

Rallying Cry

A Call to Defend the First Amendment

by Pat Nolan



Amidst assaults on free speech in the guise of “campaign reform” and on freedom of association through an attack on the Boy Scouts, an effort to lay siege to the First Amendment’s religious freedom guarantees could not be far behind. It wasn’t.

THE INK was hardly dry on the U.S. Supreme Court’s June 25, 1997, *City of Boerne v. Flores* decision, which struck down the federal Religious Freedom Restoration Act (RFRA), when government officials across the nation began to restrict religious activities. In the *Boerne* case, the Court ruled that the city of Boerne’s historic preservation ordinance could prohibit a local church from expanding its sanctuary because the ordinance applied to all property owners, secular and religious alike. *Essentially, the Court allowed the city’s desire to promote tourism to supersede the local congregation’s need for a church large enough to worship together.*

- Immediately after the Court issued its decision, local prosecutors in Pennsylvania served notice on 20 Christian day care centers that they were in violation of local ordinances which prohibit discrimination in hiring on the basis of religion. The government lawyers cited the *Boerne* decision in court documents to justify their unprecedented interference in church activities.

- In California, death row inmates were told they could no longer take their Bibles to Bible study. And when the religious volunteers tried to bring in their Bibles, they were told that they could not bring them in either. So, we have inmates attending Bible studies, but without any Bibles!

- In Texas, two school children were disciplined for wearing rosaries. The school administrator claimed that they were gang symbols.

- In Michigan, the State House passed a “mini-RFRA” for the people of Michigan, but with a joker in the deck: the bill defines “persons” as all residents of the state who are not lawfully incarcerated. In other words, if this bill becomes law, prisoners will officially be “non-

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persons" without the religious rights of everyone else.

- In New Jersey, Governor Whitman has announced that she will introduce a state RFRA, but with a prisoner exclusion.

- In states with strong teachers unions we can expect efforts to exempt schools, and where medical associations are powerful there will be attempts to exclude nursing homes and hospitals.

THIS IS not what the founders of our Republic

had in mind when they wrote the Bill of Rights. They placed such a high value on our religious rights that they wrote the First Amendment precisely to prohibit interference by the federal government in the free exercise of our religion, and the Fourteenth Amendment and later Court decisions have applied the same prohibitions to lower levels of government. Yet the Supreme Court in *Boerne* has now invented an exception to this amendment that *allows* the government to interfere — as long as the law applies to everyone.

Conservatives may be surprised to learn that the *Boerne* majority opinion, written by Justice Anthony Kennedy, was joined not only by Justices John Paul Stevens and Ruth Bader Ginsburg, but also by conservative Justices William H. Rehnquist, Clarence Thomas, and Antonin Scalia. The conservative judges' apparently believe Congress exceeded its authority with RFRA by expanding the Bill of Rights. But all RFRA did was restore religious freedom rights that have always been central to the First Amendment. The danger here is that unless Congress quickly reasserts statutory protection for religious practices, government officials will continue to interfere in church activities by carefully writing their ordinances to apply to all

groups, not just religious ones.

And as states pass mini-RFRAs with exceptions for schools, hospitals, and prisoners, we will be left with a patchwork of protection for religious liberty. The American people will have religious freedom only to the extent that they have the political muscle to prevent powerful groups from excluding them from their state's RFRA.

A consensus is growing among Christian groups that no more important issue confronts the modern Church than the passage of national legislation to protect the religious rights of all Americans. Dr. James Dobson of "Focus on the Family" and Dr. Gary Bauer of the Family Research Council have agreed to join with Justice Fellowship and Prison Fellowship in a national effort to press Congress to pass a new Religious Freedom Restoration Act. Chuck Colson was recently Dr. Dobson's guest on a two-part "Focus on the Family" radio program devoted to this issue. Dr. Dobson opened the program by saying that in all his 20 years of broadcasting only the need for

the church to spread the Gospel was of greater importance than RFRA.

And appreciation of the issue's importance is not limited to religious groups. The *Washington Post* called *Boerne* the most important church/state case ever to come before the Court. You will hear much more about this issue in the coming months. As the state legislatures convene next year, Justice Fellowship task forces will work to prevent efforts to exclude unpopular or vulnerable groups from religious protection. The battle is over the meaning of the First Amendment's religious freedom protections and whether they apply generally to all Americans or restrictively to favored groups alone. *Boerne* signals the beginning of a new chapter, not the end, in this fight. CPR



AS SOMEONE deeply involved with the modern conservative movement for 40 years, I would like to say a few words about where I think that movement may be headed.

First, let me acknowledge that there is always an economic component in our national politics. Moreover, just in recent months it has grown increasingly clear that America, and indeed the world, is in the opening stages of a major economic process that will play itself out over a period of decades and affect the political

Beyond socialism and the Cold War, the third component of American conservatism remains locked in combat with its foe — the Enlightenment's tendency to reject the Judaeo-Christian religious tradition.

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McClintock proposes;
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CONSERVATIVES' UNFINISHED MISSION

THE TASK BEFORE US

BY WILLIAM A. RUSHER



landscape of every nation on earth. This is a result of the rapidly-increasing globalization of the world economy. Thanks to the advances of technology, the economies of the United States and certain other major nations are shifting to a new emphasis on high-tech industry, while simpler manufacturing jobs are moved offshore. The whole process deserves the name it has been given: the Third Industrial Revolution.

Without question, the process is going to be painful — just as the advent of the automobile was painful for the makers of buggy-

whips. Equally without question, there will be Luddite efforts (on the left by the labor unions, and on the right by Pat Buchanan and others) to stop the process in its tracks: to flood the moat, pull up the drawbridge, and turn America into an autarchic state, permanently operated along the lines of the Second Industrial Revolution.

ICANNOT SPEAK for the left, of course, but I am confident that there will be very few conservative economists, and indeed few conservatives more generally, who will agree that such