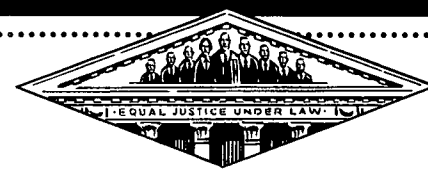

Let Us Pray

by Jeremy A. Rabkin

Pundits and editorial writers pounced on Newt Gingrich when he suggested, soon after the election, that Republicans in the House would take up a school prayer amendment after acting on the agenda outlined in the Contract With America. Most insisted the proposal was a major political blunder. But then most of them had previously decried the contract itself as a major political blunder, sure to lose votes for Republican candidates.

The school prayer amendment is an excellent idea, but an ambitious version of the proposal—one that tries to remove most or all current restrictions on state legislatures and local school boards—might not secure adoption by the required three-quarters of the states. Even seemingly popular general proposals can founder on emotional objections to particular details, as the failure of the Equal Rights Amendment ought to remind us. Almost any version of a prayer amendment will trigger an extensive debate, and such a debate will be helpful for Republicans and healthy for the nation.

Public opinion polls over the last thirty years have continually shown that roughly three-quarters of the electorate already supports prayer in the schools. President Clinton seemed to acknowledge this when he expressed openness to a prayer amendment soon after Gingrich's statement. But the Democratic Party is deeply committed—both financially and culturally—to constituents demanding perpetual allegiance to their own version of "civil liberties." The White House staff demonstrated as much when it hastily disclaimed the president's statement on this issue. It is not a bad thing for the majority party to align itself with the overwhelming majority of voters, and to leave Democrats to do the bidding of their fearful, angry little pressure groups.

The importance of the school prayer issue goes beyond both prayer and the schools, for there is no direct mention in the Constitution of either. Ever since its 1962 ruling against prayer and Bible-reading in public schools, the Supreme Court has used the supposed menace of religion in public schools as a doctrinal and political launching pad for broader attacks on religious references or accommodations to religion in public life. The court progressed from banning prayers in schools to banning the display of the Ten Commandments in public school hallways. It held that state aid to parochial schools violates the Constitution. It ruled that the display of a Christmas creche in a public building was also a constitutional violation. Some justices have even argued that laws restricting access to abortion manifest an improper "establishment of religion" by imposing a religious opinion on legislative policy—reasoning, in other words, that the Constitution requires religious opinion not only to be hidden, but also to be disenfranchised.

Nonetheless, the court has not dared to carry this logic through to its full conclusion. The court unaccountably ruled in the mid-1980s that prayers at the opening of state legislative sessions were constitutionally permissible, even when delivered by sectarian chaplains remunerated with taxpayer funds. Even liberal justices have acknowledged that the national motto, "In God We Trust," may remain on American money, and that the reference to "one nation under God" may remain in the Pledge of Allegiance. Justice Brennan, in a widely cited opinion, argued that such concessions to tradition were constitutionally acceptable because they were merely "ceremonial" and "solemnizing" gestures no longer conveying a serious "religious" connotation.

The Court has been most insistent, however, about suppressing concessions to religion in public schools. In 1985 it ruled that even a state-mandated "moment of silence" at the beginning of the school day was an affront to the Constitution, because some students might take it as encouragement to use that moment for silent prayer. In 1992, the Court held that a brief convocation statement at a high school graduation ceremony was unconstitutional because it mentioned the word "God." Lower courts have enforced the spirit of such rulings with a vengeance. Even student-initiated prayer and Bible-study sessions outside regular classrooms (given only for those who desire them) have been disallowed by lower court judges, who ruled that such activities suggest impermissible endorsement of prayer by public authorities if held on school grounds. One lower court even held that a public school was acting in accord with the Constitution in preventing a teacher from displaying a copy of the Bible on his desk and including a book of Bible stories among the books made available for free-time reading by students in his class. In a case now on appeal to the Supreme Court, lower courts have held that the University of Virginia acted properly in denying financial subsidies to a student Christian magazine, while allowing subsidies to a range of other student publications (including publications by Jewish and Islamic student groups): aid to a Christian publication might appear to be government endorsement of religion, and thus in violation of the First Amendment.

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(The case is being appealed by the indefatigable Washington-based Center for Individual Rights.)

The most common rationale for such religio-phobic rulings is unconvincing but nonetheless revealing. Children and adolescents, it is said, are particularly vulnerable to psychological coercion and the sting of exclusion; so the courts must be vigilant against religion in school settings. There is certainly some awkwardness in asking non-Christians to participate in, or remove themselves from, explicitly Christian devotion, which public schools have sometimes sponsored explicitly. But from the time of President Washington onward, public figures, public proclamations, and public rituals have invoked divine authority while steering clear of sectarian references. The New York state prayer struck down by the Supreme Court was itself entirely non-sectarian. Where there are any sizable numbers of non-Christians among the students, it seems unlikely in the 1990s that school officials will insist on religious formulas that are bound to offend many people.

The truth, however, is that while schools may usually try to avoid giving offense, no one seriously pretends that schools have a constitutional duty—or even a practical hope—of making every student feel equally comfortable at all times. Many public schools put a great deal of emphasis on competitive sports. Students with physical handicaps may not be able to participate in these sporting contests, but no one argues that schools must therefore abolish their sports programs. Many schools sponsor patriotic rituals centered around flag-raising ceremonies or the singing of patriotic songs. Students who are citizens of other countries, or who have been raised to think that America is not a land of "liberty and justice for all," may find such ceremonies alien or repellent. Few would then maintain that these ceremonies be abolished. The Supreme Court itself, in a celebrated 1943 case, ruled that school children could not be required to say the Pledge of Allegiance if it violated their conscience to do so; but the court did not conclude that because some children have conscientious objections to the flag salute, schools must discontinue the practice for all children. Only those who object to religious displays are given veto rights under current constitutional law.

The point is worth stressing. Lots of things go on in public schools these days that offend ordinary American parents. The New York City Board of Education provoked a ruckus when it proposed to teach tolerance of gays by getting elementary school students to read works like "Heather Has Two Mommies" (which contains a rather graphic description of how one of those mommies conceived Heather by artificial insemination). But parents who object to this sort of thing are confined to political channels of protest; no court doctrine establishes a general right to protest offensive material in public schools. Similarly, white parents in Prince George's County, Maryland protested the excesses of the public school system's "Afrocentric Curriculum," in which some texts degenerate into anti-white racism. They could not get a day in court for such objections.

The federal courts have not been content with this one-sided vigilance against affronts arising from actual religious expression. In 1982, the Supreme Court ruled in *Pico* v. *School Board* that schools could not even *voluntarily* accommodate objections from religious parents to school practices that offended them. In this case, the court held that removing "offensive" books from school libraries was an impermissible form of censorship. In a 1968 case, the court held that schools could not omit the teaching of evolution theory, since this would endorse the "religious" objections of Bible-believers to evolution theory. When a school board this past October withdrew books on voodoo and witchcraft from school libraries in response to parental complaints—including books explaining how to cast love "spells" or killing "spells"—a federal court ruled this action unconstitutional. A lower court even ruled that one school district had violated the Constitution by banning school dances, since the court found grounds to suspect that the objection to dances was "religious."

After all, then, the issue is not really one of assuring accommodation of differing viewpoints and trying to limit wounded feeling. The issue is essentially one of assuring that public schools remain in the hands of approved liberal secularists. The question is not protected minorities—in most communities, for example, conservative Christians who object to books on witchcraft in school libraries are probably minorities themselves. The issue is assuring that certain privileged minorities get their way, and that others—even when they are the majority—are denied control of school practices.

It may not always be possible to satisfy everyone. If a school prayer amendment removes the federal judiciary from its current role as umpire of cultural etiquette in this area, some families are sure to find the consequences disturbing to their sensibilities. If the most insistently liberal or secularist students find their schools to be intolerably religious or conservative or whatever, they are free to attend private schools more to their liking—which is exactly the advice given to students who sought some acknowledgment of religion in their schools over the past thirty years. Indeed, many and perhaps most conservatives would support some form of government aid to these private liberal havens—as long as the courts would also allow aid to private schools operated under religious auspices.

Even if not finally adopted, a prayer amendment would send a strong signal to the Supreme Court to leave difficult issues such as accommodation of religion to the good sense of accountable officials at the state and local levels. Whatever those officials might do, they are unlikely to offend more people than the federal courts have done. ❐

Save the Whalers

by David Andrew Price

One morning last January, Arvid Enghaugen, a resident of the Norwegian coastal town of Gressvik, found his whaling boat sitting unusually deep in the water. When he climbed aboard to investigate, he found that the ship was in fact sinking; someone had opened its sea cock and padlocked the engine-room door. After breaking the lock, Enghaugen discovered that the engine was underwater. He also found a calling card from the Sea Shepherd Conservation Society, a small, California-based environmentalist group that specializes in direct actions against whalers. Counting Enghaugen's boat, Sea Shepherd has sunk or damaged eleven Norwegian, Icelandic, Spanish, and Portuguese vessels since 1979.

The boat was repaired in time for the 1994 whaling season, but Enghaugen's problems weren't over. On July 1, while he was looking for whales off the Danish coast, five Greenpeace protesters boarded the ship from an inflatable dinghy and tried to take its harpoon cannon. Enghaugen's crew tossed one protester into the sea, and the rest then jumped overboard; the protesters were picked up by the dinghy and returned to the Greenpeace mother ship.

A week later, after Enghaugen's boat shot a harpoon into a whale, a team from another Greenpeace vessel cut the harpoon line to free the wounded animal. A group again tried to board the whaler, and the crew again threw them off. Enghaugen cut a hole in one of the Greenpeace dinghies with a whale flensing knife. For the next two weeks, Enghaugen and crew were dogged by Greenpeace ships and helicopters.

Although the activists failed to stop Enghaugen's hunt, their public relations war in America has been a different story. Over the past twenty years, the save-the-whales movement has been so successful in shaping public sentiment about the whaling industry that the U.S. and other nations have adopted a worldwide moratorium on whaling. Part of the credit must go to the animals themselves, which are more charismatic on television than Kurds, Bosnians, or Rwandans, who have engendered far less international protection. The movement owes most of its success, however, to the gullibility of Hollywood and the press in passing along bogus claims from whaling's opponents.

The mainstay of the case against whaling—that it threatens an endangered species—is characteristic of the misinformation. It is true that European nations and the United States killed enormous numbers of whales during commercial whaling's heyday in the nineteenth century, but to say that "whales" are endangered is no more meaningful than to say that "birds" are endangered; there are more than seventy species of whales, and their numbers vary dramatically. Some are endangered, some are not. The blue whale, the gray whale, and the humpback were indeed depleted, but those species were later protected by international agreement long before the existence of Greenpeace or Sea Shepherd. (There have been abuses. Alexei V. Yablokov, special adviser to the president of Russia for ecology and health, has revealed that the whaling fleet of the former Soviet Union illegally killed more than 700 protected right whales during the 1960s, but the International Whaling Commission's institution of an observer program in 1972 essentially put an end to the Soviet fleet's illegal activities.)

The only whale species that Enghaugen and his fellow Norwegian whalers hunt is the minke, which Norwegians eat as whale steaks, whale meatballs, and whaleburgers. As it turns out, minke whales are no more in danger of extinction than Angus cattle. In 1994, thirty-two Norwegian boats killed a total of 279 minkes, out of an estimated local population of about 87,000 and a world population of around 900,000.

In 1982 the IWC voted to suspend commercial whaling for a five-year period starting in 1986. The ostensible purpose was to permit the collection of better data on whales before hunting resumed. Norway lodged a reservation exempting itself from the moratorium, as the IWC treaty permitted, but it complied voluntarily.

Whaling nations soon learned, though, that the majority of nations in the IWC—including the United States—intended to maintain the ban indefinitely, no matter what the numbers showed. Canada left the IWC in 1982, and Iceland left in 1992. Norway terminated its voluntary compliance in 1993. To protest the commission's disregard of the facts about whale stocks, the British chairman of the IWC's scientific committee resigned that year, pointing out in his angry letter of resignation that the commission's actions "were nothing to do with science." The IWC continued the moratorium anyway at its next meeting.

A 1993 report by the Congressional Research Service observed that the data on whales undercut the conservationist argument, and that "if the United States

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