

The Court, The Becker Amendment, and Congress

THE CLERGY AND THE BECKER AMENDMENT

CERTAIN LEADING CLERGYMEN and religious groups, rather than being passive in their presentation of views concerning the Schempp ruling, were willing to fight for these views in the political arena. By May of 1964, more than one hundred and forty-five proposed constitutional amendments had been introduced into the House of Representatives to overcome the effects of the court's decision. Representative Emanuel Celler, Chairman of the House Judiciary Committee, reluctantly yielded to relentless organized pressure and held hearings on the Becker Amendment, which seemed to have the most support. Mr. Celler indicated that he was in no hurry to rush an amendment out. "The nature and importance of the subject," he said, "require that the committee have the best thinking of all schools of thought in its consideration of the pending resolution."¹

The amendment was proposed by Representative Frank J. Becker, a Republican from Nassau County, New York. It sought to permit reading of prayers or biblical selections in public schools and other governmental institutions, "if par-

ticipation therein is on a voluntary basis." The latter qualification suggests that dissenting children would be permitted to leave the classroom if they wished to during such programs.

From the first it seemed clear that while individual clergymen might disagree with the Schempp ruling, the torrent of mail that descended upon congressmen in early 1964 stemmed not so much from formalized religious sects as from *ad hoc* organizations bearing religious titles. For example, The Committee of Christian Laymen, Inc., of Woodland Hills, California, circulated a printed form attributing the drive against religious exercises in the public schools to "the American Civil Liberties Union and the Communist Party." A detachable section of this form was designed to be sent to congressmen. It read: "We are organizing a door to door campaign to let our fellow Americans know the names of those Congressmen who have not yet signed the discharge petition" [a parliamentary device to take the proposed amendment out of the hands of the committee and place it on the floor of the House of Representatives for consideration].² A number of congressmen privately confided to this author that if the discharge petition had been successful the amendment would have passed the House of Representatives since many members of the House felt it was impossible politically to oppose the amendment despite personal views to the contrary.

After surveying the testimony of a multitude of religious spokesmen which appeared before the House Judiciary Committee, several generalizations can be made. Representatives of the National Council of Churches, and of the Baptists, Lutherans, Presbyterians, Seventh Day Adventists, Unitarians, the United Church of Christ, and the Jewish faith,

unanimously opposed the amendment and supported the Supreme Court's position.³ Indeed, on one day, April 30, 1964, churchmen representing more than thirty Christian denominations were shown to be unanimously in support of the Supreme Court's position.⁴ This is not meant to suggest that these official or semiofficial statements are necessarily concurred in by every individual minister or layman within the denomination. The House Judiciary Committee received a variety of letters similar to the one that said, "I am one Baptist they do not represent."⁵

Other major American religious sects were not as consolidated in their views as those mentioned above. Spokesmen for Roman Catholics, Episcopalians, and Methodists differed among themselves over support of the Becker Amendment.⁶ Representatives of fundamentalist sects normally tended to support the amendment.

Dr. Carl McIntire, President of the International Council of Christian Churches, who was identified by Representative B. F. Sisk of California as a leader of "somewhat extremist" groups opposing the Supreme Court's decision, gave particular support to the Becker Amendment. Arguing that the amendment would not erode the First Amendment or compromise the separation of church and state, Dr. McIntire indicated he had supported the Engel decision of the Supreme Court because it struck down state-composed prayer. His opposition developed, he said, when, in the Schempp case, the court struck down "the prayer composed by Jesus Christ 2,000 years ago, the Lord's Prayer as it is called." From this he concluded, "It was clear that the issue was God and prayer, *per se*."⁷

A leading Roman Catholic, Bishop Fulton J. Sheen, in testimony before the House Judiciary Committee was criti-

cal of the Schempp decision but urged Congress not to try to override it by amending the Constitution. Emphasizing he was speaking as an individual and not as a spokesman for his church, he argued that the Supreme Court had exceeded its competency in ruling against prayers and Bible reading in the public schools. The court's decisions, he insisted, were based upon a myth — that there was a wall of separation between church and state. Bishop Sheen suggested, however, that there was real danger that the guarantees of the First Amendment would be destroyed by adding a few words. "We have disestablishment written into the First Amendment," he said. "We do not want it disturbed." In answer to a committee member's question as to who should compose the prayer if an amendment overrode the court's decision, Bishop Sheen answered, "I would suggest the prayer that every member is carrying with him in his pocket—'In God We Trust.'"⁸

Another Roman Catholic clergyman, the Reverend Robert G. Howes, a professor at Catholic University of America on leave from his parish in Wooster, Massachusetts, supported adoption of the amendment and was much more critical of the Supreme Court. Speaking for the Massachusetts Citizens for Public Prayer, an organization, he said, that represented many faiths, Father Howe told the committee: "What the prayer decisions do clearly is to explode a bomb with deadly fall-out. From these decisions, unless we now reverse them emphatically, must develop an irradiation which goes to the very marrow of the bones of those long traditions of public reverence which have for so many decades distinguished our people."⁹

A quite different Roman Catholic attitude is reflected in the editorials of the influential Jesuit magazine *America*,

submitted to the Judiciary Committee in its hearings. A May 25, 1963, editorial argued that the "thinking behind some of the Court's decisions is bad political philosophy, bad history and bad constitutional law." On the other hand, it pointed out, the court had often changed its mind when it became evident that it had "departed too far from the sense of the people." Urging caution to American Catholics because of the commonly heard accusation that they pay only lip service to the principle of church-state separation, the editorial warned: "In the atmosphere of suspicion that still surrounds us, we should gain little and lose much by identifying ourselves with an effort to change the text of the First Amendment, however good our motives or sound our interpretation of religious liberty."

A later editorial took an even more clear-cut position by noting, ". . . we are opposed to any amendment of the First Amendment." It noted, however, that, "we have never thought that the practices mentioned were an establishment of religion in the Constitutional sense." But the editorial argued that there is an additional reason not to support the proposed amendments. "All that their amendment would do would be to reverse the Supreme Court's school prayer decisions. It would not solve the basic question of the relationship of religion and education in this country. . . . Indeed, the adoption of the prayer amendment might freeze the Court's church-state doctrine as it now stands."¹⁰

Another example of attitudes represented by religious spokesmen who were critical of the Supreme Court and supported the Becker Amendment in testimony before the House Judiciary Committee is reflected by the views of Dr. Robert A. Cook, representing the National Association of Evangelicals. He noted that from the inception of the pub-

lic schools, where ministers were the teachers, it had been "a tried and proven" custom to have prayer and Bible reading in many of them. "While the good that has come from the practice cannot be measured," he admitted, "we believe that it has been considerable and provided a stabilizing influence greater than many realize. The adverse effects have been insignificant. We know of none," Dr. Cook concluded.¹¹

The sharp controversy the Becker Amendment caused in some religious denominations is revealed by the spirited debate which occurred at the 1964 Annual Convention of the Episcopal Diocese of New York. There the Episcopal leaders of that state took a strong stand against the amendment and in favor of the Supreme Court's views, when by a wide margin they defeated a resolution backing moves to negate the court's ruling. During the thirty-five-minute, heated debate on the resolution, various Episcopal leaders, including the Reverend Benjamin Minifie, the Reverend Fredrick C. Grant, who had represented the church at the Vatican Ecumenical Council, and Clifford B. Morehouse (who, as President of the House of Deputies, is the highest ranking Episcopal layman in the country), took the rostrum to warn against the "militant forces of atheism that are trying to lock God out of the schools."¹²

Opposing the resolution in support of the Becker Amendment, the Reverend Miller Cragon, Director of the diocesan Department of Christian Education, argued, "I do not believe we can legislate God into the classroom or legislate him out of it." Another supporter of the Supreme Court in this dispute was Judge Thurgood Marshall of the United States Court of Appeals and an active Episcopal layman. Judge Marshall said he was "bitterly opposed" to the resolu-

tion supporting a constitutional amendment. Bishop Donegan, who presided, took no stand on the issue, but he did not demur when one speaker claimed that the court's decisions had the Bishop's support.¹³

Less than a month after this debate, the National Council of the Episcopal Church at its quarterly meeting in Greenwich, Connecticut, formally supported the Supreme Court in its decisions on prayer and Bible reading. This action closely coincided with the stand taken by the United Churches of Christ in opposing the Becker Amendment or any other constitutional alteration designed to permit voluntary devotional exercises in the public schools.¹⁴ Somewhat earlier, the United Presbyterian Church meeting in its 176th General Assembly reaffirmed opposition to Bible reading and prayer in the public schools as devotional exercises and contended that religious indoctrination was the task of the home and the church.¹⁵

The testimony of clergymen and others (much of it favorable) before the House Judiciary Committee fills three hefty volumes or 2,774 printed pages.¹⁶ Space limitations here prevent little more than the presentation of a representative sample of the reactions. Speaking for an *ad hoc* committee of Episcopalians, Baptists, Jews, Presbyterians, and members of the United Church of Christ, the Reverend Arthur C. Barnhart of the Pennsylvania Episcopal Diocese, told the committee early in its hearings: "We see nothing in the decisions which prevent a youngster praying — before school, in school, after school, in his home or in his church or synagogue. We see nothing which prevents schools from studying the Bible or the role of religion as part of our cultural heritage." In fact, he concluded, "we see these decisions, which the resolutions before your committee seek to

negate, as clarifying the respective roles of government and religion.”¹⁷

The same day, Rabbi Irvin M. Blank, representing the Synagogue Council of America, told the committee that a truly nonsectarian prayer for school use would be impossible to compose. “Such a prayer as advocated by proponents of a constitutional amendment,” he pointed out, “would of necessity be so devoid of any real spiritual content that it would come dangerously close to irreverence and blasphemy.” The concept of voluntary participation in school prayer programs is meaningless, he contended. “For children, voluntary participation is an illusory concept and for parents it imposes a responsibility which should not be imposed,” he said.¹⁸

In somewhat the same vein, Rabbi Maurice N. Eisen-drath, President of the Union of American Hebrew Congregations, later urged the Judiciary Committee to weigh its conscience instead of its constituents’ mail before recommending a constitutional amendment. Tampering with the First Amendment, he explained, could “unravel the historic fabric of the Bill of Rights. Prayer,” he noted, “must come from the heart and not the school board.” Moreover, he pointed to the danger of “an American public school religion” consisting of a set of “meaningless, watered-down, nonsectarian platitudes” that would not be religion at all. Some of the committee members, apparently nettled by his comments about mail, tartly pointed out during the two hours they questioned the Rabbi, that there had been an increase in constituent request to leave the Constitution alone.¹⁹

Rabbi Harry Halpern representing the United Synagogue of America, the Rabbinical Assembly, the National

Women's League and the National Federation of Jewish Men's Clubs opposed the proposed amendment before the Judiciary Committee. "If this effort is successful," he said, "what is there to prevent any well-organized group from agitating for further amendment of the Bill of Rights whenever it is in disagreement with a Supreme Court decision?"²⁰

Rabbi Halpern spoke to the point often made by Justice Oliver W. Holmes — that the key reason for the Bill of Rights is to protect the minority. The majority can look after itself since it should normally control the political branches of government. In taking this position, the Rabbi presented an opposing line of reasoning to that presented to the committee on a number of occasions. This was exemplified in the testimony of Dr. Charles Wesley Lowry, head of the Foundation for Religious Action in the Social and Civil Order when he argued in support of the amendment, "It is a calamity and not straight thinking to convert legitimate radical dissent into public policy and impose it on the overwhelming majority of American people."²¹

Early in the hearings the Reverend Edwin Fuller, Chief Executive Officer of the American Baptist Convention spoke also for the National Council of Churches of Christ and opposed passage of the amendment. "The leadership of the major Protestant churches," he said, "are not convinced by and large, that God desires an attenuated and conventional worship administered in public school classrooms." Moreover, the leadership of the major Protestant churches, he explained, "are opposed to jeopardizing our long-cherished freedom to worship God as conscience dictates by tampering with the First Amendment." Such an amendment, he concluded, would be dangerous to the freedom of

nonbelievers and a threat to the religious well-being of believers.²²

Appearing the same day and concurring with Dr. Fuller, were the Reverend Eugene Carson Blake, stated clerk of the United Presbyterian Church, and the Reverend William A. Morrison, General Secretary of the Board of Christian Education of that church. Dr. Blake noted that his church had been against governmental involvement in religion for one hundred and eighty years. "I take alarm at this experiment on our liberties," he said. "The Bill of Rights should remain unamended for the rights are inalienable."

Dr. Morrison noted: "If the form and content of religious exercises in the public schools derive from some kind of syncretism or blend or only those elements of several religious traditions that are acceptable to everyone, then the result, as in the Supreme Court case of the Regents' prayer in New York State, can only be seen as a theological caricature at best or a theological monstrosity at worst."

The New York *Times* in its coverage of the testimony of these clergymen noted that "the witnesses underwent extended questioning by Committee members, who obviously disagreed with their testimony."²³

A key Methodist Church leader, Bishop John Wesley Lord, Head of the Methodist Church in the Washington, D.C., area, saw in the Supreme Court decisions an opportunity and a challenge to give objective religion a rightful place in classrooms within the framework of the Constitution. "I believe it possible," he told the committee, "for public school teachers, without violating the traditional American principle of separation between church and state,

to teach moral principles and spiritual values by precept and example." He also explained his belief in the possibility and the necessity within the principle of church-state separation to "integrate objective religious instruction with the regular curriculum, for example, teaching religious classics in courses of literature and in social studies showing the influence of religion upon our society."²⁴

This approach was concurred in by the Right Reverend William F. Creighton, Episcopal Bishop of Washington, D.C. Before the committee he explained that "Many of us have . . . rejoiced at the possibility of rescuing religious concern from its confinement in a brief period of Bible reading and prayer, and of making it an integral part of the education process." This view was shared by the Right Reverend J. Brooke-Mosely, Episcopal Bishop of Delaware, who said that both prayer and Bible reading had been "debased" by the ways some schools handled them. Some schools, he added, even broadcast prayers through loudspeakers.²⁵

Some notion of the general consensus against the proposed amendments by major religious groups may be seen by scanning the names of those testifying in favor of the court decisions in a typical day — May 29, 1964. These spokesmen included C. Emanuel Carlson, Executive Director of the Baptist Joint Committee of Public Affairs; James F. Cole of the Public Affairs Committee of the Louisiana Baptist Convention; Daniel Neil Heller, National Commander of the Jewish War Veterans of the U.S.A.; and the Reverend Robert L. Zoerheide, representing the Unitarian Universalist Association and the Fellowship for Social Justice.

Testimony was not, however, restricted to regularly recognized religious groups. For example, on June 4, 1964, the Judiciary Committee hearings were interrupted by a pro-

test from Kenneth F. Klinkert of Menomonee Falls, Wisconsin, that no atheists had been invited to testify. At Chairman Celler's suggestion, Mr. Klinkert left with the committee a statement of his position which said, "In the first place, no such thing as a personal 'God' exists. Therefore, uttering an untruth or forcing children to utter an untruth is harmful morally, psychologically and emotionally." Mr. Klinkert suggested that this was similar to "false or untrue advertising on the air or in the newspapers."²⁶

The committee also heard Tolbert H. McCarroll, Executive Director of the American Humanist Association, who opposed any amendments in this area. In supporting the Supreme Court's position, he noted: "If a religious or political bias finds its way into a public school, some Americans will inevitably be deprived of the democratic right to live their lives and bring up their children in accord with their own beliefs." Furthermore, he explained, "Those most likely to suffer the immediate deprivation of this basic right are atheists, agnostics, humanists and religious liberals." He also pointed out that the proposed amendments would create, by law, many minorities — Christian children in the public schools of Honolulu, Roman Catholic children in the public schools of Salt Lake City, or Jewish children in the schools of rural western Pennsylvania. The role of the public schools is not to create minorities, but to build an informed population, attentive, among other things, to minority opinion, Mr. McCarroll concluded.²⁷

Also opposing the Becker Amendment was Dr. Francis J. Brown, Chairman of the National Association for Personal Rights, an organization centered primarily in Chicago. Arguing that nonsectarian religious instruction in public schools was a logical impossibility, he explained that

it was "one thing to tax for the public benefit of academic content and quite another thing to tax for the support of private educational philosophies."²⁸

The committee hearings reveal that there occurred early in 1964 a torrent of mail initiated by various well-organized, *ad hoc* groups with names bearing religious overtones. Concerned by this avalanche of mail, which some veteran congressmen privately confided exceeded the amount of mail they had ever received on any subject, the Judiciary Committee not only felt impelled to hold hearings, but for a time in the spring of 1964, it appeared the committee was apt to jump its traces, override the views of its chairman, Representative Celler, and others who insisted on a calm, thorough review of all sides in the dispute, and vote the Becker Amendment out for passage.

It was only in late April and early May, when many of the major congregations began to appreciate the real threat to the First Amendment posed by the organized minority, and began to take official stands publicly and before the committee against the amendment, that the issue was placed in its proper, public perspective. When this occurred, the revisionist tide was stemmed. Future historians may well regard this almost belated action as one of the finest hours in organized religions' programs of social action. To paraphrase Mr. Dooley, if the Supreme Court follows the election returns, this experience suggests that in some instances, at least, Congress follows the churches.

EDUCATOR ATTITUDES TOWARD THE BECKER AMENDMENT

Many educators representing a variety of school systems, colleges, and universities appeared before the committee. In

general it can be said that the testimony of those from public schools and universities and from private nondenominational institutions of learning overwhelmingly opposed the Becker Amendment and supported the Supreme Court. There were, of course, those who disagreed.

David A. Robertson, Supervising Principal of the New Cumberland, Pennsylvania, joint school system told the committee that his school district had continued programs of Bible reading after the Supreme Court decisions. When threatened with an injunction, he said, the devotional exercises were abandoned "reluctantly." He asked for a constitutional amendment to permit their resumption.²⁹

Moreover, the Pittsburgh Board of Education came up with a plan to solve the problem of retaining religion in the public schools without violating the Supreme Court ban. On May 19, 1964, the board approved a 168-page guide containing a program of morning exercises which contained passages from the Bible and references to God in excerpts from literature, poetry, songs, and student compositions. To be used first on a one-year trial basis, it was designed to be a permanent replacement of the former reading of ten Bible verses.³⁰

Sometime earlier, the Pittsburgh Superintendent of Schools, Sidney P. Marland, Jr., appeared before the Judiciary Committee to oppose the Becker Amendment and to support the Supreme Court. He contended that pupils could be taught brotherhood of man, ethics, and integrity without ritual scripture reading or prayer.³¹ Mr. Marland served also as the Chairman of the Commission on Religion and the Schools established by the American Association of School Administrators which was later in its published report to strongly support the Supreme Court and to suggest

to public school officials throughout the nation legally acceptable methods of dealing with questions of ethics and morals in the public schools. (This report is discussed at length in Chapter 7.)

Several state school administrators supported amending the Constitution as proposed by Representative Becker. Thomas D. Bailey, Florida State Superintendent of Public Instruction, in favoring the amendment, argued that, "To be silent about religion and the contribution of God-centered religious thought to the growth and development of our nation may be, in effect, to make the public schools an anti-religious factor in the community."³² In the interests of accuracy it should be pointed out that the Supreme Court rulings by no means require public schools to be "silent about religion."

Mr. Bailey's position, nonetheless, was supported by the Florida Education Association in a resolution adopted on April 25, 1964, and filed with the House Judiciary Committee. The resolution said: "We affirm our faith in Almighty God and our belief that this faith is the chief cornerstone upon which our religious heritage is founded. Therefore we urge the passage of an amendment to the U.S. Constitution to permit the practice of non-sectarian devotions in the public schools. . . ."³³

The Reverend Robert G. Howes of Catholic University of America called the committee's attention to the fact that state legislatures in Maryland, Michigan, Kentucky, Mississippi, South Carolina, New Jersey, Louisiana, and Massachusetts supported proposals to amend the Constitution to overrule the Supreme Court's decision. He submitted for the record, in addition, fifteen resolutions from school boards and local governing bodies in Massachusetts urging adoption

of an amendment in this area. Most of them were almost identical in wording to that of the Gloucester School Committee which stipulated "That the Gloucester School Committee express itself as favoring legislation that is necessary to restore prayer and Bible reading in the public schools . . . on the same basis as prevailed prior to the Supreme Court ruling. . . ." ³⁴

The typical point of view of denominational school leaders opposing the Supreme Court decision and supporting the need for amendment was given the committee by the Reverend Vincent F. Beatty, S. J., President of Loyola College, Baltimore, Maryland. He argued that the "prayer decisions have inflicted a deep and dangerous hurt in the nation." Furthermore, he felt that unless these decisions were nullified they would "destroy every other practice of public reverence among us." In rejecting the argument that the proposed amendment would weaken the First Amendment, he noted that this had already occurred because of the court's decisions and, in fact, "we are indeed the real defenders of the Bill of Rights." ³⁵

The preponderant opinion among public school boards as reflected by public statements during this period, however, is exemplified by the Policy Statement of the Wichita, Kansas, Board of Education presented to the Judiciary Committee during its hearings. It said:

The Board of Education holds that the relationship between religion and the state as expressed in the First Amendment of the Constitution is one of the most distinctive features of American political and religious life. The Board endorses and supports the doctrine of separation of church and state as interpreted by the Supreme Court of the United States . . . the Board hereby commits itself to a position of neutrality with respect to religion. . . . ³⁶

This view was shared by Thomas W. Braden, President of the California State Board of Education. Mr. Braden said that the question was whether "Government in the United States may force or coerce or embarrass children into prayer."³⁷

Reflecting the sentiment of another highly populated area, Frederick C. McLaughlin, Director of the Public Education Association of New York City, testified that the proposed amendment would undermine the integrating function of the public schools. No single prayer would be satisfactory, he said, to win a substantial majority. He also contended, moreover, that a routine devotional exercise was neither good religion nor good education.³⁸

A most significant presentation to the House Judiciary Committee came in the form of a statement opposing the Becker Amendment signed by two hundred and twenty-three leading constitutional lawyers and professors of law. The law professors represented all the leading law schools in the country, private and public, denominational and secular.³⁹ The statement recognized that Supreme Court decisions have, on occasion, been controversial and subject to strong criticism, in some cases, perhaps, even by a majority of Americans. It was too early, however, to determine whether the decisions in question here were in that category, the statement noted. In any event, it argued, it would be far wiser to accept the decisions than to amend the Bill of Rights.

The statement acknowledged that it was, of course, constitutionally possible to amend the Bill of Rights. It pointed out, however:

American liberties have been secure in large measure because they have been guaranteed by a Bill of Rights which

the American people have until now deemed practically unamendable. If now, for the first time, an amendment to 'narrow its operation' is adopted, a precedent will have been established which may prove too easy to follow when other controversial decisions interpreting the Bill of Rights are handed down.

In conclusion it noted, "Whatever disagreements some may have with the Bible-Prayer decisions, we believe strongly that they do not justify this experiment."

Individual testimony against the amendment came from professors of law from highly diversified law schools. These included, for example, Jefferson B. Fordham, Dean of the University of Pennsylvania Law School; William G. Katz, University of Wisconsin Law School; James C. Kirby, Jr., Vanderbilt University Law School; Phillip B. Kurland, University of Chicago Law School; and the Reverend William J. Kenealy, Boston College Law School.

Father Kenealy told the committee that he did not agree at numerous points with the court's decisions, but he did agree with the results.⁴⁰ Ritual prayers and Bible reading, the Jesuit priest insisted, violated the constitutional and personal right of free exercise of religion. This personal right he explained was "independent of political controversies, subject to no primaries or elections, above popular passions and majority votes, and beyond the power of state officials and school boards, guaranteed by our Constitution and entrusted by it to the protection of our courts."

All available evidence suggests that the preponderant majority of educators on all academic levels and from public and private schools alike, supported the Supreme Court and opposed the Becker Amendment or similar devices to alter the First Amendment.

REACTION OF CONGRESS TO THE SCHEMPPE CASE

When the news of the Supreme Court's action in the Schempp case first reached Congress, the initial reactions of most of the members willing to be quoted tended to be more restrained than critical. Senate Democratic leader Mansfield said only: "The Supreme Court has its function — we have ours." Asked if the Senate would drop its opening prayer, he replied quickly: "No Sir!"⁴¹

Senator Aiken (Rep., Vt.) said: "If it is illegal to quote the Bible or read the Lord's Prayer in the public schools it's illegal in Congress, too." He went on to point out, however, that the Supreme Court decision could be changed by a constitutional amendment.⁴²

Senator Carlson (Rep., Kans.) who headed the International Christian Leadership movement also was unhappy. "Prayer and religious services are fundamental in the nation's history, and I regret to see a decision that in any way lessens the need for sound principles that are so basic."⁴³

Although initial reactions in the Congress were not enthusiastically in support of the court's decision, they did lack the vitriol and rancor of the later reactions of some politicians both in Congress and out.

POLITICS, PRESSURE, AND THE BECKER AMENDMENT

As on most key issues, the division of opinion on the Becker Amendment did not split according to strict party lines. It appears rather that a coalition reaction resulted similar to that apparent in congressional behavior on other major issues. Southern Democrats and "conservative" Republicans tended to favor the amendment, while northern Democrats and "liberal" Republicans tended to oppose it.

There were, however, some notable exceptions to this generalization.

Two months before the House Judiciary Committee began its hearings, House Republican leaders endorsed the amendment. Representative John W. Byrnes of Wisconsin, Chairman of the House Republican Policy Committee, informed the press that this group went on record February 18th in support of the proposal. While not specifically saying so, the context in which this announcement was made suggests it was the hope of House Republican leaders that their members would sign the discharge petition initiated by Representative Becker, thus removing the proposal from the Judiciary Committee.⁴⁴

An example of congressional opinion supporting the Becker Amendment can be seen from the first day's testimony before the House Judiciary Committee when twenty-four members of the House of Representatives appeared, all supporting the amendment. Of this total of twenty-four, twelve represented southern or border states, eight came from the Middle West, while only four came from the states with major metropolitan areas on the east coast. During the first day of hearing fourteen of the twenty-four testifying for the amendment were Republicans and ten were Democrats. But of the Democrats nine came from southern or border states.

The relatively restrained approach of the House Republican Policy Committee opposing the Supreme Court's decisions and supporting the amendment was not the one followed by all Republican congressmen when discussing the issue. A letter from Congressman George A. Goodling (Rep., Pa.) to R. H. Edwin Espy, General Secretary of the National Council of Churches of Christ, was made part of the Judi-

ciary Committee's record. The congressman took Mr. Espy to task because in the congressman's judgment the elected leaders of the National Council of Churches in opposing the amendment did not represent or speak for forty million church members. If Mr. Espy believed that the leadership reflected its membership's views, Congressman Goodling wrote, ". . . you simply don't know what you are talking about." If Mr. Espy would come down from his "exalted" position, the congressman thundered, "You will discover . . . that the chiefs and the Indians are in violent disagreement." Furthermore, Congressman Goodling asserted, ". . . if ever any organization aided, abetted and gave comfort and encouragement to atheists, your organization would head the list."⁴⁵

The impact of his constituents' mail was also alluded to by Congressman Goodling in his letter to Mr. Espy. He pointed out that during the week of April 26, his office had received more than five thousand communications "with more coming in daily." While in no way attempting to minimize the torrent of organized mail sent to congressmen on this subject, it seems clear that it varied from one congressional district to another. Somewhat earlier, Representative Otis Pike (Dem., N.Y.) said that since the mail campaign began several months before, his office had received a total of about four thousand pieces of mail favoring the amendment and perhaps fifty against it.⁴⁶ Congressman Paul B. Dague (Rep., Pa.), in his testimony supporting the Becker Amendment, reiterated the experience of some of his colleagues by noting "that no single issue arising in the last 17 years has elicited such a reaction from my constituents as has the Court's decision in the *Schempp* and *Murray* cases."⁴⁷

There is little doubt that from the first, Chairman

Emanuel Celler of the Judiciary Committee was less than enthusiastic about proposals to amend the First Amendment and made it clear that neither he nor the committee was going to be stampeded into rushing an amendment out for floor debate.⁴⁸ From the mail and cries of anguish of some congressmen, he concluded even before the hearings began, that one thing was already obvious — that there are eighty-three different religious sects in this country with fifty thousand members or more.⁴⁹ In this, Representative Celler was accurately analyzing the high degree of religious pluralism in this country, a fact that seemed to have escaped other congressmen who apparently saw a homogeneity of religious attitudes which does not exist.

Before and during the hearings Mr. Celler was supported by other members of the committee who insisted that whether the Congress or the courts were in favor of religion *per se* was not the issue in this debate. Congressman Roland Libonati (Dem., Ill.), for example, pointed out repeatedly that the Becker Amendment would cancel the "Freedom of Religion" Clause and "Establishment of Religion" Clause of the First Amendment by superseding it as a later reflection of constitutional policy.⁵⁰

Representative James C. Corman of California, another member of the committee, noted that critics of the committee feared it would take "either a negative attitude or that we would be reaching an un-American decision . . . if we should decide that those who propose amendments are unable to improve on the works of Madison and the First Amendment." While he urged members of the committee to be patient in hearing opposing views, he concluded, ". . . I have impatience with those who would be changing Madison's work."⁵¹

Representative Corman and Representative Robert Kastenmeier of Wisconsin, as well as Chairman Celler, pointed to the possibility that the amendment, if adopted, would override those state court decisions and statutes prohibiting Bible reading and prayer in the public school. The amendment would preempt the field and force major changes upon a number of states. "Those who are asking that we get back to where we have been, are trying very desperately to take some of us along a road which we have never been, which would be state administration of religious activities," Mr. Corman observed.

Following these comments by northern Democrats, Representative Whitney of North Carolina, a supporter of the amendment, commented dryly, "I know some of us welcome these three colleagues of ours on the states rights bandwagon." And Representative William Cramer (Rep., Fla.) sharply disagreed with the view that the amendment would override state practices prohibiting such programs.⁵²

Representative Charlotte T. Reid (Rep., Ill.) complained to the committee that, as a result of the court's decisions, "the malleable student cannot avoid the impression that his Government is, somehow, Anti-God."

This prompted a sharp response from Representative John V. Lindsay, a New York Republican. "We will be taking testimony for weeks," Representative Lindsay said, "and we should require that witnesses address themselves strictly to the constitutional question we face. We should not," he insisted, "permit this to become mixed up with morality and emotionalism. We are not anti anything . . .," he concluded.⁵³

STATE GOVERNORS AND THE BECKER AMENDMENT

Only two state governors appeared before the Judiciary Committee during its hearings on this subject. Both were from the South and both supported the amendment. Governor Farris Bryant of Florida contended that compulsory attendance at public schools and a barring of prayers from classrooms formed a combination unfair to the pupils. "By what right," he inquired, "can they be required by the federal government or any government, to live most of their waking hours during most of their youth in an environment from which an acknowledgment of prayer to God is artificially restricted?"⁵⁴

The peripatetic Governor Wallace of Alabama also strongly supported the Becker Amendment or something similar to it in his testimony before the Judiciary Committee. His appearance before the committee coincided with that of Bishop Sheen. Some observers felt that Bishop Sheen's position was not enhanced noticeably by this juxtaposition, inasmuch as the two men's names tended to be merged in the headlines of newspapers covering the story.⁵⁵

Governor Wallace told the committee that the court decisions were "part of the deliberate design to subordinate the American people, their faith, their customs and their religious traditions to a Godless state." The Supreme Court, he pointed out, had made "a hollow mockery of the guarantees of the Bill of Rights and sounded the death knell to the democratic institution of local schools controlled by local elected school officials." Nonetheless, the Governor insisted, no school prayers should be made compulsory. When such

prayers were used, he contended they should be composed by "decent local folks," who would know just what should be said.⁵⁸ The Governor, of course, ignored the fact that in the world of reality which spawned these disputes, the "decent local folks" could not agree on whether such practices were proper, let alone which prayer should be repeated in the public schools.

INTEREST GROUP REACTIONS

In addition to the activities of religious groups and educators who were immediately concerned with the issues involved in the Becker Amendment, a number of major national-interest groups took an active role in the debate. Their particular positions should come as no surprise to anyone familiar with the political polarization of the mid-1960's. If anything, they help bear out the fact that the debate over the court's decisions on prayer and Bible reading was not isolated from the political crosscurrents of the day.

In May of 1964, the American Legion came out in support of an amendment similar to that sponsored by Representative Becker. This organization, claiming three million members, stated that if the court's decisions were not modified, "there will arise from the grass roots a cry of indignation which war veterans and their families will not only support but lead and which will exceed the protests already registered in Congress."

Daniel J. O'Connor, Chairman of the Legion's National Americanism Commission, however, told the Judiciary Committee that his organization while opposing these decisions did not share the criticisms of the Supreme Court, "which would make the judiciary a whipping post for ex-

tremists." But he went on to argue that the decisions were coercive and despite arguments to the contrary, interdicted all prayers, whether voluntary or under school, city or state supervision.⁵⁷

A spokesman for the American Farm Bureau Federation, which claimed to represent over 1,628,000 farm and ranch families, said this group not only opposed the court's decisions but supported an amendment to the Constitution overriding them. Mrs. Haven Smith, Chairman of the Women's Committee, testified before the Judiciary Committee and argued that the court's decision "created a great fear among our people. . . . The vast majority of American farmers and ranchers," she explained, "do not believe that religion should be confined to one day of the week, or to the church, or to the home."

Mrs. Smith went on to state "there is a present and pressing need to establish clearly that our Constitution does not make antagonists of religion and government." Furthermore, she advanced the belief that the rationale of those initiating actions seeking to enjoin prayer and Bible reading "has not been an effort to neutralize public education in regard to religion, it has instead appeared to be an effort to outlaw and censor traditional religious references and activities in our public school system."

Students of interest-group behavior should see some significance in the fact that under questioning by Chairman Celler, Mrs. Smith admitted that the policy position supporting a constitutional amendment had not emanated from the grass-roots membership as she had said earlier. Instead, it had been adopted by the American Farm Bureau Board of Directors in executive committee. The resolution of the

membership adopted at its national convention stated merely: "We believe the decisions of the Supreme Court in prayer and Bible reading cases constitute an erroneous departure in constitutional interpretation."

Congressman Celler quickly called this discrepancy to the attention of Mrs. Smith. He pointed out:

It is quite a different thing when you are discussing a matter of such paramount importance as a constitutional amendment to say that resolutions which have been adopted, *which do not even mention a constitutional amendment* [emphasis added], can be construed to favor a constitutional amendment. . . . I don't care what executive board says so, it cannot possibly be so when the original source of power comes from the original resolution passed by the Farm Bureau Federation which, in turn, says nothing about a constitutional amendment. . . . Maybe that is what the executive board wanted or desired, but it is certainly not a part or parcel of the resolution originally adopted.⁵⁸

Months before this, however, other groups less well known but highly active had begun a concerted drive to bring pressure on Congress to negate the court decisions. Testimony before the House Judiciary Committee reveals that as early as October 17, 1963, groups such as the International Christian Youth of the U.S.A., and its subsidiary, "Project America," launched the "Return the Bible to the Schools Campaign." Their goal was to obtain one million signatures and petitions to congressmen in support of the Becker Amendment.⁵⁹ They did not stand alone.

The John Birch Society was active in their behalf as is revealed in the John Birch Society Bulletin of March 2, 1964. This document briefly summarized the background of the Becker Amendment and the problem faced by its supporters in obtaining enough signatures on a discharge petition to remove it from the Judiciary Committee of the

House. The importance of the discharge petition to the success of the amendment is stressed. "It is almost certain that the Bill will be passed if it can be brought to the floor of the House," the bulletin reported. "This would start the wheels rolling," it predicted, "for almost certain ratification of the amendment by the required 38 legislatures."

This publication of the John Birch Society went on to emphasize the significance of passing the amendment. It explained: "This forced reversal of the winds blowing atheistic communism in, as the official 'atmosphere' of our country, would be a body blow to the morale of all the pro-Communist bellows behind those winds — which means most of the liberal establishment."

The bulletin concluded by urging members to write to their congressmen and to the "Americanism Committee . . . or to the International Christian Youth — U.S.A., Collingswood, New Jersey, or to both. They will give you the information and guidance to do a really effective job."⁶⁰

Testifying before the committee in this connection were Carl Thomas McIntire, National Chairman of the International Christian Youth of the U.S.A., accompanied by Larry Miller, National Director of that group's "Project America" and "Return the Bible to the Schools Campaign." Under careful questioning by members of the committee, especially Congressman Senner (Dem., Ariz.), these young men admitted that the International Christian Youth of the U.S.A. was in fact a part of the International Council of Christian Churches (which they defined as composed of conservative Protestant congregations), although in these two programs, they said, they sought support from youth of all denominations.

They took credit also for their organization's action in

circulating thousands of post cards to be sent by individuals to their congressmen urging passage of the Becker Amendment. But they denied that their "Project America" was the same one referred to in the *Liberty Letter* of May, 1964, distributed by the Liberty Lobby. The purpose of the *Liberty Letter* is clarified in that issue to correct any wrong ideas that subscribers may have. It explained:

They think that its purpose is to inform liberals and do-nothings about the communist conspiracy. Or they think that its purpose is to tickle their intellect, like a crossword puzzle or a book by Bill Buckley.

But LIBERTY LETTER is neither a philosophical treatise nor an exposé. LIBERTY LETTER is written to Conservatives who already 'know the score' and want ACTION.⁶¹

This issue of the *Letter* irritated committee members for a number of reasons. Not only did it invite people to an old-fashioned political rally where "the distinguished columnist Westbrook Pegler" would "lower the boom" on the White House crew and its pinko friends, the *Letter* contained also a sharp attack on Chairman Celler of the Judiciary Committee. After warning its readers not to be deluded into the belief that "Manny [Celler] has suddenly 'got religion'" because he had scheduled hearings on the Becker Amendment, the *Letter* noted:

Celler knows that if the Becker Resolution ever reaches the floor of the House it will be passed by an overwhelming majority and sent on its way to the Senate and the individual states to certain victory. To prevent this savage slap at the Warren Court, Arch-secularist Celler will pull out all stops to tie the Becker Amendment into endless knots of red tape until the Congress adjourns for this summer's political conventions.

The two young men who appeared before the committee to represent the International Christian Youth of the U.S.A., insisted under questioning that the various phases of its operation were in no way connected to the Liberty Lobby or similar groups, despite the similarity of the post cards designed to be sent to congressmen which emanated from the several organizations. But Mr. Miller replied to Congressman Corman that he was happy the congressman had read into the record the endorsement of their project by the John Birch Society.

Their prepared statement to the committee said, "We believe that you must move with great haste to guard our Constitution which provides three distinct branches of Government, *taking away from the Judicial branch the final authority over all legislation* [emphasis added] and asserting the power properly vested in you, and only you." Despite the seemingly clear-cut recommendation to abolish the power of judicial review contained in this testimony, Mr. Miller under questioning from Representative Rogers insisted that nothing in the statement was meant "to imply that we would be taking away anything from the judicial branch."⁶²

TURNING OF THE TIDE

By mid-May, 1964, it would appear from the Judiciary Committee hearings and from press reports, that the issues and forces involved in the movement for the Becker Amendment had come to be better understood in Congress and throughout the country. When this occurred, it seems to this writer that much of the impetus behind the drive in favor of the amendment was lost.

Several reasons explaining this phenomenon stand out. First, during April and May of 1964, many religious organizations and leaders went on record as opposing the amendment, with most of them also formally supporting the Supreme Court's decisions. Secondly, the action of the Judiciary Committee itself was extremely important in clarifying and delineating group responses and attitudes toward the proposal and pinpointing the organized nature not only of the mail campaign on Congress, but the organized nature of much of the resistance to the Supreme Court itself. This is one instance where the classic role of congressional hearings to inform both Congress and the public of countervailing forces in the society seems to have been realized.

The actions of Representative Robert L. Leggett (Dem., Calif.) are illustrative of the change in congressional reactions as the hearings progressed. Mr. Leggett, who had been one of the first members of Congress to sponsor legislation to override the Supreme Court's decisions, appeared before the Judiciary Committee on May 20, 1964, and urged that the First Amendment be left unchanged.⁶³ He told the committee that a constitutional amendment in this area could result in religious upheavals, intolerance, and the persecution of minorities. He noted that the hearings had demonstrated that the leadership of the National Council of Churches, Baptist, Quaker, Jewish, Lutheran, Presbyterian, Seventh Day Adventist, Unitarian, and United Church of Christ groups all opposed amendatory action. Moreover, he reminded the committee, Roman Catholics, Episcopalians and Methodists were divided among themselves over support of such an amendment.

Mr. Leggett also alluded to the absence of an understanding of facts which characterized some who supported

the amendment. For example, he said that several thousand of his constituents were still pressing him to keep fighting for a return of prayers to California public schools. What these people failed to realize, he explained, was that there have been no public school prayers in California for sixty-two years because the state constitution bans them.⁶⁴

During the same day the committee heard Representative Paul C. Jones (Dem., Mo.) complain that misinterpretations of the First Amendment, the focal point of the court's decisions, were causing widespread and dangerous confusion. He did not excuse members of the court from contributing to this state of affairs. Mr. Justice Douglas' concurring opinion in the Engel case had declared "in advance," Mr. Jones thought, that many of the religious aspects of government ceremonial and financial operations were unconstitutional. According to the congressman, these ranged from the prayers of congressional chaplains to the motto "In God We Trust" on coins and bills. Rather than concentrating on possible amendments, Mr. Jones said, Congress should repudiate such interpretations "and let the world know we believe in God."⁶⁵

At this time the New York *Times* was reporting that the Judiciary Committee's mail which at first was heavily in favor of an amendment was now running heavier in opposition.⁶⁶ The paper noted that "a similar trend was reported from the offices of individual members, including sponsors of some of the pending 147 overriding resolutions."

Shortly afterward, the sponsor of another proposal to change the First Amendment suggested a compromise to the Judiciary Committee. Representative Cornelius E. Gallagher (Dem., N.J.) asked the committee to convert his proposed amendment into a simple congressional expression in favor

of his plan. His plan would have set aside a few minutes at the beginning of each school day for silent prayer or meditation. Mr. Gallagher told the committee that "This requires no prescribed prayer, it requires no one to pray. It eliminates the need for excusal provisions and the harsh stigma of nonconformity."

Despite the fact that he introduced an amendment on the subject, Mr. Gallagher told the committee he agreed with the court decision that banned school prayer composed and ordered by school management. He expressed the belief that the Bill of Rights needed no amendment, but argued that some action was now required by Congress.

The New York *Times* reported that the Judiciary Committee showed "immediate and cooperative attention." Chairman Emanuel Celler observed later, the newspaper noted, that this or a similar measure might serve to get sponsors of many of the pending one hundred and forty-seven resolutions calling for constitutional amendments "off the hook."⁶⁷

The Judiciary Committee hearings were concluded June 3, 1964, with the committee taking no action on any of the proposed amendments then or later and Congress was to adjourn without acting either upon a discharge petition or upon the substantive proposals. The tide of public reaction seemed to turn as churches, Congress, and many other groups, by clarifying the significance of the court's rulings and their scope, placed matters in a clearer perspective and stemmed one of the most powerful onslaughts upon basic constitutional guarantees in the history of the United States.