

FEDERAL TAX AID TO PAROCHIAL SCHOOLS IS BOTH UNCONSTITUTIONAL AND UNWISE

(Statement by Senator Sam J. Ervin, Jr. for immediate release)

If we are to appraise aright the current demands for Federal tax aid to parochial schools, we must begin with a study of history. This is true because we can understand the institutions and laws of today only if we know the historical events out of which they arise.

Man's struggle for religious freedom

The most heart-rending story of history is that of man's struggle against civil and ecclesiastical tyranny for the simple right to bow his own knees before his own God in his own way.

As one of America's wisest jurists of all time, the late Chief Justice Walter P. Stacy of the Supreme Court of North Carolina, declared in the opinion he wrote in State v. Beal, 199 N. C. 278:

"For some reason, too deep to fathom, men contend more furiously over the road to heaven, which they cannot see, than over their visible walks on earth," and "It would be almost unbelievable, if history did not record the tragic fact, that men have gone to war and cut each other's throats because they could not agree as to what was to become of them after their throats were cut."

The Founding Fathers who wrote the Constitution of the United States were acutely aware of these truths.

They saw with the eyes of history the cruelties of the Spanish Inquisition, the massacre of the Huguenots of France, the slaughter of the Waldensians in the Alpine Valleys of Italy, the hanging and jailing of English and Irish Catholics by Protestant England, the hunting down of the Covenantors upon the crags and moors of Scotland, the branding, hanging, and whipping of Quakers and the banishing of Baptists by Puritan Massachusetts, and the hundreds of other atrocities committed in the name of religion.

The Founding Fathers knew, moreover, that even during their own lifetimes those who did not conform to the doctrines and practices of the churches established by law in the places they lived, such as Scotch-Irish Presbyterians in Ulster, Catholics in England and Ireland, and dissenters in various American colonies, had been barred from civil and military offices because of their faiths, had been compelled to pay tithes for the propagation of religious opinions they disbelieved, and had had their marriages annulled and their

children adjudged illegitimate for daring to speak their marriage vows before ministers of their own faiths rather than before clergymen of the established churches.

The determination of the Founding Fathers to secure religious liberty by separating church and state

The Founding Fathers were determined that none of these tragic historical events should be repeated in the nation they were creating.

To this end, they inserted two provisions in the Constitution of the United States.

The first of these provisions appears in Article Six and declares that "no religious test shall ever be required as a qualification to any office or public trust in the United States."

The second appears in the First Amendment and states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

These provisions embody in the Constitution the abiding conviction of the Founding Fathers that the complete and permanent separation of the spheres of religious activity and civil authority is best for religion and best for the state.

I cherish the constitutional principle of the separation of church and state as the most precious part of our heritage as Americans. It must be preserved if liberty of any kind is to endure. This is true because political liberty cannot exist where any church dictates to the State and religious liberty cannot exist where the state interferes with religion.

The author of the "establishment of religion" clause of the First Amendment was James Madison, who had previously piloted through the Virginia legislature Thomas Jefferson's Virginia Statute for Religious Freedom, which declared that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."

The Constitution prohibits Federal tax aid to any and all churches

The First Amendment is designed to prevent every form and degree of official relation between religion and civil authority. To this end, it secures the right of every person to worship God according to the dictates of his own conscience and prohibits every kind of public aid or support, financial or other, for religion.

Its purpose to outlaw all use of public moneys for religious purposes is stated with unmistakable clarity by the Supreme Court of the United States in the comparatively recent case of Everson v. Board of Education, 330 U. S. 1.

I quote from the opinion in that case.

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between church and state."

There can be no doubt of the fact that the parochial schools constitute an essential part of the Catholic church. Indeed, they are established and operated by the Catholic church for the purpose of teaching the children of Catholic parents the tenets of the Catholic faith. This is made clear by the Canon Law of the Catholic church which specifies that "Catholic children are to be educated in schools where not only nothing contrary to Catholic faith and morals is taught, but rather in schools where religious and moral training occupy the first place" and that "the religious teaching of youth in any schools is subject to the authority and inspection of the church."

Despite assertions to the contrary, the First Amendment makes no distinction whatever between outright grants of Federal moneys to parochial schools and long-term loans of Federal moneys to parochial schools. It forbids both grants and loans. The decision in the Everson case makes this crystal clear by stating, in substance, that Congress cannot pass laws which "aid one religion" or "aid all religions," and that "no tax in any amount can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

The Catholic debt to the Constitution

All Americans of all faiths have the absolute legal right to send their children to the public schools of the states in which they reside. Many Catholic parents forego the exercise of this legal right and send their children to parochial schools because they want their children to receive something which the First Amendment forbids the public schools to give them, i.e., instruction in the tenets of their religion. In sending their children to

parochial schools, Catholic parents are exercising a right secured to them by the same Constitution which forbids the use of tax-supported institutions for the teaching of any religion. This observation finds illustration in the decision of the Supreme Court of the United States in Pierce v. Society of Sisters of Holy Names, 268 U. S. 510, where the Court decided that the parents of Catholic children have a constitutional right to send their children to parochial schools, and adjudged unconstitutional an Oregon Statute which required parents of all children, including Catholic parents, residing in Oregon, to send their children to the public schools of that state.

Use of Federal taxes for parochial schools unwise

Even if there were no constitutional prohibition on such action, Congress should not grant or loan Federal tax moneys to parochial schools or any other schools teaching the tenets of any religion.

The ringing declaration of Thomas Jefferson's Statute of Virginia for Religious Freedom that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical" is just as true today as it was when Jefferson wrote these immortal words. It would be "sinful and tyrannical" to tax Catholics and Jews to aid the teaching of Protestantism, or to tax Catholics and Protestants to aid the teaching of Judaism. It would likewise be "sinful and tyrannical" to tax Protestants and Jews to aid the teaching of Catholicism.

A great American, the late Justice Rutledge, had this to say on this subject:

"The great condition of religious liberty is that it be maintained free from sustenance, as also from other interferences, by the state. For when it comes to rest upon that secular foundation it vanishes with the resting. Public money devoted to payment of religious costs, educational or other, brings the quest for more. It brings too the struggle of sect against sect for the larger share or for any. Here one by numbers alone will benefit most, there another. That is precisely the history of societies which have had an established religion and dissident groups. It is the very thing Jefferson and Madison experienced and sought to guard against, whether in its blunt or in its more screened forms. The end of such strife cannot be other than to destroy the cherished liberty. The dominating group will achieve the dominant benefit; or all will embroil the state in their dissensions."

If we are to preserve religious liberty, or, indeed, any kind of liberty, we must keep the state's hands out of religion and religion's hands off the state,

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