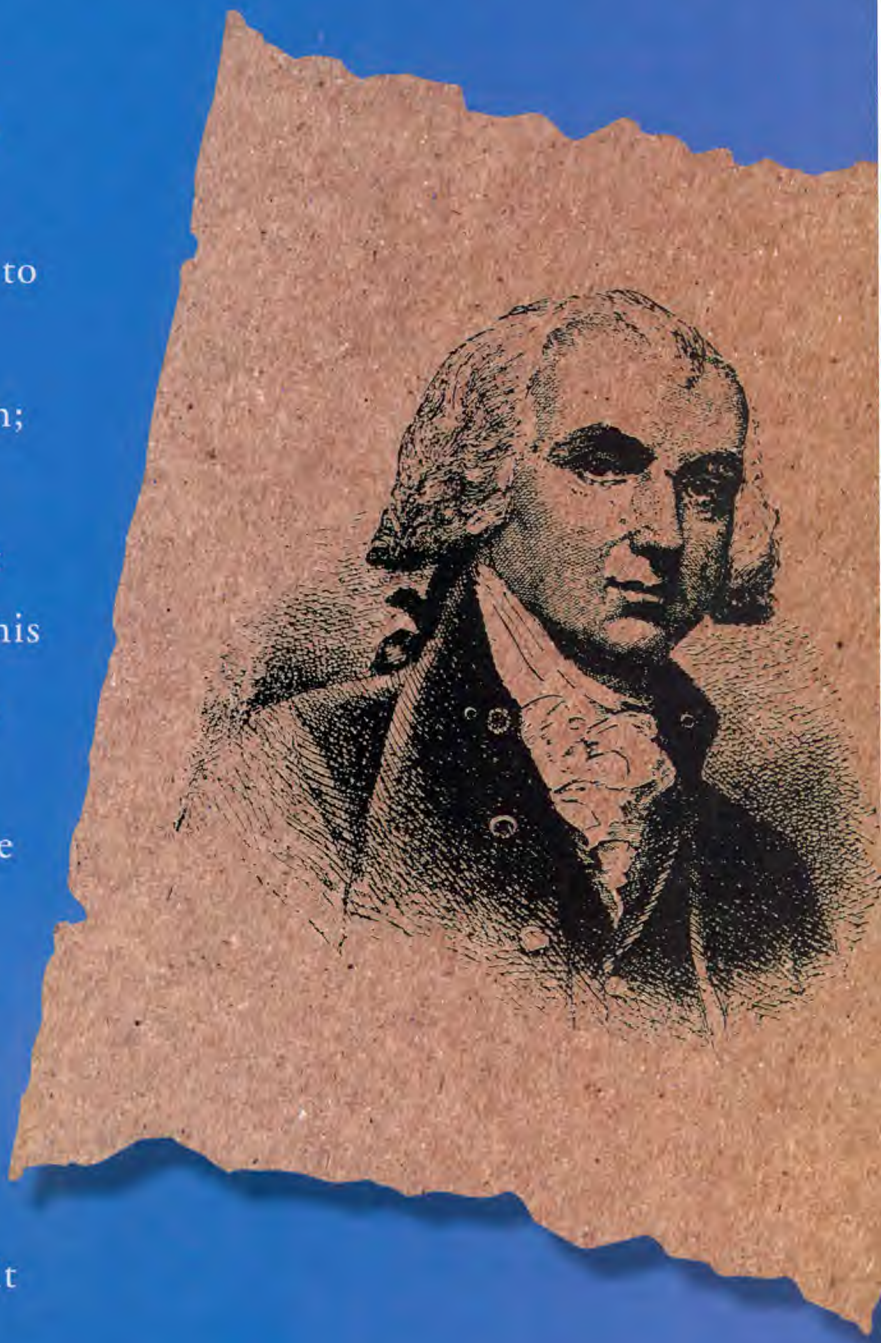
Certainly the Pachinos are not the only individuals who have incorrectly received citations from Baltimore County officials. According to the Associated Press article mentioned earlier, county officials said that the law was frequently applied when homes were used for regular worship services.

Fortunately, the religious liberty bill, HR 1961, reaffirms the religious protections provided by the First and the Fourteenth Amendments of the U.S. Constitution and can aid local governing bodies as they must consider or rule upon constitutional issues raised in cases involving religious institutions and their practices. (As of this writing, the bill must still be ratified by the Senate and pass scrutiny by the Supreme Court. A previous bill, the Religious Freedom Restoration Act, was deemed unconstitutional by the Supreme Court.)

After reviewing this case and the recently passed bill, HR 1961, it seems that zoning laws and the enforcement of those laws need to be reevaluated. This case not only highlights possible abuses of zoning laws across the United States (including Baltimore County), but reminds us that we should never take for granted any of our constitutional rights. Certainly many Christians in the United States never give a second thought as to whether or not they can have a Bible study group or a group prayer meeting in their home. But after incidents such as this, one can't help thinking twice and wondering, "Will I be the next victim of misinterpreted laws?" or "Will my neighbors report my religious activities to authorities and gather evidence against me?"

On the other hand, it is easy to understand why Baltimore County officials might misinterpret the zoning code. The phrase "for religious worship" can be misconstrued. The first of the five criteria used to determine if a religious institution is being operated is ambiguous. In determining the frequency of the religious activity, one must first decide what they consider to be frequent. Obviously there will be different opinions. Some might think once a week is frequent. Or, as indicated in the article, some might view biweekly religious meetings as a violation of the zoning code, simply because they are regularly scheduled.

"The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated in their own minds, cannot follow the dictates of other men: it is unalienable also because what is here a right toward men is a duty toward the Creator."



James Madison,
Memorial and Remonstrance, 1785.

The Case of the CONSCIENTIOUS

By MITCHELL A. TYNER

Chris Carter ran into a wall, and it cost him his job. Congress intended to dismantle that wall a quarter century ago, but the federal courts have frustrated that intent. Here's what happened.

Chris Carter was a state policeman—a very good one. He has a sheaf of commendations, awards, and positive media coverage an inch thick. Obviously, he was the kind of officer any law-enforcement agency would want to employ: honest and conscientious. Too honest and conscientious not to obey his deeply held belief that God requires him to observe Saturday as the Sabbath. That's where the trouble began.

On February 15, 1998, Chris went to his immediate superior and asked to be scheduled off from sunset Friday until sunset Saturday. He didn't ask to put in fewer hours, or to avoid unpopular duties. Actually, he said he would be happy to work any other time, any shift, any assignment, as long as it allowed him to observe the Sabbath. That presented the scheduler with an opportunity: he scheduled Carter to work early on Fridays and to come on duty late on Saturdays. Nobody complained, because the other troopers were happy to have someone else on the highways on Saturday nights.

That took care of the regular schedule, but there was another problem: race weekends. Chris worked for a state in which stock car racing is a major event, and at least twice a year state troopers are called in from all over the state to work race weekends at a major track. The duty involves Friday afternoon and evening, and all day Saturday and Sunday. Carter knew the routine, having worked races several times in the past. So he asked the scheduler to arrange his hours on race weekends to be Saturday night and Sunday. He was willing to put in long hours with minimal rest in between.

But the scheduler told Carter that it was out of his hands: the post commander had decreed that all troopers would work race weekends, either at the track or on regular patrol. Carter would have to work on Saturday like everybody else.

On February 25, 1998, Carter asked the post commander for an accommodation on an upcoming race weekend. The post commander replied, "It's good enough that we work it out for you on regular duty; I'm not going to do it for race weekends." When Carter restated that he could not work on the Sabbath, the commander notified him that if he did not, he would be disciplined. There was to be no leave for anyone, he was told; all troopers would work, either on post or at the race.

The following Friday, March 6, 1998, Carter was in the radio room of his post and happened to hear a conversation with another trooper who asked the radio operator to remind the post commander that the trooper was going on vacation that weekend—race weekend. The trooper happened to be the post commander's son-in-law. Records show that this trooper was, indeed,

ILLUSTRATION BY ART LANDERMAN

allowed to take leave at a time Carter was told was not available to anyone.

Carter failed to report as scheduled on the Saturday of race weekend—as he said he would. The post commander started disciplinary procedures against Carter—as he said he would. During that procedure Carter was interviewed by the commander of the entire state patrol, who said, "If you want, I can inquire as to the availability of a non-law-enforcement job for you. Understand, it would be a clerical job, probably with a cut in pay." Carter said, "Thank you, please do that." Later the commander seemed to forget his suggestion, and took no action to follow up on it. The possible availability of such a position was never determined. The only accommodation was to tell Chris Carter he would be allowed to trade shift assignments with other troopers if they were willing. But this was a hollow gesture, as the shift roster was often not available until Friday afternoon. Carter would have had to ask his peers to swap for an unknown schedule: one that might even conflict with their own assignments. Exactly how that idea might work in reality was never explained. By canceling the previous system whereby Carter covered the unpopular Saturday night shift, and suggesting that he instead try to trade shifts, the state police were simply disallowing a workable system in favor of an unworkable one.

According to the record, the state patrol put forth no further effort to do anything but run through their routine disciplinary procedure, which resulted in Carter's termination on April 23, 1998.

Was accommodation possible? Yes, in several ways. Carter could have continued the system of working an early shift on Fridays and a late one on Saturdays. No hardship was ever shown to come from that system. Alternatively, on race weekends Carter could have worked a split shift, around the hours of the Sabbath. Then too, Carter could simply have been given leave on race weekends—as was the post commander's son-in-law. In another option, Carter could have been scheduled for some other unpopular detail, but one that did not conflict with his Sabbath convictions. Finally, the patrol could have followed up on the commander's suggestion of a transfer. None of these options were followed.

And it wasn't unheard of for the patrol to accommodate a trooper. Evidence showed that it had been done over a period of several years for another trooper who also worked as a postman. The patrol simply scheduled him around the hours he worked for the postal service.

So what happened here? Why was the patrol unwilling to do for Carter what it had done for others? There are at least three possible answers:

The first possibility is simply hostility to religion. Some would immediately classify this case as demonstrating a perceived societal antipathy toward those who bring their religious beliefs and practices into the public eye. Beyond doubt, many feel that religion is a private matter, protected when practiced in private, but something that should not be "brought into the workplace." Many supervisors, asked for such accommodation by an employee, comment, "You made a choice; you'll just have to live with the results of that choice." Such statements show a total misunderstanding of sincere religious conviction. While religious affiliation and practice is a personal choice, when an individual asks for help with a conflict between work and religious practice, they have no choice but to make a statement about who and what they are. To call that a choice is to think of a sort of cafeteria-style religion: "I will be Adventist today; tomorrow I will choose to be a Baptist, then Calvinist, Disciple of Christ, Episcopalian, and if I last that long, perhaps I'll try Zen." Perhaps that concept was part of the reason for the state patrol's refusal to accommodate Chris Carter.

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Second, and demonstrably a part of this case, is the issue of authority, or more precisely put, a perceived challenge to managerial authority. We live in a time when many react negatively to political correctness, affirmative action, and emphasis on diversity. The result is an increased hostility to nonconformity, or what is often described as a request for "special treatment." Many personnel managers are taught that the way to avoid problems is to blindly treat all employees alike. That approach may be productive of good in the areas of racial/ethnic/national/origin/gender discrimination, but in areas in which the law requires accommodation of individual need, it is counterproductive.

Chris Carter challenged authority just by stating what he could not do. And the state police reacted not by an honest effort to accommodate him, but by asserting its authority at all cost.

After firing Carter, the state police moved to suspend his certifications to operate various items of police equipment, ostensibly because he was found guilty of insubordination: failure to obey a direct order. There was absolutely no evidence presented at the suspension hearing that Carter's action in any way demonstrated a decreased ability to operate the equipment. At the end of that hearing, one of the officers who testified for the state approached Carter, and said, "Chris, sorry it had to be this way, but the tail doesn't wag the dog." In his eyes, Chris Carter was the tail trying to wag the dog, by asking for special consideration. He challenged authority just by stating what he could not do. And the state police reacted not by an honest effort to accommodate him, but by asserting its authority at all cost.

A third reason the state police did not put forth meaningful effort to accommodate Chris Carter is the state of the law, specifically Title VII of the Civil Rights Act of 1964. Current court interpretation of that act is clearly a far cry from what Congress intended.

When the 1972 amendments to the Civil Rights Act of 1964 were being debated on the floor of the United States Senate, Senator Jennings Randolph (D-W. Va.) specifically mentioned the difficulties of those whose religious practices came into conflict with work schedules. Randolph, a Seventh Day Baptist, specifically brought to the attention of the Senate the plight of his fellow Sabbatarians, who so often found their observance of the Sabbath in conflict with work schedules. The federal courts at that time had heard only one major case brought by a Sabbathkeeper, claiming that the 1964 act required his employer to accommodate his religious practice (*Dewey v. Reynolds Metals*). The lower court rejected the claim, and the Supreme Court, in a 4-4 tie vote, upheld that ruling. It was obvious that the 1964 act did not offer the needed protection, which led Randolph and others to support the 1972 amendments. The record of that debate is clear that the proposed amendments were intended to remedy the problem identified in *Dewey*.

The amendment passed, and became Section 2000e-j of Title 42 of the *United States Code*. In brief, it requires an employer to accommodate the religious practices of an employee unless to do so would be an undue hardship on the conduct of the business.

That section was first interpreted by the United States Supreme Court in the 1977 case of *Trans World Airlines v. Hardison*. The Court effectively undercut the intent of the legislation by defining undue hardship as (1) any violation of a seniority agreement, or, according to some interpreters, any violation of any part of a collective bargaining agreement; (2) any diminution of productivity or efficiency; (3) any extra cost over a minimal amount, without saying how "minimal" was to be calculated; or (4) any violation of the rights of other employees.

The *Hardison* rationale is bad enough, but there's more. Chris Carter lives in the territory of the United States Court of Appeals for the Eleventh Circuit. That circuit authored per-

haps the most restrictive of all decisions interpreting the law requiring accommodation. In that case, *Beadle v. City of Tampa*, the circuit ruled that a law-enforcement agency had fulfilled its duty to accommodate employee religious practices when it allowed the employee to seek voluntary shift swaps. Never mind that the city knew that no one would do so, or that another workable method of accommodation existed. For a law enforcement agency, the mere offer to accept swaps was enough. Until that decision is modified or overturned, or until the law is amended by Congress, to bring a case such as Carter's to court would be to "court" further damage.

There is some hope that Congress will do exactly that. Senators John Kerry (D-Mass) and Sam Brownback (R-Kans), on September 28, 1999, introduced the Workplace Religious Freedom Act (WRFA). In doing so, both stated that the intent of their bill is to restore the law to what Congress originally intended.

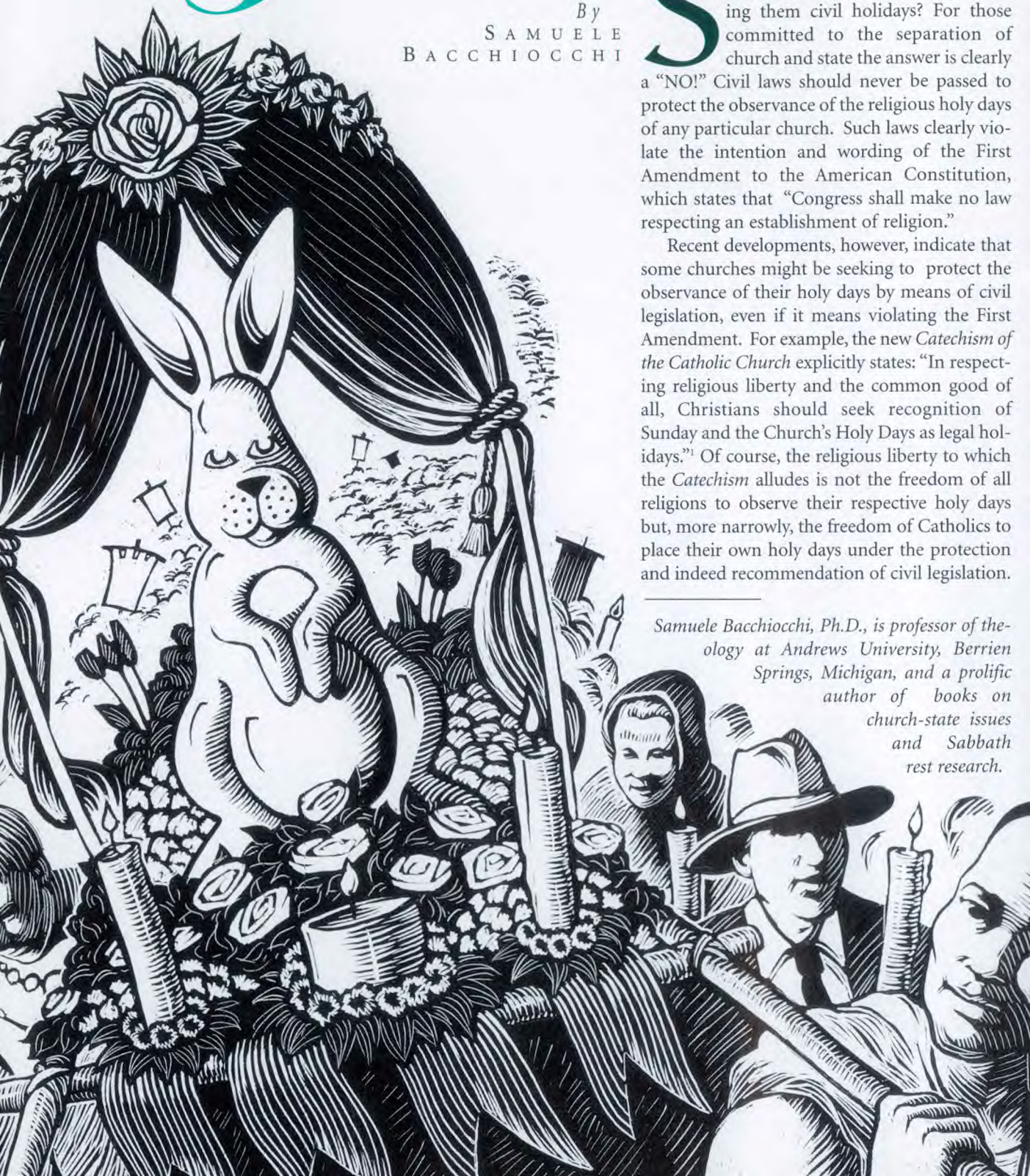
WRFA would indeed undo much of the worst damage. It would require consideration of all available means of accommodation, and require that "undue hardship" be evaluated in light of the size and situation of the individual employer. At the very least, an employer could not get by with merely offering to accept voluntary substitutes where the employer knew such an offer was meaningless.

The passage of WRFA would not bring back Chris Carter's police career. But it would, he says, be deeply satisfying because he would know that others could not be treated as he was.

WRFA would require consideration of all available means of accommodation, and require that "undue hardship" be evaluated in light of the size and situation of the individual employer.

HOLY DAYS

By
SAMUELE
BACCHIOCCHI



Should the state protect the observance of religious holy days by making them civil holidays? For those committed to the separation of church and state the answer is clearly a "NO!" Civil laws should never be passed to protect the observance of the religious holy days of any particular church. Such laws clearly violate the intention and wording of the First Amendment to the American Constitution, which states that "Congress shall make no law respecting an establishment of religion."

Recent developments, however, indicate that some churches might be seeking to protect the observance of their holy days by means of civil legislation, even if it means violating the First Amendment. For example, the new *Catechism of the Catholic Church* explicitly states: "In respecting religious liberty and the common good of all, Christians should seek recognition of Sunday and the Church's Holy Days as legal holidays."[1] Of course, the religious liberty to which the *Catechism* alludes is not the freedom of all religions to observe their respective holy days but, more narrowly, the freedom of Catholics to place their own holy days under the protection and indeed recommendation of civil legislation.

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or HOLIDAYS?

The same appeal is made by Pope John Paul II in his pastoral letter *Dies Domini*: "In the particular circumstances of our own time, Christians will naturally strive to ensure that civil legislation respects their duty to keep Sunday holy."[2] By calling for Sunday legislation to protect Sunday observance, the pope seems ready to ignore the discriminatory nature of such legislation against those who observe Saturday or other days of the week. He seems not to be sensitive at all to those who might conscientiously object to any state-mandated form of worship.

Further, the Catholic Church is not only urging Christians "to seek recognition of Sunday and of the Church's Holy Days as legal holidays," but is also employing the diplomatic channels and influence of the Holy See to achieve this objective. The Holy See, as the moral and juridical representative of the Catholic Church, is actively involved in persuading the international community of nations to recognize Catholic holy days as legal holidays.

And the efforts of the Holy See have been most successful. In almost all countries where the Catholic Church exercises a dominant influence, the local governments have made the Catholic holy days into national civil holidays. In my native Italy, for example, as well as in France, Spain, Portugal, and all Central and South American countries, August 15 is a national holiday that commemorates the Catholic belief in the assumption of Mary to heaven. The same is true of November 1, a national holiday that commemorates what the Catholic Church calls "All Saints' Day."

A number of other countries are currently being urged to recognize Catholic holy days as legal holidays. Croatia, for example, signed an agreement with the Holy See on February 11, 1999, regarding juridical questions. Article 9 of the agreement explicitly states as follows:

ILLUSTRATION BY DOUG RUGH

"Sunday and the following Holy Days will be free from work: (a) January 1, commemoration of Mary, the most holy mother of God, New Year; (b) January 6, the Epiphany of the Lord or the Holy Magi; (c) Monday following Easter-Sunday; (d) August 15, the Assumption of the Blessed Virgin Mary; (e) November 1, all the saints; (f) December 25, the birth of the Lord; (g) December 26, first day after Christmas, St. Stephan."[3]

THE CONSTITUTIONALITY OF RELIGIOUS HOLIDAYS

As stated earlier, any attempt to influence national governments to adopt as national civil holidays the religious holy days of a particular church clearly violates the separation between church and state. But such a violation does not seem to preoccupy the Catholic Church, concerned as she is in advancing her own cause, even if it means sacrificing the fundamental principle of the separation between church and state.

In a speech entitled "The Vatican's Role in World Affairs: The Diplomacy of Pope John Paul II," Michael Miller, C.S.B., president of the University of St. Thomas and former member of the Secretariat of State of the Holy See from 1992 to 1997, stated that the goals of the pope "are, admittedly, a mixture of the religious and the more narrowly political." With candid frankness Miller acknowledges that "John Paul is not constrained by American ideas of the separation of Church and State." Instead his concern is to "pursue what he regards as the common good of all humanity."[4] The problem with this pope's policy is his mistaken identification of the "common good of all humanity" with the good of the Catholic Church. But what is good for the Catholic Church is not necessarily good for society as a whole. And what is bad for constitutional integrity will compromise all of our freedoms.

For the pope or any church leader to impose their own church holy days as legal holidays on the rest of society means to violate the freedom of those who do not accept such holy days. History teaches us that such policy has had frightful consequences. Countless "heretics" have been tortured and executed for refusing to accept the peculiar beliefs promoted by the

dominant church for "the good of all mankind." And indeed the recent apostolic letter *Ad Tuendam Fidem* ("In Defense of the Faith") contains more than a few intimations of this historic tendency.

To prevent a repetition of any past religious intolerance, it is imperative to ensure that no one church succeeds in imposing her religious agenda on the rest of society. This is not an easy task, because religious agendas are often concealed and promoted as social and secular programs for the good of humanity.

THE "SECULAR" BENEFITS OF SUNDAY LAWS

A case in point is the promotion of Sunday laws on the basis of social, cultural, and family values. This strategy is evident in the pastoral letter *Dies Domini*, in which the pope downplays the religious aspects of Sunday laws, highlighting instead the social, cultural, and family values. For example, John Paul says: "Through Sunday rest, daily concerns and tasks can find their proper perspectives: the material things about which we worry give way to spiritual values; in a moment of encounter and less pressured exchange, we see the true face of the people with whom we live. Even the beauties of nature—too often marred by the desire to exploit, which turns against man himself—can be rediscovered and enjoyed to the full."[5]

By emphasizing the human and "secular" benefits and values of Sunday laws, John Paul knows that he can gain greater international acceptance for their legislation. It is worth noting in this regard the U.S. Supreme Court decision in *McGowan v. Maryland*, 366 U.S. 420 (1961) that upheld Maryland's Sunday-closing laws as not violative of the federal Constitution. The reason the Court justified the state's interest in protecting a common day of Sunday rest is that Sunday has become secularized in American society. The Court said: "We believe that the air of the day is one of relaxation rather than religion."[6]

This reality is recognized not only by the pope but also by Protestant churches. The Lord's Day Alliance, an ecumenical organization in the United States, supported by more than 20 Protestant denominations, frequently publishes articles in its *Sunday* magazine, emphasizing the secular and social benefits of Sunday laws. Typical of the *Sunday* approach is an article by Attorney Michael Woodruff entitled "The Constitutionality of Sunday laws." "If we must justify the retention of the Lord's Day as a secular day of rest," Woodruff writes, "we must find compelling secular grounds to make it so. . . . If courts view Sunday laws as having the direct effect of 'advancing religion,' then under current First Amendment doctrine, such laws must be unconstitutional. However, if the laws are generally applicable and have a religion-neutral purpose, then the effect is likely to be seen as incidental. To this end, the distinction between religious practice and the form of laws is important."[7]

The pope seems well aware of the need to maintain this distinction. So, naturally, in his pastoral letter he appeals to the social and human values that Sunday laws guarantee and promote. He writes: "In our historical context there remains the obligation [of the state] to ensure that everyone can enjoy the freedom, rest and relaxation which human dignity requires, together with the associated religious, family, cultural and interpersonal needs which are difficult to meet if there is no guarantee of at least one day of the week on which people can both rest and celebrate."[8]

The problem with the above reasoning is the definition of "one day a week" as meaning exclusively "Sunday." Both the Catholic Church and the Lord's Day Alliance are committed to ensure that Sunday is the weekly day of rest protected by law. This policy ignores that we have a pluralistic society, in which Christians and Jews observe Saturday as their day of rest, Muslims may wish to observe their Friday, and countless other groups and individuals might find the imposition of religious holy days at odds with their principles, and in some cases at odds with their lack of profession.

In order to be responsive to all the religious and nonreligious groups holding different days of rest and/or worship, the state would have to pass legislation guaranteeing different legal holidays to different people. Of course, implementation of such legislation is inconceivable, because it would seriously disrupt our socioeconomic system.

The issue at stake is not the right of Catholics, Protestants, Jews, Muslims, or any other religious group, to protect their weekly and annual holy days, but rather their right to seek state recognition for their own holy days as legal holidays. The latter is an attempt to advance the interest of one's own religion by infringing on the freedom of others.

Imagine what would happen in America if the Jews succeeded in persuading Congress to pass a law making their weekly Sabbath and their seven annual holy days national legal holidays. Most Americans would strongly denounce such a law as unconstitutional, sectarian, and discriminatory. Yet this is exactly what has happened in many countries in which the Catholic Church has been able to influence the political process. The Catholic holy days have been enacted into national legal holidays, causing considerable problems for minorities who observe different days.

This was my experience while growing up in Rome, Italy. Back then Saturday was a school day. Only Sunday was the legal weekly day of rest. Unable to attend school on Saturday on account of my religious convictions, I faced constant problems, including the threat of expulsion from school. To justify my school absences our family doctor wrote a most ingenious medical certificate, stating that on Saturday I was "psychologically incapacitated." But even that kindness hints at a marginalization of dissent reminiscent of the Soviet Union, where religious and political dissent were categorized as mental aberration and treated as such in prison wards. A not so subtle and very dehumanizing way to deal with dissent.

In many countries thousands of Sabbatarians have over the years suffered all sort of recriminations and persecutions for refusing to violate their religious convictions by working on Saturday. In these instances Sunday laws have served to penalize those who for religious reasons choose to rest and worship on a different day of the week.

THE STATE AND THE HOLY DAYS

So should the state guarantee to all its citizens the right to observe their weekly and annual holy days? The answer is "yes" *and* "no." Of course the state must protect the rights of all its citizens to practice their religion, including their holy days. But this does not mean that the state must recognize as legal holidays all the religious holy days observed by the various religious groups within the state. In quick order such a policy would destroy First Amendment rights and protections as well as seriously disrupt the socioeconomic system.

The state can protect the right of various religious groups to observe their holy days simply by enacting a legislation that encourages employers to make reasonable efforts to accommodate the religious convictions of their employees. In most cases this can be done without causing undue hardship to companies, because the short workweek already provides workers with two or three free days. Most basically, all that a company needs to do is to set up the work schedule of its workers in accordance to their rest-day preference.

There will be, however, insensitive companies that show no consideration to the religious convictions of their workers. In such cases the solution is to be found not in Sunday or Saturday laws, but in legislation that assists employers in accommodating the religious convictions of their workers, ensuring that this does not cause undue business hardship.

Of course, the practice of one's religion, including one's holy days, is bound to cause some problems in the secular and pluralistic society in which we live. This is part of the Christian calling to live in the world without becoming part of it.

Summing up, Christian and non-Christian religions have the right to seek recognition from the state to practice their religion unhindered, but they should not expect the state to protect their holy days by making them civil holidays. Any such law would violate the fundamental principle of the separation between church and state, which has proven to be the best guarantee of religious liberty for all.

CHRISTIAN AND NON-CHRISTIAN RELIGIONS **SHOULD NOT** EXPECT THE STATE TO **PROTECT** THEIR HOLY DAYS BY MAKING THEM CIVIL HOLIDAYS.

FOOTNOTES

[1] *Catechism of the Catholic Church* (Vatican City: 1994), p. 528.
[2] Pastoral letter *Dies Domini*, par. 67.
[3] The text of the agreement can be accessed at the following website: http://www.hbk.hr/vijesti/1996/talug/tprv.htm.
[4] J. Michael Miller, "The Vatican's Role in World Affairs. The Diplomacy of Pope John Paul II" (speech delivered in the fall of 1997 at the University of St. Thomas in Houston, Texas).
[5] *Dies Domini*, par. 67.
[6] Cited by Michael J. Woodruff, "The Constitutionality of Sunday Laws," *Sunday* 79 (January-April 1991): 9.
[7] *Ibid.*, pp. 21, 22.
[8] *Dies Domini*, par. 66.

Monkey Fever IN KANSAS

By DEREK H. DAVIS

Resolving the creationism-evolution controversy in American public schools.

The Kansas State Board of Education recently decided to de-emphasize the teaching of evolution in the Kansas public schools. This recharged the ongoing debate across America about the relative merits of evolution and creationism as curricular subjects in the nation's public schools. ■ Evolution is the scientific theory that organisms evolve over time by adopting traits that maximize their chances of survival. Creationism is the belief, taken generally from the Bible, that the universe and all higher things were created by a higher power. In Kansas, as elsewhere, this is a controversy that promises not to go away. Meanwhile, students are caught in a political tug-of-war between creationists and evolutionists who each seek to minimize, if not eliminate, the ability of the other to present its case in public school settings. The growing polarization between the two camps serves only to penalize America's youth—who deserve better. Is there not some sensible way to settle on what America's public school students should be taught about the origin and development of life forms? In short, is there a way to handle this persistent problem more responsibly than we have in the past?

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ILLUSTRATION BY JOHN KACHIK


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The Kansas Board's Action

The current controversy in Kansas over the teaching of evolution began on August 11, 1999, when the State Board of Education voted 6-4 to adopt a modified version of the state's science standards, ignoring the recommendations of a 27-member state committee of scientists that had spent an entire year drafting the standards. After the vote, more than half of the drafting committee members protested by asking that their names be deleted from the standards. John Shaver, a cochair of the drafting committee, called the board's vote a "travesty to science education," adding: "Kansas just embarrassed itself on the national stage."[1] Kansas governor Bill Graves, a Republican, expressed outrage. "This is a terrible, tragic, embarrassing solution to a problem that didn't exist,"[2] he said. Board member Bill Wagnon said the standards could make Kansas students "the laughingstock of the world."[3]

> Contrary to some news reports, the board's standards do not *prevent* the teaching of evolution.

Board members who voted for the new standards downplayed the effect of the board's action. Board chair Linda Holloway explained that the new standards leave the question of teaching evolution to the state's 304 school districts.[4] "It's a local control issue," she said. Board member Scott Hill said the new standards "simply give more latitude to local school districts in deciding what to teach about the origins of life. Most teachers will probably continue to teach evolution." He added, "I personally believe that improving the specificity, the clarity, and the content area of our standards is a huge step forward."[5]

Exactly what do the new standards provide? On their face, the new standards hardly appear to be the product of a fundamentalist conspiracy to replace evolution with creationism as a curricular emphasis. Indeed, creationism is not even mentioned in the standards. The board subcommittee that revised the standards reportedly had toyed with language in an earlier draft that would have encouraged classroom teaching of creationism as "the idea that the design and complexity of the cosmos requires an intelligent designer," but that language was withdrawn, presumably to avoid a legal challenge. Nevertheless, the approved version eliminates references to "macroevolution," the process by which one species of life evolves into another. Although the approved standards retain references to "microevolution," or genetic adaptations or natural evolution within a species, omitting macroevolution is a major move, since evolutionary theory is essentially meaningless without it. The omission also means that macroevolution will not be included on the Kansas statewide texts required of all Kansas students. Consequently, some school districts may decide not to teach macroevolution, choosing instead to focus on concepts that will be tested. The standards also dropped reference to the big-bang theory of creation of the universe, the idea that the universe began when all matter was compressed into a single point, which then exploded and has been expanding ever since.[6]

Contrary to some news reports, the board's standards do not *prevent* the teaching of evolution. Several Kansas school administrators do not anticipate changing their current methods of teaching evolution. One superintendent commented, "I guess it probably would not change our science curriculum much. We speak of it [evolution] strictly as a theory anyway." Sharon Freden, assistant state commissioner of education for learning services, pointed out that the new standards are not the equivalent of curriculum. "Curriculum goes way beyond what the state board has adopted in any of its standards," she said. "What we typically counsel schools is to make sure that their local curriculums include what is in the state standards. We would expect in every area of standards that the local districts go way beyond what is in the standards."[7]

Despite the efforts on the part of some to cast the board's action in positive terms, by all accounts the decision is certain to embolden local school boards seeking either to eliminate or minimize the teaching of evolution. Reportedly some school boards have already said they will consider adopting creationist textbooks. Moreover, the sentiment of the general public would seem to side with those who favor the teaching of creationism. In a June 1999 CNN/*USA Today*/Gallup poll (which predates the Kansas board's action), when respondents were asked whether they would support or approve creationism *alongside* evolution in public school classrooms, 68 percent said they would support it. When asked if they would support or oppose teach-

ing creationism *instead of* evolution, 40 percent said they would support it.[8]

The Battle Joined

The appearance of Charles Darwin's *Origin of Species by Means of Natural Selection* in 1859 was a watershed event in human history. Its theory of organic evolution was the first serious challenge to traditional beliefs in divine creation. Darwin seemed to present almost irrefutable proof of the fact of macroevolution, namely, that transformation of the form and modes of existence of organisms occurred in such a way that the descendants differ from their predecessors. In other words, through the interplay of random variation, heredity, and the struggle for survival, an indeterminate number of species can arise from existing species.[9] Darwinism challenged longstanding Western conceptions of natural kinds, or types, in which species were identified and grouped according to their unchanging observable characteristics.[10] In upsetting this conception, Darwinism brought with it a blurring of the view that humans are a distinct species and by extension challenged their status as a unique creation of God.

By the early 1900s evolutionary ideas were clearly visible in the botany, biology, and zoology texts. The texts showed a confidence in evolutionary theory that conflicted with fundamentalists' rejection of it as speculative theory.[11] The proponents of creationism declared war on the evolutionists, a war whose biggest battlefield would be the nation's public schools. Over the course of the twentieth century, creationists would employ a number of basic strategies to prevent or limit the teaching of evolutionary theory in America's public schools.

The first strategy of creationists to limit instruction in evolutionary theory was to lobby the state legislatures to *bar* the teaching of evolution in the public schools. Between 1901 and 1929 they introduced antievolutionary bills in 37 state legislatures.[12] The first state to pass a law banning the teaching of evolution was Tennessee in 1925. The new law made headlines later that year in the famous *Scopes* trial in which John Scopes, a high school science teacher in Dayton, Tennessee, was convicted for violating Tennessee's statute. Although he was found guilty, Scopes was required to pay only a $100 fine.

Despite the guilty verdict, the victorious creationists had little cause for rejoicing. The prosecution team, led by three-time presidential candidate William Jennings Bryan, was unable to present any credible witnesses for creationism and came off looking like buffoons in the press accounts of the trial. After the trial the creationists nevertheless continued their crusade to pass statutes banning the teaching of human evolution, and were successful in Mississippi in 1926 and in Arkansas two years later. The "banning" strategy ended, however, in 1968 when the U.S. Supreme Court held in *Epperson v. Arkansas*[13] that the Arkansas statute was an attempt to advance religion (by encouraging instruction in creationism) contrary to what the Establishment Clause permits. Tennessee and Mississippi promptly repealed their antievolution statutes.

Even before the decision in *Epperson*, however, the strategy to ban the teaching of evolution ran out of steam in 1928 after Arkansas became the third and last state to pass a "banning" statute. Rather than give up, the creationists simply changed tactics. Instead of lobbying for state legislation banning the teaching of evolution, they shifted their attack to local communities, where they engaged in what one critic described as "the emasculation of textbooks, the 'purging' of libraries, and above all the continued hounding of teachers."[14] Their revised strategy was successful, as school boards, textbook publishers, and teachers all over the country succumbed to the considerable pressure they exerted. Darwinism disappeared from many high school texts, and for years, probably until at least the 1950s, many American teachers feared being identified as evolutionists.[15]

With America basking in the glory of the allied victory in World War II, American Christianity became preoccupied with two new evils: rampant materialism and the threat of worldwide expansion of Communism. According to one writer, "fundamentalists were preoccupied with maintaining their own subculture, setting up Bible camps, colleges, seminaries, newspapers, and radio stations. To the extent that they attacked the public schools, they focused more on prayers and sex education than on evolution."[16] Darwinism quietly reentered the classroom and the science texts. Hardly anyone noticed until the late 1960s when fundamentalists became aroused by the federally funded Biological Science Curriculum Study Texts,[17] which prominently featured evolution. These texts prompted two California housewives to take action. This would soon

mushroom into a third major strategy of creationists to wage battle against the teaching of evolution in the nation's public schools. Nell Seagraves and Jean Sumrall learned of the U.S. Supreme Court's decision in 1963 (*Murray v. Curlett*)[18] that protected atheist students from mandatory prayer in public school. Madalyn Murray's ability to shield her child from religious practices suggested to Seagraves and Sumrall that such creationist parents as they "were entitled to protect our children from the influence of beliefs that would be offensive to our religious beliefs."[19] With this line of argument they convinced the California Board of Education to grant creationists equal rights; creationism would be taught alongside evolution in California's public schools.

Energized by their victory, in 1970 Seagraves helped create the Creation-Science Research Center (CSRC), affiliated with Christian Heritage College in San Diego, to prepare creationist literature suitable for adoption in public schools. Also joining this effort was Henry Morris, a civil engineering professor at Virginia Polytechnic Institute who resigned his position to help get the center off and running. By 1972 Seagraves and Morris were at odds over strategy. They parted ways, but Morris stayed at the college to establish the Institute for Creation Research (ICR).

By 1975 Morris had added five scientists to the ICR staff, turning ICR into the world's leading center for the advancement of creationism. As a strategy to ensure that creationism received an adequate hearing in the public schools, ICR adopted the "balanced treatment" framework already approved by the state of California. And rather than contend for equal time for "creationism," ICR decided to seek equal time for "*scientific* creationism" in which "only the scientific aspects of creationism" would be taught. In other words, creationism would qualify as science, a sure way to avoid court decisions holding that the teaching of creationism is an advancement of religion prohibited by the Establishment Clause. Textbook references to the six days of Genesis and other biblical themes were omitted and replaced by "scientific" evidence for a recent flood catastrophe and "scientific" arguments against evolution. The product was the same, but the packaging was new and improved.[20]

The strategy proved to be effective, at least initially. School boards around the country adopted the two-model approach, and a 1980 poll indicated that 75 percent of the public approved.[21] Two state legislatures, Arkansas and Louisiana, passed legislation to require all secondary schools in their states to provide "balanced treatment" of creation and evolution. Arkansas' statute, passed in 1981, was immediately challenged by the ACLU, and the following year a federal district court in Little Rock held that the law constituted an unconstitutional advancement of religion.[22] In answer to the argument presented by the state's attorneys that all polls favored an equal treatment approval, Judge William Overton wrote, "The application and context of First Amendment principles are not determined by public opinion polls or by a majority vote."[23]

Louisiana's Balanced Treatment Act was similar to the Arkansas Act and was eventually brought before the U.S. Supreme Court. In a 7-2 decision the Court in 1987 held in *Edwards v. Aguillard*[24] that although the act's stated purpose was to protect academic freedom, its legislative history indicated that its sponsor had purely religious motives. The Court held that the "preeminent purpose of the Louisiana legislature was clearly to advance the religious viewpoint that a supernatural being created humankind,"[25] thus rendering the statute unconstitutional.

With the Supreme Court's holding, the strategy of teaching creation under a theory of mandatory equal treatment alongside evolution went down in flames. Creationist supporters were not about to give up the fight, however. Efforts to pressure textbook publishers to minimize the coverage of evolution enjoyed only limited success. The movement in the late 1980s and throughout the 1990s to challenge the viability and effectiveness of American public school education by lobbying for government funding of private religious schools where creationism could be freely taught also made little headway. A new strategy was needed, a fourth one in the twentieth century, and it was the Kansas Board of Education that rose to the occasion in 1999. The strategy: issue formal guidelines to all of the state's 304 school boards that include virtually no obligation to teach evolution. Correspondingly, the guidelines impose no duty to teach creation concepts, either: to do so would arguably violate the *Epperson*, *McLean*, and *Edwards* cases, which prohibit the advancement of religious doctrines. But the strategy is clear: even if creationism is not taught as a classroom subject, at least it is not disadvantaged by

the regular presentation of evolutionary theory.

Will this strategy work? Is it constitutional? Does it advance learning in Kansas? Are the students being deprived of a respectable science education? Is the action of the Kansas Board of Education merely a back-door method of advancing religion? These questions are important, they deserve answers, and they beg a more basic question asked at the front of this essay: As we begin the twenty-first century, is there not a more prudent way to handle the creationism-evolution problem than we have handled it in the century just passed?

In all likelihood, the creationism-evolution controversy will persist for the foreseeable future. But it can be handled more effectively than it has been in the past. It is suggested here that both creation and evolution can be shared in the public schools of America, although with restrictions that may not completely satisfy proponents of either viewpoint. But there is room for compromise on this issue, and there is ample space for constructing a framework that is fair and respectful to both viewpoints while remaining within the law.

Perhaps a starting point would be for both sides to appreciate the other's claims for what they are: diametrically opposed approaches to apprehending truth. Darwinian evolution destroyed for many people the most fundamental assumptions of the biblical worldview. It seemed to affirm naturalism rather than supernaturalism. Everything, including religion, could be explained by reducing it to natural causes in the process of development. Appeals to the supernatural were hardly a reliable means of explaining reality; observable, testable natural forces could produce "scientific" knowledge. This transformation in the method of understanding the physical world was truly a paradigm shift of the first order. No wonder supernaturalistic creationists and naturalist Darwinists could not communicate. They operated with such different worldviews and presuppositions about how to explain the world that they could find little common ground.[26]

Some Bible-believing Christians have been able to accept elements of Darwinism without collapsing their entire biblical worldview. The Bible, they contend, explains the fact of *origin* of life, evolution explains facts relating to the *development* of life.

It is on such points of commonality that there is hope for some meaningful discussion on science/religion questions between creationists and evolutionists. But many creationists will always insist that the Bible must be interpreted literally, that Darwinism is purely and simply a feeble alternative explanation for life and its variety. Conversely, many within the scientific community believe that Darwinism empirically eclipses supernatural views of life, and look to science as the only means of constructing an accurate view of reality.

Given that Americans find themselves in the middle of a cultural and scientific paradigm shift from which they are not, as a national people, able to see their way clear, it seems prudent that we need to be open and fair with our youth about presenting conflicting alternatives to the origin and development of life. One research team asserts that, despite a century of instruction in evolution offered by the nation's public schools, "large numbers of people reject the theory of evolution."[27] They further assert that the science education community has done an inadequate job of helping teachers present evolution effectively, and are not able to overcome the fact that "most students . . . view the biological world from a kind of pre-Darwinism perspective."[28] Still another research team reports that the problem of a credible presentation of evolutionary theory is exacerbated by the fact that "a significant number of science teachers have serious questions when it comes to evolution."[29] These kinds of problems are not easily overcome. Proponents of evolution would suggest that the real solution to these problems is to eliminate any consideration of creationism in the public schools and give students and teachers a more intensive grounding in evolutionary theory. But this approach is likely only to exacerbate the problem, not alleviate it.

There is ample space for constructing a framework that is fair and respectful to both viewpoints while remaining within the law.

It goes without saying that any solution to the creation-evolution dilemma will have to be crafted within the constitutional parameters already provided by the Supreme Court. It is significant that while legislatures, school boards, and activists have all sought in the past to limit the teaching of evolution, courts have rarely done so. In *Epperson* (1968) the Supreme Court

said that any attempt to ban public schools' right to teach "the theory or doctrine that mankind ascended or descended from a lower order of animals"[30] (the wording of Arkansas' antievolution statute) is tantamount to elevating religious doctrines and thus a violation of the First Amendment, which requires governmental neutrality toward religion. The Court was clearly affirming Arkansas public schools' right to teach evolution.

The Kansas State Board of Education may be attempting to *limit* instruction in evolutionary theory, but their action certainly cannot be interpreted as an attempt to advance creationism by *prohibiting* instruction in evolution, and thus their action, if challenged legally, is not likely to be invalidated. Individual school districts in Kansas may themselves attempt to prohibit instruction in evolution while offering creationism in its place, but such an approach not only would be illegal but would also lack the official sanction of the Kansas State Board of Education. But the Kansas board's strategy is nevertheless a bad strategy. It is a bad strategy because it *discourages* teachers from exposing Kansas students to a widely accepted and fundamental aspect of science.

Despite what many assume, creationism, like evolution, also has never been judicially banned from public school curricula.

On the other hand, despite what many assume, creationism, like evolution, also has never been judicially banned from public school curricula. What the courts have repeatedly said is that creationism cannot be presented in a way that advances religion, i.e., it cannot be presented pursuant to a religious mission. The *McLean* and *Edwards* cases struck down the "balanced treatment" statutes in Arkansas and Louisiana because they both required that if evolution were taught, then creationism must also be taught; or that if evolution were not taught, then neither could creationism be taught. The courts assumed that in the first scenario (both positions taught) there was a legislative intent to advance a religious doctrine; in the latter scenario (neither position taught) they found there to be a legislative intent to prohibit instruction in science because it was antagonistic to a particular religious doctrine. Under either scenario, the courts held, the government was using its authority to advance a religious purpose, something the Establishment Clause prohibits.

The courts, however, have never disallowed teaching *about religion*, provided it is done in an objective, nondevotional manner. Provided there is no *religious purpose* in teaching a particular subject, virtually any subject can be presented in the public school classroom. As far back as 1963 the U.S. Supreme Court held:

"One's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as a part of a secular program of education, may not be effected consistently with the First Amendment."[31]

In short, creationism *can* be presented in public school settings, provided it is presented *objectively* and not as *truth*, thus eliminating *religious* purpose. What is required is pedagogical neutrality. Many public schools offer outstanding courses in anthropology, comparative religion, history, literature, and philosophy in which religious ideas, including creationist accounts of the origin of life, are presented legally. Traditionally, most schools avoid presenting creationism in science classes because the courts have said that religion is *not* science. But there is no reason that a science class, such as history, anthropology, comparative religion, or literature class, cannot address subjects interrelated to its discipline, creationism among them. Such is the nature of interdisciplinary education. If science teachers, acting either with or without a mandate from legislatures or school boards, objectively, neutrally, and fairly present creationism without seeking to achieve a religious purpose, but as an alternative explanation to life's origin and development, the presentation should not only satisfy constitutional restraints but might also help to diffuse the creationism-evolution controversy that has raged since the *Scopes* trial of 1925.

Nell Noddings provides a thoughtful response to the issue of creationism and evolution, focusing on pedagogical rather than constitutional considerations:

"Teaching *about* religion has long been accepted. The central problem . . . is that religious or metaphysical questions may arise anywhere, and I have recommended not only that they be treated wherever they arise—in, say

math or physics classes—but that teachers should assume that students are continually asking such questions implicitly, and, therefore, that they should plan their lessons to include such material. Following such a plan means that students will not be able to escape the discussion of religious questions. They will at least hear (even if they decline to participate in) discussions about God, ethics, creation, religious politics, mystical love, atheism, feminism, and a host of other topics. . . . They [teachers] need only refer to beliefs clearly stated by others and let students weigh the evidence or decide consciously to reject it in favor of faith."[32]

In other words, says Noddings, there should be no legal impediment to presenting creationism alongside evolution, provided it is done with genuine objectivity. One of the greatest tests of any free society is its willingness to allow dissent about important issues of the day. This is a major challenge facing science teachers today. As James Fraser notes, "it is not sufficient . . . to hand the debate about evolution over to the humanities or social science classes. That solution divides the world, and human knowledge, in unnatural ways."[33] The debate, argues Fraser, belongs in the biology class. He is right. The capacity of biology teachers to teach good scientific evolutionary biology while also treating the views of dissenting students and their parents with respect will be one important criterion by which success in twenty-first-century multicultural education in America is measured.

Creationism is fundamentally part of a religious worldview. Public schools, as government agencies, may acknowledge this but not join in embracing creationism as the *correct* worldview. They may objectively present creationism alongside evolution as an alternative explanation of life's origins, but may not use it to achieve a religious objective. Such is the nature (and wisdom) of the separation of church and state. As Supreme Court Justice Wiley Rutledge wrote in *Everson v. Board of Education* in 1947, "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion."[34] Justice Hugo Black added in the same case that the Court "could not approve the slightest breach" of the line demarcating church and state. Kansas and other states can responsibly give attention to both creation and evolution in their public schools without effecting the breach.

FOOTNOTES

[1] Diane Carroll, "Evolution Question Left to Schools," Kansas City *Star*, Aug. 12, 1999.

[2] Roger Myers, "Evolution Deemphasized: Divided Board Gives Districts Leeway in What to Teach," Topeka *Capital-Journal*, Aug.12, 1999.

[3] Pam Belluck, "Kansas Votes to Delete Evolution From State's Science Curriculum," *New York Times*, Aug.12, 1999.

[4] Carroll.

[5] *Ibid.*

[6] Belluck. See also Kansas Science Education Standards at http://www.ksbe.state.ks.us/outcomes/scidraft5.html

[7] Roger Myers, "Educators: No Revolution in Curricula," Topeka *Capital-Journal*, Aug. 13, 1999.

[8] Kevin O'Shea, "No More Evolution in Kansas," *First Amendment Rights in Education* 5 (September 1999): 3, 4.

[9] Dorothy Nelkin, *The Creation Controversy: Science or Scripture in the Schools* (Boston: Beacon Press, 1982), p. 26.

[10] See John L. Rudolph and Jim Stewart, "Evolution and the Nature of Science: On the Historical Discord and Its Implications for Education," *Journal of Research in Science Teaching* 55, No. 10 (1998): 1071. In addition, see Jon H. Roberts, *Darwinism and the Divine in America: Protestant Intellectuals and Organic Evolution*, 1859-1900 (Madison, Wis.: University of Wisconsin Press, 1988).

[11] George E. Webb, *The Evolution Controversy* (Lexington, Ky.: University Press of Kentucky, 1994), p. 62.

[12] Nelkin, 31.

[13] *Epperson v. Arkansas*, 393 U.S. 421 (1968).

[14] Ronald L. Numbers, "The Creationists," in *God and Nature: Historical Essays on the Encounter Between Christianity and Science*, eds. David C. Lindberg and Ronald L. Numbers (Berkeley, Calif.: University of California Press, 1986), p. 403.

[15] *Ibid.*

[16] Nelkin, pp. 32, 33.

[17] Gerald Skoog, "The Topic of Evolution in Secondary School Biology Textbooks: 1900-1977," in *Evolution Versus Creationism: The Public Education Controversy*, ed. J. Peter Zetterberg (Phoenix, Ariz.: Oryx Press, 1983), p. 67.

[18] *Murray v. Curlett*, 374 U.S. 203 (1963).

[19] Numbers, p. 411.

[20] *Ibid.*, pp. 412, 413.

[21] *Ibid.*

[22] *McLean v. Arkansas Board of Education*, 529 F. Supp. 1255 (1982).

[23] *Ibid.*, p. 1273.

[24] *Edwards v. Aguillard*, 482 U.S. 578 (1987).

[25] *Ibid.*, p. 591.

[26] George Marsden, "Understanding Fundamentalism Views of Science," in *Science and Creationism*, ed. Ashley Montagu (New York: Oxford University Press, 1984), p. 100.

[27] M. U. Smith, H. Siegel, and J. D. McInerney, "Foundational Issues in Evolution Education," *Science and Education* 4 (1995): 23.

[28] Rudolph and Stewart, p. 1070.

[29] R. A. Eve and D. Dunn, "Psychic Powers, Astrology, and Creationism in the Classroom," *American Biology Teacher* 52 (1990): 10.

[30] *Epperson v. Arkansas*, 393 U.S. 97, 99-100 (1968).

[31] *Abington Township School District v. Schempp*, 374 U.S. 203, 225 (1963).

[32] Nell Noddings, *Educating for Intelligent Belief or Unbelief* (New York: Teachers College Press, 1993), pp. 133, 134, quoted in Fraser, *Between Church and State*, pp. 167, 168.

[33] James W. Fraser, *Between Church and State* (New York: St. Martin's Press, 1999), p. 168.

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By
DAVID A. PENDLETON

TROUBLE IN PARADISE

Hawaii legislators defend Free Exercise Clause versus Establishment Clause.

The freedom to exercise one's religion is arguably the most precious liberty Americans enjoy. The very first clauses of the Bill of Rights to the United States Constitution read: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." For more than two centuries this "prohibition" has played a crucial role in ensuring the independence and vitality of religion in the United States.

The statement that "Congress shall make no law" is often identified as the Establishment Clause, for it articulates the disestablishment or antiestablishment principle that "no law respecting an establishment of religion" can be passed by Congress. The second statement, regarding "prohibiting the free exercise" of religion, often referred to as the Free Exercise Clause, guarantees the freedom of religious exercise.

Both the Establishment Clause and the Free Exercise Clause, however differently worded, serve to safeguard religious liberty. By no

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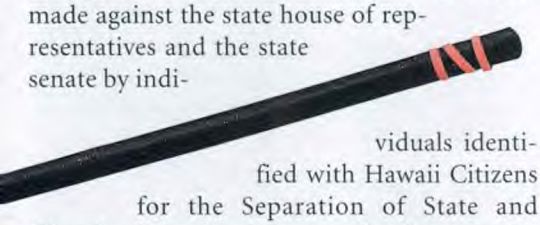
David A. Pendleton, an attorney, serves as minority floor leader in the Hawaii House of Representatives.

means at cross-purposes, they prevent government from commandeering religion for secular purposes, and they prevent the rise of a theocratic state. The goal, then, of both clauses is to ensure that religion and government are free to work in their respective spheres without interference from the other. The clauses require us to harmonize the need for a government to govern and the right of all people to adhere to and practice their sincerely held beliefs.

Religious liberty took center stage in the state of Hawaii for several days this past spring during the 1999 legislative session. Religious liberty was the subject of ardent debate in Hawaii because public complaints had been made against the state house of representatives and the state senate by individuals identified with Hawaii Citizens for the Separation of State and Church. The question was what free exercise rights do government officials have?



Specifically the complaints alleged that the practice of a number of state senators and state representatives to gather together periodically on their lunch breaks to pray for the people of Hawaii was unconstitutional. The argument was that because they are government officials, praying in a government building, there was a violation of the separation of state and church.

The complaints also asserted that by placing religious symbols on the doors of their offices legislators violated the separation of state and church. Most often the symbols were the traditional Christian fish symbol or the Jewish Star of David. In one case, however, a state senator displayed on his door an array of religious symbols from numerous religions practiced throughout the world.

In response the Hawaii state attorney general indicated that it was not improper for legislators to gather in such a manner, since legislators do not surrender their constitutional religious free exercise rights by virtue of becoming public officials.

By this reasoning, President Clinton, for example, can carry a Bible with him to church, even if it means carrying it with him in his armored limousine or on *Air Force One*, both of which are provided by the government. President Clinton can invite clergy to the White House for a prayer breakfast. He can even speak publicly of his private meetings in the White House with prominent clergy who serve as "spiritual counselors." None of these activities involving a government official and taking place on government property violate the Constitution.

The Hawaii State Ethics Commission also provided guidance regarding legislative gatherings. The opinions did not speak directly to the question of religious gatherings, but they clearly prohibit meetings for a commercial or "business purpose" or where use of state property furthers individual gain.

It should, of course, be no surprise that these government agencies supported the constitutionality of these practices, since the U.S. Supreme Court has long upheld the practice of opening a legislative session with a public prayer. If a prayer can be offered in, say, the chamber of the House of Representatives at the start of the legislative session, then surely legislators can meet on their own time to eat lunch and pray for the people of Hawaii.

On the separate issue of the religious symbols, the attorney general indicated that such practice is not unconstitutional. That is so because the symbols do not serve to cause a passerby to "reasonably construe the symbol to reflect the government's endorsement of Christianity." Instead, they merely convey the individual legislator's personal views.

The doors are used as venues for expression by a number of legislators—hence the common practice of displaying posters promoting literacy or raising awareness about world hunger or voicing opposition to domestic violence. Clearly none of these expressions are meant to be formal pronouncements of official government policy, but rather are understood by all to reflect the individual legislator's sentiments on the particular topic. Just as legislators are permitted to print and mail newsletters to report on their individual votes and policy preferences, so they are permitted to post those same votes and policy preferences on their office doors.

One capitol staff member had this to say on the issue: "Members of Hawaii Citizens for the Separation of State and Church are legally entitled to voice their beliefs. That is the exercise of free speech. They can place on their own Hawaii Citizens office doors whatever messages they wish. What they cannot tell other citizens, albeit elected citizens, is what messages meet with their approval."

Of course, this does not mean that legislators have an absolute right to place on their doors

ILLUSTRATION BY SALLY JO VITSKY

Prohibitions against messages that constitute harassment are onstitutional, as are prohibitions against campaign-related messages.

anything they wish. There are limits: the legislative doors are not entirely public forums, as are public streets, sidewalks, and parks. There are legal and ethical constraints as well as the parameters set by public pressure and the opinion of fellow legislators.

"The attorney general opined we could display religious symbols in our offices and therefore on our doors," explained Representative Barbara Marumoto, house minority leader. "So I did not mind when many representatives and senators put up a fish, a Star of David, or a Buddha icon. But if someone put up a Nazi symbol claiming free speech, I would object strenuously and take issue with the opinion," she said.

Prohibitions against messages that constitute harassment are constitutional, as are prohibitions against campaign-related messages. Additionally, legislators cannot place inaccurate or fraudulent information on their doors, such as titles that they do not hold or committee chairmanships to which they have not been duly elected.

While the controversy involved genuine constitutional issues, not least the rights of the individual legislators, leaders in the house and senate asked the legislators to exercise prudence. While legislators might be within their constitutional rights, it was hoped that they would take reasonable steps to avert any undue controversy with Hawaii Citizens for the Separation of State and Church.

Despite these attempts to moderate the situation, Hawaii Citizens for the Separation of State and Church continued to pursue the issue. On April 6, 1999, their members roamed the hallways of the state capitol in search of the "offending" symbols on doors of senators and representatives.

Legislators were forewarned about the "symbol sweep," as some dubbed it. They were also informed that the organization would either remove the symbols or add to them messages of their own devising, such as "Let's Tell Our Children the Truth: God Is Make-believe!" or "God Is Dead!"

The day passed relatively quietly. One particular senator did exchange some words with a person from the Hawaii Citizens for the Separation of State and Church organization, but other than that isolated incident there was little out of the ordinary at the capitol that day. This does not mean, however, that everyone was pleased.

Representative David Stegmaier, veteran lawmaker and former chair of the house education committee, returned to his office after a committee hearing to find his office door "cleaned up." "I was shocked when the theft of my office's religious symbols took place," he explained. "The incident made me realize how easily our rights of free expression can be taken away. On that occasion it was a bully acting in his private capacity, yet it could just as easily have been a government functionary simply following orders."

As Representative Stegmaier sees it, citizens do not lose constitutional rights to exercise their religion freely when they avail themselves of their constitutional rights to participate in the democratic process and embark on careers in public service. They are not somehow stripped of constitutional free exercise protections, though they certainly take on significant constitutional obligations and responsibilities.

Representative Stegmaier was the primary sponsor of a house bill modeled after the federal Religious Freedom Restoration Act (RFRA), which was supported by a broad civil rights coalition and sponsored in a bipartisan fashion by U.S. senators Ted Kennedy (D-Mass.) and Orrin Hatch (R-Utah).

Often referred to as the mini-RFRA (or a state RFRA), the legislation introduced in the Hawaii House of Representatives by Stegmaier and supported by many other representatives, including myself, was tailored to ensure continued religious liberty in the state of Hawaii. The measure was introduced because the issue of religious freedom is one that deserves the public's attention. Recent U.S. Supreme Court decisions have shown that many freedoms once taken for granted are at the mercy of majority sentiment.

Imagine, for example, a mandatory autopsy law that requires the autopsy of an Orthodox Jewish victim of an automobile accident, in direct opposition to the sincere religious beliefs of Orthodox Jews against such an autopsy. Or imagine a case in which a government prosecutor wishes to compel a clergyman to discuss the contents of a penitent's confession. Or imagine the State Tax Department litigating against the Society of Friends (Quakers) for refusing to attach the wages of their employees who refused for religious reasons to pay the civil defense or National Guard component of their taxes. Setting aside the question of whether churches become tax collectors for the IRS, such scenarios could happen.

Representative Bob McDermott supported the introduction of the mini-RFRA religious liberty bill. Describing as disappointing the conduct of the Hawaii Citizens for the Separation of State and Church, he candidly shared that he does not believe the United States Constitution prohibits "the displaying of one's faith." In fact, he suggested, it would be dishonest for legislators to conceal their beliefs from those they serve. And given the ethical problems politicians face from time to time, he said "We need more people of faith regardless of your denomination, in public office."

I belong to the legislative prayer group. We periodically gather together for lunch to talk about the personal challenges in our lives and pray for the people of Hawaii. The group is bipartisan (Republicans and Democrats), ecumenical (Catholics and Protestants), and bicameral (representatives and senators). Attendance is of course voluntary.

I have become involved in the more controversial issue of religious symbols on legislative office doors, for I have only my name, title, district number, and room number displayed on my door. Nevertheless, in my office I have posters promoting literacy, education, and justice for our veterans. I also have flyers opposing domestic violence, gang involvement, and environmental pollution. A number of these policy positions are informed by my faith, although they do not promote my faith.

I must admit additionally that on my bookshelf in my inner office I have a Bible, along with a hundred other law, history, and civics books. I also have copies of *Liberty*, *Adventist Review*, and *La Sierra Today*, periodicals affiliated with religious institutions, on the end table in the lobby of my outer office. The presence of these magazines does not confer the government's imprimatur on my faith any more than does the presence of *Forbes* on my end table indicate endorsement of Steve Forbes' presidential candidacy.

While it is beneficial for a community to openly discuss matters of constitutional import and the role faith plays in our individual lives, the manner in which this particular discussion arose was certainly less than ideal. A number of legislators have stated that if the organization truly wanted them to remove the symbols, they would have approached them privately and politely. But because the organization chose publicly to cast aspersions on the constitutionality of practices and motives of legislators, they were forced to stand up for the First Amendment against those who would "censor their expression."

The confrontational approach taken was less than productive and may have actually encouraged a number of legislators to add symbols to their doors. It became a free speech issue in addition to a religious liberty issue. It drew into the conversation many who would otherwise have left their office doors unadorned. Unfortunately, though, it distracted media attention away from other pressing issues.

Freshman Democrat representative Brian Schatz believes there was a definite downside to the whole incident: "I think people should be able to put whatever they want on their doors. However, I can see the potential of the blurring of the line in the separation of church and state. I also think that the response was out of proportion. There were so many more important issues that we were dealing with last session, and this distracted attention from them."

Lessons can be learned from the recent incident in Hawaii. Often it is not what is said that is objectionable but how something

is said. Second, the media should not be the first group one turns to in order to address a concern—unless publicity alone is the goal. Third, there are no easy answers. It may be relatively easy to say one stands for the separation of church and state, but it can be challenging to determine exactly what practices and policies are consistent with that principle.

One of the noted Hawaiian navigators is Nainoa Thompson. He can sail ships thousands of miles without dependence on modern navigational instrumentation. He can successfully navigate the Pacific Ocean precisely because he can consult fixed stars. For brief periods of time he can use other natural phenomena—currents, tides, birds and their flight patterns, the sun. But if he fails to consult the fixed stars regularly he risks losing his way.

America's commitment to religious liberty is one of those fixed stars. Our Founders learned from centuries of religious war and persecution in Europe that government's role was to safeguard religious freedom, not to abridge it or to promote religion or a particular religion. Government must preserve religious liberty without establishing religion. Finding this delicate balance can never be easy. But it is necessary—and Constitutionally required—for us to be ever vigilant for true religious liberty.

It may be relatively easy to say one stands for the separation of church and state, but it can be challenging to determine exactly what practices and policies are consistent with that principle.

LIBERTY

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Christian to the Core

I am finally writing this letter in response to an article I saw in *Liberty* some years ago (actually, May/June 1996). I was a bit surprised when I read "Our Godless Constitution." As a teacher and historian I was alarmed at your article. Over the years I became fascinated with early Supreme Court rulings and quotes of the Founders.

Your article states that the Founders were uninterested in saving souls and wanted a secular government. As a historian, I offer the following quotes:

"The highest glory of the American Revolution was this: it connected, in one dissoluble bond, the principles of civil government with the principles of Christianity"—John Quincy Adams.

"It cannot be emphasized too strongly or too often that this great nation was founded, not by religionists but by Christians, not on religions, but on the gospel of Jesus Christ"—Patrick Henry.

"Our Constitution was made for a moral and religious people; it is wholly inadequate for any other"—John Adams.

"It is impossible to rightly govern without God and the Bible"—George Washington.

"The Bible is the cornerstone of liberty. A student's perusal of the sacred volume will make him a better citizen, a better father, a better husband"—Thomas Jefferson.

"Morality is the necessary spring of popular government. And let us with caution indulge the supposition that morality can be maintained without Christianity"—George Washington.

"True religion affords to government its surest support"—George Washington.

"Religion and virtue are the only foundations of republicanism and of all free governments"—John Adams.

"Government is a firm compact sanctified from violation by all the ties of personal honor, morality, and religion"—Fisher Ames, author of the First Amendment.

"The moral principles and precepts contained in the Scriptures ought to form the basis of all our civil constitutions and laws"—Noah Webster, founder of American education.

"God grant that in America true religion and civil liberty may be inseparable and that the unjust attempts to destroy the one may in the issue tend to the support and establishment of both"—John Witherspoon, signer of the Declaration of Independence.

"I do not believe that the Constitution was the offspring of inspiration, but I am as perfectly satisfied that the Union of the States in its form and adoption is as much the work of a Divine Providence as any of the miracles recorded in the Old and New Testament"—Benjamin Rush, signer of the Declaration of Independence.

"The Christian religion, its general principles must ever be regarded among us as the foundation of civil society"—Daniel Webster.

"Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits and humbly to implore His protection and favor"—George Washington.

WILLIAM EISENHART
Elkland, Pennsylvania

[This excerpt from a lengthy letter of rebuttal perhaps overreacts to the original article by Isaac Kramnick and R. Laurence Moore, authors of the book *The Godless Constitution: The Case Against Religious Correctness.* Rather than defend all aspects of the authors' position it might be better to affirm the perception and foresight the Founders showed in framing the Constitution and establishing these United States. Yes, they were Christian, if not in every case conventional in their beliefs, then Christian in their general outlook and reflective of a nominal Christian culture.

What is so remarkable is that these men affirmed both the moral values of their faith and a calculated political structure which would be free of the coercive elements of state-promulgated religion. By this unique synthesis they create both a moral, "religious" state, and a truly secular freedom.—Ed.]

Liberty *and* Justice

Your article "Blank Check?" (January/February 1999) raises concerns about how a poorly designed school voucher program could inadvertently lead to intrusive government regulation of private

schools. But the article misses the bigger picture.

In its 1925 decision, *Pierce v. Society of Sisters*, the Supreme Court declared that "the child is not the mere creature of the state; those who nurture his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." The Court was stating that parents, not the state, have the right to choose their children's education. In America today, high taxation prevents many parents from being able to exercise this right because it leaves them too little after-tax income to be able to consider non-public schools for their children. Wealthier parents can still exercise their natural and constitutional right to direct their children's education, but poorer parents cannot.

Justice demands that the natural rights of all citizens—the poor as well as the rich—be protected. To reestablish justice in our society, people of all income levels should have the same right to send their children to public, private, or parochial schools. But it is vital that a plan affording such education options not infringe upon religious liberty through the imposition of entangling regulations.

The best way to meet these two goals would be to give children who are not enrolled in the public school system an advance against future taxes. The government would write a check to a child's family, for use at the family's school of choice, as an advance against the child's future sales and income taxes. (Even children who grow up and go on welfare pay sales taxes.) This would expand the freedom of educational choice, give recipients a tax break, and allow for a true free exercise of religion, all without using government money.

BRET SCHUNDLER, Mayor
Jersey City, New Jersey

Tolerance Not Approval

Is tolerance the gospel by which we live? Or is it truth? In a recent letter to the editor, "Tolerance Is the Key," the writer suggests that to teach a child that his other parent's religion is a sin is to deny freedom of religion to that parent.

The weaknesses of that idea are exposed if you take that to the logical extreme. Shall we be tolerant of Satanism, or white supremacy? Shall we be tolerant of religions that practice human sacrifice or the selling of girls into sexual slavery?

As Christians we are to respect people as made in the image of God. Within the family we teach our children respect for their other parent based on that fundamental truth and that we are told in the Bible to honor our parents. But that does not extend to the embracing of their religion any more than it extends to approving of immorality.

There is a higher law than either the popular law of tolerance or the law of this land. That law is God's law. When, as a Christian, I must choose between obeying the law of the land or the approval of another's religion or practice, I have no choice but to obey God. I have a responsibility under God to rear my children in my faith. I also have a responsibility to warn my children of the dangers of false and destructive religions.

If that is denying freedom of religion I will bow before the true and living God and not the god of tolerance.

DON R. CAMP
Cove, Oregon

Moved by "Blackbirds"

I am moved to write this letter after reading this article in your September/October 1999 issue. I have been greatly distressed at the one-sided approach that we in the West have taken toward this issue. I wish Mr. Clinton and our prime minister, Mr. Chretien, had had an opportunity to read your article before beginning the bombing campaign against Yugoslavia.

IAN R. LINTON, Q.C.
Tillsonburg, Ontario
Canada

Readers can E-mail the editor at steeli@nad.adventist.org

The Liberty *editors reserve the right to edit, abbreviate, or excerpt any letter to the editor as needed for clarity or brevity.*

DECLARATION OF PRINCIPLES

The God-given right of religious liberty is best exercised when church and state are separate.

Government is God's agency to protect individual rights and to conduct civil affairs; in exercising these responsibilities, officials are entitled to respect and cooperation.

Religious liberty entails freedom of conscience: to worship or not to worship; to profess, practice and promulgate religious beliefs or to change them. In exercising these rights, however, one must respect the equivalent rights of all others.

Attempts to unite church and state are opposed to the interests of each, subversive of human rights and potentially persecuting in character; to oppose union, lawfully and honorably, is not only the citizen's duty but the essence of the Golden Rule–to treat others as one wishes to be treated.

ALL ANIMALS ARE EQUAL

The closing days of 1999, while full of talk of millennial possibilities, were curiously lacking in real optimism (blame Y2K if you like). Curious because the stock market (which may eventually take a dive) was at that time and the time of this writing sailing well beyond the 11,000 mark—an all-time high, buoyed up by a broad base of speculators. So why the lack of vision? Absent vision, the Good Book says, the people perish.

Well, back into the past century there was a real spate of Utopian proclamations. That "brave new world" of Aldous Huxley and others was at least a goal of sorts, if ultimately troubling. Then it was as if the Mars probe of our aspirations plummeted through a red mist into silent oblivion.

A few months ago an ambitious Hollywood producer came up with an animated rework of a classic by author George Orwell. No, not his real masterpiece, *Nineteen Eighty-Four*, but the more approachable *Animal Farm*. *Nineteen Eighty-Four*, written a little later and when the tendencies that both books identified were more developed, suffers a little from having expired its lease. When the apocryphal year 1984 rolled around I, like many other editors and journalists, felt compelled to examine how completely or incompletely our reality of that time matched the author's forebodings. Unfortunately George Orwell got it wrong, and 1984 proved a bit of a bust for us. And now that we are crossing into the new millennium the very title seems anachronistic, even though the major premises of the book have become eerily contemporary.

But all that said, *Animal Farm* is perhaps the tale for our time. The Hollywood version of recent days has refocused attention on Orwell's satire, even if the director felt constrained to alter the plot for a more favorable, more socially acceptable outcome.

Animal Farm in the anthropomorphic genre of *Babe* and other tales (the Mickey Mouse/Disney construct) describes how the animals of Manor Farm rise up and claim the farm from the incompetent farmer. They then rename it "Animal Farm" and reconfigure it as a model community, with social order and the truly democratic principles of equality.

Oh, sure, they had their challenges. It took considerable negotiation before rats were accepted by the majority as comrades. But a formal bill of rights was drawn up, and it included the wonderful proclamation that "all animals are equal."

To avoid filling an entire editorial with a summary of the book, it's enough to say that by the end of the tale (pun noted) the egalitarian principles had been hopelessly compromised. The pigs were now consorting with the humans and running the farm as a dictatorship. While they still repeated the mantra that "all animals are equal," it was qualified by the additional cry that "some animals are more equal than others."

How they came to this sorry pass is complex, but enough to say that economic necessity led to a number of compromises, and the increasingly bitter infighting among the animals broke down their sense of the common good.

Enough of *Animal Farm*. Let's look at our democratic aspirations and the continued need to guarantee equal rights and freedoms for all.

It seems that every day or so we hear of another school shooting, mass murder, brutal killing, or violent outbreak. People are afraid. Responding to those fears, the president of the United States offered that to guarantee some sort of general security we might have to give away certain freedoms. This was an unchallenged assumption.

Well, we humans are nothing if not logical! When it suits us. And the argument has broadened somewhat to include the moral state of society. Effectively turning reality on its head, there is now a clamor for the state to underwrite moral education to solve all of our ills. This in direct contradiction of the fact that it is individual morality that enables a moral state, not the other way around.

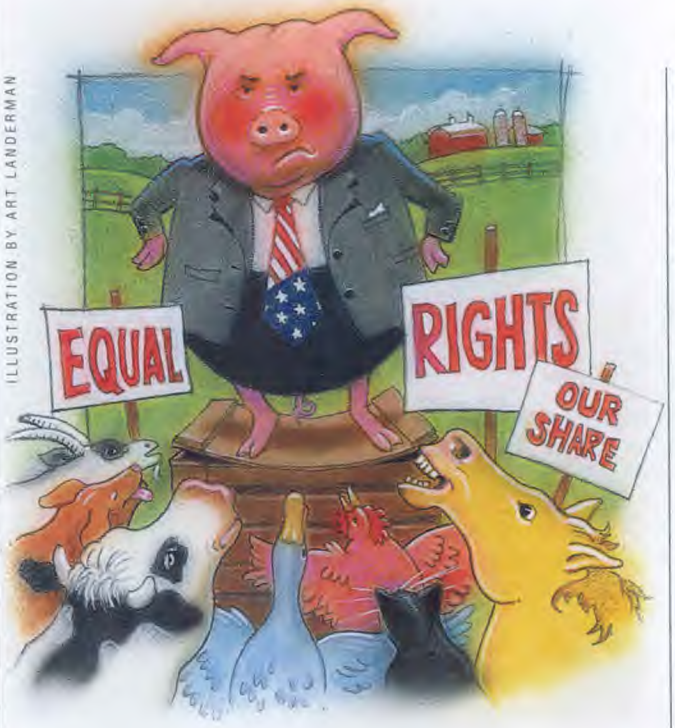


ILLUSTRATION BY ART LANDERMAN

The framers of the Constitution recognized as much in the First Amendment. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" is a continuation of the language of the Declaration of Independence, which premised all rights on the self-evident fact of a higher power.

The leaders in those formative days of the American republic were acutely aware of the lessons of history. They were acutely aware of the sorry tale of intolerance, persecution, and zealotry that had decimated freedoms and personal security throughout the centuries in the Old World. They wanted none of those troubles to appear here. The language of the Constitution is strong and forthright in erecting a "firewall" against state-sponsored religion/morality.

James Madison feared the inclination of many to use the power of the state to advance religious instruction. In 1785 he wrote the highly influential "Memorial and Remonstrance" against a proposal in the house of delegates in Virginia to pay the salaries of church teachers. He wrote, "It is proper to take alarm at the first experiment on our liberties." His alarm sounds eerily contemporary. "The free men of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of only one establishment may force him to conform to any one establishment in all cases whatsoever?"

We are in a time when various religious groups are demanding special privilege. They are demanding special access to the law and the public coffers. They are demanding special access to our children. This cannot be!

Alarm! Alarm! Alarm! Circle the wagons. Erect the stockade. Man the wall. This is no time to break down that barrier between church and state, erected for reasons of security—to both state and individual.

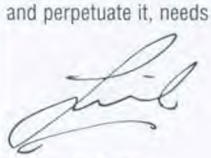
The battlefront is broad and varied, but at base the question is one of merging state and church interests. Will we see churches administering federal welfare programs? That is the suggestion. Will we see churches mandating both doctrinal and scientific studies in public schools? There are those who would demand as much. Will we see taxpayer money supporting church schools, either through indirect vouchers or direct subsidy? That is the tendency. Will we see on the one hand the diminution of the rights of certain religious minorities and on the other the formalized force of law backing up the practices and beliefs of a favored few religious institutions? That is both the tendency and the aim in some quarters.

Those of us who believe in God and in honoring our Creator have no question that He expects us to live a certain way and to worship a certain way. At the same time those of us who truly honor our citizenship in a state founded on egalitarian principles, which aims to respect all viewpoints and belief systems, know how important it is to remain true to such a goal.

Analogies extended too far invariably break down. But it is not far off the mark to say that the freedoms of this happy farm have been extended precisely because it has been spared the feudal nature inherent in state religion.

No, we are not animals. Neither our religious faith nor the definitive proclamations of this republic lead us to say that. We are creatures of a Creator. We cannot afford to be the mewing, barking, and crowing crowd of the farmyard that was so easily led astray by the sophistries of a few pigs.

A last word from James Madison: "What influences, in fact, have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of civil authority; in many instances they have been seen upholding the thrones of political tyranny: in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty may have found an established clergy convenient auxiliaries. A just government, instituted to secure and perpetuate it, needs them not."



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