

# TWO CHEERS FOR A SCHOOL PRAYER AMENDMENT

By William A. Donohue

Newt Gingrich knows how to get people's attention. Even before he became Speaker of the House, Congressman Gingrich was upsetting the status quo by recommending such heresies as a school prayer amendment. It didn't take long before reporters were calling the Catholic League asking for our comments. Many were surprised by our ambivalent response. On the one hand, the initial decision to ban prayer in the schools was fundamentally flawed and could use a good corrective. On the other hand, amending the Constitution is serious stuff and should be done only as a last resort and only for issues of the utmost importance. Therefore, two cheers for a school prayer amendment is about all we can offer.

The so-called establishment clause of the First Amendment was originally meant to bar the establishment of a national church and to prohibit preferential treatment by the government of one religion over another. We know this because that is what James Madison said it meant, and he should know because he authored the amendment. But given the disposition of judges to deconstruct the law, it matters little what the actual text says anymore: the unelected elites simply do as they please. Indeed the decision to ban school prayer, *Engel v. Vitale*, was of this nature, and that was in 1962. Yet from 1791, when the First Amendment became law, to 1962, a school prayer was as natural a part of education as reading and spelling. But then the innovators took over, rendering the original intent of the amendment all but incoherent.

The decision to ban prayer in the schools was not only bad law, it was bad logic. It makes no sense to open each day's session of the House of Representatives with a prayer and ban

school prayer. It makes no sense to open every day's session of the Senate with a prayer and ban school prayer. It makes no sense to open every day's session of the Supreme Court with a prayer and ban school prayer. It makes no sense to open every presidential term with an oath asking the protection and help of God and ban school prayer. It makes no sense to have 'In God We Trust' on coins – it's been there since 1865 – and ban school prayer. It makes no sense to have the President proclaim a National Day of Prayer, which has been the case since 1952, and ban school prayer. It makes no sense to have the words "one Nation under God" in the Pledge of Allegiance, a tradition since 1954, and ban school prayer. None of this makes any sense but none of it seems to matter, hence the push for a school prayer amendment.

Those who fear that a mandated school prayer would intrude on the rights of those who are non-believers have nothing to fear. That issue was settled in 1943 in the *Barnette* decision: no student is required to say any prayer in school. Surely if a school prayer amendment were to pass, the ruling in *Barnette* would hold. We know that something like 94 percent of the American people believe in God and something like 80 percent believe in school prayer, though the number supporting a constitutional amendment is less than 70 percent. It appears unlikely, then, that a school prayer amendment would engender widespread resistance.

Would the Catholic League support a school prayer amendment? If it were voluntary and non-denominational, there would be no problem with such an amendment, but it would not be our preferred course of action at the moment. In this vein, however, it should be said that the prayer that was originally struck down was both voluntary and non-denominational. Here's the exact text of the prayer that the Supreme Court objected to:

"Almighty God, we acknowledge our dependence on Thee, and we beg Thy blessings upon us, our parents, our teachers and our

country."

That prayer was adopted by the State Board of Regents in New York State and led to practically no complaints prior to the 1962 decision. Of course, a constitutional amendment would avoid a Supreme Court challenge and would therefore settle the issue once and for all. But the question that must be asked is whether it would be judicious to amend the constitution in order to set the record straight.

Amending the Constitution is not to be taken lightly. That is why the American people are somewhat less enthusiastic about supporting a school prayer amendment than they are about supporting an abstract right to pray in the schools. To be sure, it is tempting to support a school prayer amendment on the sole grounds that it is high time we send a message to the imperialistic federal bench. Indeed it might make a great deal of sense to tame the Supreme Court by by-passing it altogether the way it has by-passed the expressed will of the American people, as registered in the people's representatives in the legislature. But if there were another way to accomplish the goal of allowing school prayer, that would still be preferable. Fortunately, there might be.

The Supreme Court has yet to rule on the constitutionality of student-initiated prayer, and if that were to pass constitutional muster, perhaps no amendment would be necessary. In the past year and a half, Tennessee, Mississippi, Alabama and Virginia have all passed laws allowing student-initiated prayer, and though these laws are presently being tested in the courts, it is possible that the high court will find such prayers constitutional. While some would say that nothing less than teacher-initiated prayers will do, it is not likely that the American people would press for a constitutional amendment if student-initiated prayers are found permissible.

But the real issue in the schools is not prayer, it is

religious expression. It is absurd that religious expression is accorded a second-class status by school administrators. It is even more absurd to think that the same ACLU lawyers who would defend simulated sex on stage – that is what a student play of “Oh! Calcutta!” would be – would nonetheless object if the same students put on the play “Jesus Christ Superstar” (the ACLU once sued Bethel High School in the state of Washington over this). Unless religious speech is treated on a par with other types of speech, there will be no reason to rejoice, not even if prayer is allowed. If those who are currently pushing for a school prayer amendment were to push instead for an amendment that would secure basic religious speech rights in the schools – and in other public forums as well – they would be making a contribution that would have real-life benefits to people of every faith.

In the meantime, what should be done immediately is an all – out effort to educate students about the world’s religions. It is illegal to teach religion in the schools but not to teach about religion. In other words, it is against the law to indoctrinate students into the faith of a particular religion, but it is not illegal to instruct them on the traditions, customs, social conventions and belief systems of any of the world’s religions. This was made crystal clear in the 1963 *Schempp* decision that disallowed Bible reading: the court took pains to say that it was not barring the objective presentation of the subject of religion. What this means is that it is not okay to have a true and false test asking students whether Jesus is the Son of God, but it is okay to have a true and false test that asks whether it is a belief among Christians that Jesus is the Son of God.

It would be great if students came to an appreciation of the world’s religions. It would be even greater if students were to learn of the role that religion has played in the formation of the nation’s history. The social functions and historical importance of religious ideas could also be presented. But

right now, thanks to intimidating ACLU lawsuits, almost any mention of the word religion is enough to make school administrators run for cover. Even worse, as New York University professor of psychology Paul Vitz has shown, the elementary and secondary school texts are devoid of almost any mention of the role religion has played. Thus everything from the abolitionist movement to the civil rights movement of the 1960s are discussed absent any reference to religion.

Those who are strongly opposed to prayer in the schools, whether initiated by students or teachers, should be expected to support vouchers in the schools. After all, if there were real choices in education, the school prayer issue would soon become moot. It is outrageous that many of the same people who call themselves pro-choice on abortion are quick to deny students the right to pray in school and are just as defiant in denying choice in education. That they have succeeded in having it both ways may have been true in the past, but given the mood of today's electorate, the past is not a trustworthy guide to the future. In any case, those who don't want prayer in the schools should be expected to put up or shut up on the question of vouchers.

Student-initiated prayers and vouchers are clearly preferable to a school prayer amendment, and that is why the Catholic League can't get too caught up in the current battle. But if nothing else, the idea of the people taking command of their rights by challenging the wisdom of the judiciary is a very, very pleasant thought. It is hoped that those who helped to create this mess will now assist us in finding a way out of it. They can begin by allowing student-initiated prayer and giving the green light to vouchers. But if the Supreme Court balks on these two measures, we should go for broke and get an amendment that guarantees basic religious speech rights in the public square, the kind of amendment that would bring us back to the point where we were before all this madness began.