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Box 15, Folder 10, Church-State, 1977-1978.



✓  
The American Jewish Committee  
Long Island Chapter  
5 Bond Street  
Great Neck 11021

Date 2-10

TO:

Marc Tannenbaum

FROM: PHILLIP SAPERIA

✓ For your information





**CATHOLIC LEAGUE** for Religious and Civil Rights

1100 WEST WELLS STREET, MILWAUKEE, WISCONSIN 53233

414 / 289-0170 • 414 / 289-0325

January 24, 1977

Reverend George P. Graham  
Co-Chairman, Catholic-Jewish Relations  
Committee of Nassau-Suffolk  
Diocese of Rockville Centre  
The Tribunal  
253 Sunrise Highway  
Rockville Centre, New York 11570

Dear Father Graham:

Thank you for your letter concerning the Catholic-Jewish dialogue in your area.

Let me make a few points to set the context of the situation. In 1945 the American Jewish Congress merged its Commission on Law and Legislation with its Commission on Economic Discrimination to form a new entity, the Commission on Law and Social Action. The president of the AJC, Dr. Stephen S. Wise, asked Alexander H. Pekelis, director of the old Commission on Law and Legislation, to prepare a program of action and philosophy for the new Commission. This paper has served as a basic constitution for the ACJ on matters of law and social action.

What is particularly interesting about Dr. Pekelis' paper is its emphasis on Establishment of Religion questions to the exclusion of free exercise questions. He remarks that "strictly speaking, the first freedom guaranteed by the Bill [of rights] is not the freedom of religion but a freedom from religion." (Law and Social Action, Cornell University Press, 1950) There is absolutely no mention that the Establishment Clause is a means to protect Free Exercise.

It is within this context, in my opinion, that the AJC often unthinkingly operates when it comes to religious freedom questions. Specifically, on the abortion question, the Congress submitted a brief written by Leo



Pfeffer defending Dr. Kenneth Edelin, the physician who was convicted of manslaughter during an abortion procedure. In this brief, Mr. Pfeffer charges that efforts to pass a pro-life constitutional amendment on abortion violate the First Amendment to the Constitution both in motive and result because of the religious basis of such action.

For example, Mr. Pfeffer says the following:

"We agree with the statement of the United States Commission on Civil Rights that "[o]utlawing abortion is a constraint on the First Amendment when the restriction flows from wholly or partially nonsecular, or religious, motives. When no wholly secular reason can be advanced for the prohibition, then to outlaw abortion is a direct assault on the freedom of conscience protected by the First Amendment." (Brief, p. 6)

"Today, there is practically no substantial support for anti-abortion laws outside organized religion, and this is true not only in the United States but in the rest of the world as well. (Ibid, p. 12) Translated to the present context, this means that government may not determine whether abortion is sinful and immoral as asserted by one religious group or permissible and moral as maintained by other religious groups." (Ibid, p. 15)

Mr. Pfeffer goes on to conclude that "a primary effect of anti-abortion laws is to advance the religious doctrine of those who hold abortion to violate God's law . . . if establishment of religion means anything, it means imposing on all the community the theology of some . . . whether it is frankly designated as theology or labelled morality." (Ibid, p. 22)

It was on the basis of these and other texts that I concluded that "the American Jewish Congress has filed a brief charging that Catholics violate the Constitution by speaking out against abortion." It is clear that religious motivation, in whole or in part, invalidates a law under the First Amendment, according to Mr. Pfeffer. In fact, one cannot even advance moral grounds for pro-life legislation because that too is a violation of the Establishment Clause. In short, those who advance religious, ethical or moral reasons to pass a pro-life amendment are violating the Constitution by doing so.



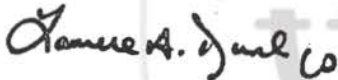
Reverend George P. Graham  
January 24, 1977  
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One final word. Mr. Robison claims that the Maryland "parochiad" referendum was not a manifestation of anti-Catholicism because Methodist, Baptist and other groups joined in the fray. If Mr. Robison is going to indulge in vindication by association, then he is open to questions about the overtly anti-Catholic activities of some PEARL members, to wit Americans United for Separation of Church and State.

Just one example of AU's anti-Catholicism: C. Stanley Lowell, a long-time associate director of AU, said in his pamphlet "Truth Series, #6," published by AU that "the Roman Catholic enclave in our country is a divisive influence. I disapprove of the kind of narrow limited teaching done by brainwashed nuns and priests in parochial schools. Training of this kind may qualify for citizenship in a totalitarian state, but it is not adequate for a citizen of a free country."

Isn't that old-fashioned nativism at its worst?

Sincerely,



Lowell A. Dunlap, Ph.D.  
Assistant Executive Director

LAD:vr





*More Donabson*

THE AMERICAN JEWISH COMMITTEE

date March 23, 1977  
to Members of the Domestic Affairs Commission  
from Seymour Samet (SD)  
subject DAC Meeting - March 31, 1977 - 5:00 P.M.  
Institute of Human Relations, 165 E. 56th St., NYC 10022

Major discussions are now being held throughout the nation re the implications of the forthcoming Supreme Court hearing on the Bakke case. This interest has been accentuated by virtue of a statement by Joseph Califano, Secretary of H.E.W., who was reported to have said he favors quotas as a technique for overcoming past discrimination. The Bakke case raises the question of quotas and affirmative action in a manner which attorneys believe may significantly influence the future of governmental programs affecting minorities and women.

At our March 31st meeting we will consider whether we should recommend that AJC submit an amicus brief in this case. It is most important, therefore, that you read the attached background paper which describes the issues before the court. If for any reason you will be unable to attend the meeting, we would like very much to hear from you either by correspondence or by telephone so that your views may be reflected in our discussions.

We will also be discussing recommendations by the Education Committee in opposition to AJC going on record as favoring tax credits for parents of children attending higher educational institutions. Tax credits have been proposed by those who believe that middle-income families ought be given assistance in meeting some of their economic problems. The assumption is that not only is this a legitimate response to their needs but it would serve an intergroup relations purpose by reducing middle-class hostility at what it perceives to be an exclusive concern for the economic problems of low-income minority group members. Opponents have serious questions re this use of the tax system.

The Education Committee in voting to oppose AJC support for tax credits has indicated their reasoning is not because of a concern over church/state separation. The two brief background papers which are enclosed describe the rationales, both pro and con, for the discussion we will have at our next meeting.

SS/sso  
77-600-26

Encl. 77-620-18 (Bakke)  
77-620-13 (Church/State)  
77-620-14 (tax credits)



3/15/77

Bakke v. The University of California at Davis Medical School

Summary of facts set forth in California Supreme Court Decision

I. The Issue

Does a special admissions program of the University of California at Davis Medical School which benefits disadvantaged minority students offend the constitutional rights of better qualified applicants denied admission because they are not identified with a minority?

Bakke filed a complaint against the University and asked the Court to compel the University to admit him, claiming that he was rejected because he is white, that all students admitted under a special program were members of racial minorities and that they were admitted, as a group, under separate, preferential standards. He claimed that he was the victim of unconstitutional discrimination in violation of the Equal Protection clause of the 14th Amendment to the U.S. Constitution.

The University defended its special admissions program as valid. The minority status of the applicant, it said, was only one factor among many in selection for admission. The purposes of the special program were to integrate and promote diversity in the student body and in the medical profession and to expand medical education opportunities to persons from economically or educationally disadvantaged backgrounds.

The trial court ruled that the special admissions program was invalid because it operated to discriminate by reason of race. The court said that Bakke was entitled to have his application evaluated without regard to his race or that of any other applicant. However, it also determined that Bakke nevertheless was not entitled to be admitted because, in the two years in which he had applied, he would not have been selected even if there had been no special program for minorities.

Both parties appealed.

The California Supreme Court, in a 6-1 decision, affirmed the lower court holding that the special admissions program was invalid. It also refused to order that Bakke be admitted to the University. However, on the question of Bakke's right to be admitted, while it agreed with the lower court's refusal to order his admission, it

(over)



concluded that because the University had discriminated against Bakke because of race, the University should shoulder the burden of proving that he would not have been admitted even without the special admissions program. It therefore remanded the case to the trial court for a hearing on this issue.\*

The U.S. Supreme Court has agreed to hear the University of California's appeal and has stayed the order of remand to the trial court pending outcome of its deliberations.

## II. The Admissions Procedure

Applicants must take the Medical College Admissions Test, and complete an application giving a description of extracurricular and community activities, work experience and personal comments, in addition to submitting two letters of recommendation. In 1973, applicants were given the option of asking to be considered by a special admissions committee, based on economic or educational disadvantage. In 1974, (the second year that Bakke applied) the basis for the option was changed to membership in a minority group. Between 1971 and 1974, both white and minority applicants applied for the special program, referred to in brochures as a program to increase opportunities for medical study for students from disadvantaged backgrounds. However, all students accepted under the special program have been minorities.

All applicants are rated against those in their group only. Under the regular admissions program, applicants with a grade point average below 2.5 are rejected summarily. Of those with higher scores, a certain number are selected for interview and the interviewer grades the applicant on a scale of 0-100. The file is then reviewed by other members of the regular admissions committee, without knowledge of the numerical score given by the interviewer. Each gives his/her own numerical score. The scores are then tallied. All numerical scores are based on motivation, character, imagination and the type and locale of the practice anticipated, as well as on grades and test scores.

Those who are judged qualified for the special admissions program are not automatically disqualified if their grade point average is less than 2.5. If called for an interview, it is conducted by a faculty and student member of the special committee, who prepare a written summary of qualifications, with recommendations, for actual determination by the regular admissions committee.

\* The California Supreme Court subsequently directed that Bakke be admitted. *JK*



Bakke's application warranted an interview in both years for which he applied. He was neither admitted nor placed on the alternate list in either year.

Some minority applicants who were admitted in those years through the special program had lower GPA's and MCAT scores, as well as University determined combined ratings.

### III. The University's appeal

The trial court found that although the special admissions program purported to be open to educationally or economically disadvantaged students, only minority students had been admitted and this was invidious discrimination. The University did not challenge the finding that non-minority applicants were barred from participation in the special admissions program.

The California Supreme Court observed preliminarily that "although it is clear that the special admissions program classifies applicants by race, this fact alone does not render it unconstitutional." However, it found the Bakke case different from the precedents relied on by the University. In those precedents the extension of a right to minorities did not deprive non-minorities of rights they would otherwise enjoy. In Bakke, the Court said it was clear that the special admissions program did so deprive non-minorities. The fact that all minority students may have been fully qualified did not alter the Court's judgment.

The Court then turned to the question of whether a racial classification intended to assist minorities but which also has the effect of depriving others of benefits they would enjoy but for their race violates the Constitutional rights of the majority. It said that it could not agree with the proposition that deprivation based on race should be viewed differently because the race discriminated against is majority rather than minority. The Equal Protection Clause applies to all persons.

The next question was whether the University had demonstrated that the special admissions program was necessary to serve a compelling government interest and that the objectives of the program could not reasonably be achieved by some means which would impose a lesser burden on the rights of the majority.

(over)



The University justified the program on the grounds that admission of minority students is necessary to integrate the medical school and the profession, influence students and members of the profession to become aware of and assist in meeting the needs of minorities and provide role models. Also, it hoped to increase the number of doctors serving the disadvantaged community and develop a greater interest in treating certain diseases.

The California Supreme Court rejected the assertion that minorities would have more rapport with doctors of their own race or that black doctors would have a greater interest in treating "black diseases." The Court further stated that it was not convinced that the University had demonstrated that it could not achieve the other basic goals of the program in a means less detrimental to the rights of the majority.

The University claimed that if special consideration is not afforded minorities, almost none would gain admission. But the Court said no evidence had been introduced as to the nature of admissions standards prior to the special program, and speculated that virtually determinative weight might have been given to grades and test scores. If so, the Court said, the fact that few minorities were accepted before 1969 was not necessarily attributable to the absence of racial preference but rather to the use of strict grade standards. Moreover, the Court said, these were not the only available alternatives. The University is not required to choose between a racially neutral standard applied strictly according to grades and a standard which accords racial preference. "There is no rule of law which requires the University to give determinative weight in admissions to these quantitative factors." The University is entitled to consider other factors such as the interview, recommendations, character, professional goals, etc. "The standards for admission employed by the University are not constitutionally infirm except to the extent that they are utilized in a racially discriminatory manner. Disadvantaged applicants of all races must be eligible for sympathetic consideration..." The Court "does not compel the University to utilize only the highest objective academic credentials as the criterion for admission."

In addition to flexible admission standards, the Court suggested aggressive recruitment, remedial schooling, increased places, etc. It also suggested more precise and reliable ways than racial criteria to identify applicants who are genuinely interested in the medical problems of minorities, such as demonstrated concern supported by a declaration to that effect.



The University claimed that it is valid to give preference to minorities based on race even if the classification results in detriment to the majority. The Court ruled that the cases cited as precedent, had involved overt prior discrimination in the past and that preferential treatment was necessary as affirmative relief to overcome this. The Court said there was no evidence in the record to indicate that the University had discriminated against minority applicants in the past.

Justice Tobriner dissented, claiming:

- 1-- By failing to distinguish between invidious racial classifications and benign racial classification, the majority utilized the wrong standard.
- 2-- The majority incorrectly asserted that students accepted under the special admission program are less qualified. The record established that all are fully qualified under the school's own standards.

He also found that:

- 3-- The use of racial classifications to promote integration or to overcome the effects of past discrimination was neither "suspect" nor presumptively unconstitutional.

At the conclusion of his lengthy and well documented dissent, Justice Tobriner noted that "It is anomalous that the 14th Amendment that served as the basis for the requirement that elementary and secondary schools could be compelled to integrate, should now be turned around to forbid graduate schools from voluntarily seeking that objective."

3/15/77  
Marilyn Braveman  
77-620-18



March 14, 1977

Report to DAC From National Education Committee on AJC support for higher education, including a discussion of tax credits for parents of children attending higher educational institutions.

This year the National Education Committee began a program planning process which built upon both local and national concerns as expressed by our members through a questionnaire and several field and national meetings. In addition to strong support for strengthening our involvement in such issues as overcoming public school segregation, continuing the search for more adequately and equitably funded public schools, coming to grips with the community relations problems of bilingual education etc., there was growing feeling that we should pay more attention to issues in the field of higher education.

I - Background

America's colleges and universities are experiencing serious problems today. The golden post-World War II years of expansion and increasing resources are at the end. Enrollment in many institutions is falling off and costs, even exclusive of inflation, are spiraling. Although many institutions have developed highly creative and innovative responses to their financial problems, tuition in public and independent institutions has risen substantially. This, in turn, causes a further drop in enrollment, leading to fewer available jobs and threatening the existence of many institutions.

II - Why this is of special concern to Jews

Jews have always been deeply involved with postsecondary education. We have used it as a vehicle for upward mobility, preparing us for a wide variety of careers and professions. For many valid reasons, including high educational attainment, large numbers of Jews pursued and continue to pursue teaching careers in colleges and universities.

Many of our young people choose careers which require long years of expensive post graduate work. Although Jewish parents tend to plan ahead for their childrens' education, rapidly rising costs and inflation tend to make such financial planning inadequate or obsolete.



In addition, the shrinking college and university job market has already had its effect on young Jews and others who are looking for jobs or do not have tenure. If national trends continue, layoffs will affect those who already hold tenure in many institutions.

American women from all socio-economic levels and background are increasingly aware of the desire and need to prepare themselves for the job market. Large numbers of Jewish women have been enrolling in or returning to college, particularly as their own children begin to attend school.

### III - Higher Education as an intergroup relations issue

- A - Financing - Many lower and middle income white ethnics, particularly those with several children, are frequently considered too "well-to-do" to qualify for financial aid but in reality are too hard hit by inflation and the job market to afford the high cost of college for their children. They perceive that existing aid programs are designed solely to assist the black population at their expense. However, recent studies show that enrollment of the black middle class is decreasing because of the same kinds of financial problems.
- B - Admissions - In highly selective undergraduate post graduate schools the issue of who should be admitted has been an increasing source of inter-ethnic tension. The problem has been most intense in schools of law, medicine and other helping professions which have always been attractive to Jews.

This was exemplified in the 1974 de Funis case in which a law school applicant claimed that he was discriminated against because of an admissions system which favored minorities. There were an unprecedented number of amicus briefs on both sides, including ours which supported de Funis. The Case was declared moot by the U.S. Supreme Court. In the Fall, the Court will hear a similar case regarding admissions to the University of California Medical School.



- C - Other factors - The situation is further complicated by recent attacks questioning the economic value of a college education. Although these reports, in reality, present a view that the gap in income between earnings of college and high school graduates has decreased and that career choices should be made carefully, they are viewed as yet another "establishment" attack on groups and individuals looking to better themselves through education.

#### IV - Program

- A - Financing - We will urge comprehensive planning by state and Federal Governments to help institutions, both public and private, as well as to expand aid to middle and lower income individuals. This might mean more merit scholarship and other scholarship aid, tuition assistance programs etc. We have considered a recommendation on tax credits for parents of students in higher education, described fully in the accompanying document "Church-State and Higher Education."
- B - Admissions - We believe that it is possible to develop constitutionally sound, fair and rational procedures for admitting those previously denied access and securing the most highly qualified applicants and with the help of a foundation grant are working on doing this with A Better Chance, Inc. and the American Council on Education. In addition, we have studied the Bakke Case and are preparing recommendations for positive proposals to be included in any brief AJC may submit.
- C - We have prepared a background paper, attached on the economic value of a college education which will be the basis of a joint consultation with the National Urban League.

This interest and deepening involvement in higher education does not mean that we will fall into the trap of making a choice between support of higher education, on the one hand, as opposed to support for elementary and secondary education on the other.



The whole spectrum of education is of deep concern to us and we should encourage our membership to become active at all levels.





March 14, 1977

Church State and Higher Education, including a discussion of tax credits for parents of students in higher educational institutions.

Our 1969 pamphlet, Religion and Public Education, will be updated shortly to reflect subsequent modification and developments and to include a position paper on higher education, attached, that was adopted after its publication.

The National Education Committee was asked to review the position paper in the light of developments since 1969 and to make a recommendation for AJC policy on the desirability of tax credits for higher education.

I - Recommendations

After extensive discussion and consultation, the National Education Committee makes the following recommendations:

- 1 - That the 1969 paper be updated and clarified in terms of the U.S. Supreme Court definitions of "church-related" post-secondary colleges and universities.

Specifically, it recommends that the reference to religious symbols be removed and that the focus of our concern should be on the "no religious requirements" for members of Boards of Trustees, faculty and student body.

- 2 - That AJC not favor tax credits. This is not based on church-state considerations but is a public policy decision, as described below.



## II - Discussion

At the November 17 meeting of the National Education Committee, a lengthy discussion of tax credits for parents of children in college was concerned chiefly with AJC church-state policy in higher education which had been adopted in 1969. Members present did not feel sufficiently well informed on church-state issues to vote on tax credits at that time. In addition, there was considerable concern about the wisdom of their use despite acknowledgment of the very real problems of paying for a college education. It was decided to meet again on January 14 after some additional work on the issue.

Members of the Committee were invited to attend a December 8 meeting of the New York, Westchester, Long Island Church-State Task Force where the church-state issue would be the primary focus of the discussion, although it was anticipated that public policy issues also would be raised.

Carol Stix attended that meeting and reported on our Committee's deliberations and questions. After a wide ranging discussion, the Task Force voted that it did not oppose tax credits to higher education on church-state grounds, but expressed serious reservations as to their wisdom.

In addition, AJC members from 9 mid-western chapters who were present at the Mid-West Regional Education Fly-In on December 13, were asked for their reactions to the issue.

Their comments, those of the Task Force and the Education Committee were included in the revised paper sent to the National Education Committee for the January 14 meeting. In addition to describing the church-state issues, this paper recommended that that we not oppose tax credits for parents of students in higher educational institutions that meet the standards of our 1969 paper, with certain clarifications, and provided that it is understood that such support is based on the following factors:

1. In 1972, our Board of Governors voted to oppose tax credits credits for parents of children in elementary and secondary schools. The above recommendation must not be interpreted as a change in that position. The distinction was based on



the fact that our concerns about religious indoctrination in higher educational institutions are not the same as in elementary and secondary education. Education beyond the 12th grade is not a required state function nor is attendance mandated. Most students are better equipped and more inclined to evaluate the teaching and values of these institutions. We consider them mature enough to resist those limited attempts at religious indoctrination that may well occur at institutions of higher education which receive government funds.

- 2- This is an important bridge issue between Jews and Catholics, many of whom have been severely divided on previous church-state issues.
- 3- In order to receive our support, specific proposals may not take the form of a tax deduction, which would eliminate those taking a standard deduction, or otherwise contain provisions that would deny help to poorer tax payers.

Members were asked to respond to a mail poll if they could not attend the February 14 meeting.

The results of the poll, including several votes that arrived after the meeting, several that were added and some that were changed at the meeting, were 11 to 4 in favor of reaffirming our 1969 position and not opposing tax credits in higher education on church-state grounds.

However, those present at the meeting voted to oppose the recommendations by a vote of 5 to 3. Several of those present changed their views as a result of the discussion and felt that the poll had been inadequate.

The persuasive arguments included the following concerns:

- 1 - Tax credits will really not help the poor.
- 2 - There needs to be a coordinated approach to the financial problems of both individuals and institutions. There was fear that legislators would feel their responsibility was at an end if tax credits are adopted.



- 3 - There was fear that tax credits would be used as an excuse for raising tuition and this wiping out their benefits to parents.
- 4 - There was strong respect for the reaction of many of our members from many professions, who had been consulted in this long process that it was unwise and perhaps irrational for the tax structure to be used to achieve unrelated social goals. It was acknowledged that it is indeed true that there are strong counter-arguments, chiefly that the tax structure is used to accomplish unrelated goals, nevertheless, it was considered inappropriate for AJC to recommend such action.

The Committee concluded that we should give higher education high priority and search for other devices to help people pay for it. This is discussed fully in the accompanying paper "Report to the DAC."







# THE AMERICAN JEWISH COMMITTEE

Institute of Human Relations • 165 East 56 Street, New York, N.Y. 10022 • 212/751-4000 • Cable Wishcom, N.Y.

DATE: March 31, 1977

TO: National Legal Committee

FROM: Samuel Rabinove

SUBJECT: Report on Wolman v. Essex

To refresh your recollections of this case, enclosed is an additional set of the materials that were sent to you previously. As you will note, notwithstanding my recommendation, the responses from this committee reflected a sharp division of opinion among its members as to whether or not AJC should file a brief amicus along the lines indicated. At a point when the vote was 11-10 in favor of filing, since time was of the essence, our executive vice president, Bert Gold, authorized us to phone those members who had not yet responded so as to obtain a more definitive tally. This was done by Sandra Rapoport, our Legal Associate, and myself. Even more so than in some of the written responses, the conversations with our members elicited considerable ambivalence about this case. Every member was contacted, and the final vote was 17 "Yes", 16 "No", 5 "Abstain". Quite apart from those who voted "No" or "Abstain", some who voted "Yes" also expressed misgivings about it. Among the reasons given for being troubled about the case were dissatisfaction with the policy modification, concern about the scope of the Ohio law, deference to the strong view of the Cleveland Chapter (which would have preferred to file on the side of ACLU), and that we need not file in every case and perhaps should not file where our chapters are so divided.

In view of the closeness of the vote, Bert decided to submit the matter to the Board of Governors, which was scheduled to meet on March 20, for final resolution. At the Board meeting, the issue was presented by Professor Howard L. Greenberger, Chairman of the National Legal Committee. After a lively debate, the Board voted decisively (better than 2 to 1) by a show of hands not to file a brief in this case. Among the reasons given afterwards by Board members who voted not to file were uncertainty about the problems involved in supporting most parts of the law while opposing others, the sharp split in the Legal Committee and the opposition of the Cleveland Chapter.

The following are, either in substantial part or in their entirety, the remarks included on the mailed responses from the members of this committee:

ELMER L. WINTER, President ■

RICHARD MAASS, Chairman, Board of Governors ■ MAYNARD I. WISNER, Chairman, National Executive Council ■ THEODORE ELLENOFF, Chairman, Board of Trustees ■ GERARD WEINSTOCK, Treasurer ■ LEONARD C. YASEEN, Secretary ■ ROBERT L. HOROWITZ, Associate Treasurer ■ Honorary Presidents: MORRIS B. ABRAM, LOUIS CAPLAN, IRVING M. ENGEL, ARTHUR J. GOLDBERG, PHILIP E. HOFFMAN ■ Honorary Vice-Presidents: NATHAN APPLEMAN, MRS. JACOB BLAUSTEIN, JACK A. GOLDFARB, ANDREW GOODMAN, EMERY E. KLINEMAN, JAMES MARSHALL, WILLIAM ROSENWALD ■ MAX M. FISHER, Honorary Chairman, National Executive Council ■ MAURICE GLINERT, Honorary Treasurer ■ JOHN SLAWSON, Executive Vice-President Emeritus ■ Vice-Presidents: JORDAN C. BAND, Cleveland; MRS. JAY S. BAUMANN, Westchester; AVERN COHN, Detroit; EDITH S. COLIVER, San Francisco; EMANUEL DANNETT, Westchester; WILLIAM S. FISHMAN, Philadelphia; JEROME L. GREENE, New York; LEONARD KAPLAN, Boston; RAYMOND F. KRAVIS, Tulsa; DAVID LLOYD KREEGER, Washington, D.C.; RICHARD H. LEVIN, Chicago ■

■ BERTRAM H. GOLD, Executive Vice-President



Wahoo -- I didn't realize that AJC policy was as "accommodationist" as your letter makes it appear. I am glad that it is and hope we will engage in more and more anti-strict "wall" cases. -- Donald M. Landis (New York)

A strict interpretation of the Establishment Clause does not require discrimination against children who attend private schools so as to deprive them of the benefits of public programs administered by public agencies in public facilities. -- Gerald Walpin (New York)

I feel strongly that AJC should file a brief amicus in the case of Wolman v. Essex, in support of the Ohio law providing aid to nonpublic school students. Despite the strong dissent of the Legal Issues Committee of the Cleveland Chapter, I find the argument in favor of the ACLU position basically unpersuasive and wish to record my strong agreement with the position adopted by the Board of Governors....If we effectively deny parents access to institutions other than those supported by the state, may that not potentially be a greater threat to liberty than the proclaimed "erosion" of the wall between church and state (a wall which has always been imperfectly defined)?...As I reread the letter I sent you Monday, I see a need for clarification: I am not advocating aid to nonpublic schools. Constitutionally, that would clearly be impermissible. On the other hand, I do not think that all state welfare measures which might remotely benefit nonpublic schools should be denied to children simply because they attend such schools. That approach, it seems to me, penalizes people for exercising their First Amendment rights to educate their children as they see fit. (I also don't believe the line between "aid" and "incidental benefit" is as easy to draw as the "purists" insist. -- Sheila S. Suess (Indianapolis)

While I would generally be guided by local chapter preferences, this case will determine not only the Ohio law but likewise a challenge to essentially similar Pa. legislation which our Phila. Chapter and national affirmatively support. -- Allen H. Reuben (Philadelphia)

AJC has played an important role in the development of the law relating to public aid to religious schools. We should continue to present our views in this area. These views, while perhaps not entirely satisfactory to most participants in the debates which led to the adoption of AJC's position, represent a reasonable and delicate balancing of the many conflicting legal and policy considerations involved. -- Jesse Margolin (New York)

The current AJC position appears to strike a reasonable balance between the competing considerations. -- Eugene Driker (Detroit)

--continued



I question the modification of AJC's general position of opposition to public aid to religious schools, but since it is AJC's national policy, I recommend filing of the amicus brief. -- Sidney J. Machtinger (Los Angeles)

(Yes) But with considerable reluctance. -- James Greilsheimer (New York)

AJC policy strongly supports separation of church and state. AJC's newly revised policy is really an exception to the general rule. I support both the policy and the limited exception, but it seems to me that it is not an imperative for AJC to urge the U.S. Supreme Court to draw the distinction. Our position is really more one of indifference. -- Carl G. Koch (Seattle)

I strongly urge AJC not to support aid to religious schools with public money. Your attempt to distinguish between diagnostic medical services, etc. and textbook loans is weak indeed and disappointing. -- Aaron A. Foosner (No. Miami Beach)

Both the background events and the language of the recent policy modification indicate that it is permissive with respect to what local chapters may do, not an affirmation of overriding national policy in the church-state area. The modification's language speaks of services which "may" be made available, as distinguished from earlier, pre-modification language re school lunches and medical services that the latter "should" be available. The modification was intended to permit the Phila. chapter to take a local position that was forbidden to it under the prior policy. The DAC vote on the modification, as I recall, was very close -- and I am skeptical about whether it would have prevailed if there had been a polling by mail of the entire DAC, as is customary for Legal Committee members. (I don't know how close it was at the Board of Governors.) Moreover, even the permissive language of our modification requires that the services in question must not preclude intermingling public and private students "where feasible". In the Ohio case, do we know how the intermingling issue sits, on the facts of the case -- and, equally important, does the record in the case permit a judgment to be made on what intermingling is not "feasible"? I oppose going forward, in sum, because (a) I disagree with your apparent view as to "national policy" after the modification; (b) I think Ohio chapter preferences deserve strong, if not overriding, consideration where the national statement is so loose; and (c) on the matter of allocating scarce staff resources, I find this a foolish place to waste time and effort -- particularly in view of the division of lay opinion. -- Arthur L. Kimmelfield (New York)

I agree with the position of the Cleveland Chapter. I have serious reservations concerning the recent shift in the AJC position with respect to public aid to parochial schools. If I am correct in believing that there is substantial support for what is now a minority position within AJC, I feel it might be wise to act with restraint on this issue. -- David J. Sweet (New York)

--continued



I concur with the conclusions reached by the Cleveland Chapter and would favor an amicus supporting the ACLU position. -- Michael N. Newmark (St. Louis)

I am opposed to the filing of a brief amicus in the case of Wolman v. Essex because I am concerned that the statutes in question may lead to a meaningful lowering of the barrier between church and state, as I understand the barrier to exist. To give only one example, there is a reference in the information furnished to providing auxiliary services to religious school pupils in "mobile units". Does this mean that the "public school" (in this case, a mobile unit) will travel to the religious school and in effect become part of the religious school? If so, the concept of furnishing services in a public setting could be eroded beyond a reasonable point.... -- Robert S. Jacobs (Chicago)

This is not an issue on which we feel strongly and I see no reason to exert our efforts which will be misunderstood as a change in our basic policy opposing aid to parochial schools. -- Robert L. Pelz (New York)

Too much government entanglement. -- Jeffrey Mines (West Hartford)

If members of local chapters in the State recommend that no brief be filed by AJC in this matter, the weight of their opinions must be recognized and followed. -- Howard P. Kasdan (Cleveland)

P.S. We owe a debt of gratitude to a volunteer lawyer from the Philadelphia Chapter, Richard L. Berkman, who had begun to work on a brief amicus to be filed in this case.

SR:eak  
encls.  
77-630-10





# THE AMERICAN JEWISH COMMITTEE

Institute of Human Relations • 165 East 56 Street, New York, N.Y. 10022 • 212/751-4000 • Cable Wishcom, N.Y.

DATE: February 24, 1977

TO: National Legal Committee

FROM: Samuel Rabinove

SUBJECT: Wolman v. Essex

In Meek v. Pittenger, 421 U.S. 349 (1975), the Supreme Court invalidated most of the provisions of a Pennsylvania law designed to provide public assistance of an auxiliary nature to parochial school pupils, comparable to those provided for public school pupils, as in violation of the Establishment Clause of the First Amendment. In accordance with AJC's basic policy of opposition to public aid to religious schools, AJC had joined with other Jewish and non-Jewish organizations in a brief amici in the Supreme Court in opposition to that law.

Shortly after the decision in Meek was rendered, Pennsylvania and Ohio enacted similar laws which were designed hopefully to enable such supplementary assistance to religious schools to pass constitutional muster. For example, the auxiliary services (guidance, counseling, testing, etc.) which the previous law had authorized to be made available on religious school premises, and which were struck down in Meek, under the new Ohio law are to be provided to religious school pupils either in public schools, other public centers or mobile units. Moreover, instructional materials and equipment are to be "loaned to pupils... or their parents", rather than to the schools themselves.

At the behest of our Philadelphia Chapter, AJC modified its general position of opposition to public aid to religious schools to the extent needed to enable the Chapter to endorse the new Pennsylvania law. (A copy of the revised policy is enclosed, along with AJC's Statement of Views, "Religion and Public Education.")

Subsequent to the enactment of the Ohio law, the American Civil Liberties Union brought suit\* to challenge its validity on First Amendment grounds. Last July, a three-judge Federal Court upheld the constitutionality, on its face, of the new Ohio law. As the enclosed correspondence indicates, our Philadelphia Chapter has strongly urged AJC to file a brief amicus upholding the validity of the auxiliary services provisions of the new law. Our Cleveland Chapter, however, and two key lawyer members of our Cincinnati Chapter, urge AJC to stay

\*Wolman v. Essex

ELMER L. WINTER, President ■

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LEONARD KAPLAN, Boston; RAYMOND F. KRAVIS, Tulsa; DAVID LLOYD KREEGER, Washington, D.C.; RICHARD H. LEVIN, Chicago ■



out of this case, essentially because they seem to be strongly sympathetic to the ACLU position on these issues.

My own professional opinion is that while chapter views should always be given weight and, indeed, should be entirely dispositive with regard to law suits on the state and local levels (provided a chapter's stand does not clash with AJC national policy), once a case reaches the U.S. Supreme Court it assumes national proportions and therefore national policy should receive greater weight. Hence I recommend that a brief amicus be filed in Wolman v. Essex, in accordance with AJC's policies with respect to the various sections of the law. In substance, this would mean that AJC would support speech and hearing diagnostic services, medical and dental services, therapeutic psychological services, remedial services, and programs for physically and emotionally handicapped non-public school children, along the lines set forth in the statute. AJC would support also guidance and counseling services, as well as standardized tests and scoring services, to the extent that these are made available to such students who are "educationally disadvantaged." AJC would oppose textbook loans, instructional materials and equipment, and field trip transportation, in accordance with our underlying policy that "public funds should be used to support public schools only."

A reply slip and envelope are enclosed for your convenience.



SR:lk

Encl.: Religion and Public Education

Modification of AJC policy on "Religion and Education"

Letter, 1/21/77, Philadelphia Chapter

Memo, 2/17/77, Cleveland Chapter

Letter, 2/16/77, from Steer, Strauss, White & Tobias (Cincinnati)

77-630-7



THE AMERICAN JEWISH COMMITTEE

**date** February 17, 1977  
**to** Sam Rabinove  
**from** Marty Plax  
**subject** Wolman v. Essex

This letter will confirm the conclusion of the Legal Issues Committee of the Cleveland Chapter reached at a meeting held on February 8.

The meeting was held to obtain the opinions of Ohio AJC members on the question of filing an amicus brief against the ACLU position in the case of Wolman v. Essex. At your suggestion I contacted Joshua Kancelbaum, one of the ACLU lawyers, to acquire a copy of their jurisdictional statement. In the course of my conversation with him, I invited him to address the Legal Issues Committee. Jordan Band was invited to speak about the national AJC position which, I learned from you, was moving away from the strict separation of church and state position that traditionally it had held.

In addition to the regular members of the Legal Issues Committee (one of whom is a chapter vice-chairman), the chapter President, Secretary, Program Chairman, and a past chapter President were present.

Mr. Kancelbaum began his presentation with a review of the cases leading up to Wolman v. Essex, and in particular, the Pennsylvania case, Meek v. Pittenger. He also reviewed the ACLU position. In the Wolman case, ACLU is concerned with the shift in the Ohio statute from providing materials and services to the schools to providing them for individual parents and students. This change, ACLU argues strains severely the decision in Meek. Similiary, ACLU is concerned with the definitional ambiguities in the Ohio Statue pertaining to the meaning of a public, neutral place where services can be rendered.

Those present at the meeting were very concerned with the shift in the AJC position. Regretfully, Jordan Band was unable to complete his previous engagement so he was not present at the meeting. Since the national position could not be properly explained, I suggested the call on the speaker phone to you. Those present were particularly interested in which areas AJC might take issue with the ACLU arguments.

As you will recall, those present expressed their personal convictions in support of the ACLU position, but they also took cognizance of the organizational imperatives dictating other action.

In light of the Board of Governor's majority decision to move away from a strict interpretation of the Establishment clause, the Cleveland Chapter takes the position that if there is a choice for AJC between filing a brief contrary to the ACLU position or not filing one, the latter is the more appropriate action. If the choice



were entirely open, the chapter would support the ACLU.

MJP:vc

cc: Dave Heiman  
Jordan Band  
Bob Gries  
Bob Hexter  
Sid Zilber  
Seymour Samet  
Harold Applebaum  
Eugene DuBow





STEER, STRAUSS, WHITE & TOBIAS

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R. GUY TAFT

GORDON STRAUSS  
1912-1944

PAUL W. STEER  
1909-1972

February 16, 1977

Mr. Sam Rabinove  
Legal Counsel  
American Jewish Committee  
165 E. 56th St.  
New York, New York 10022

Dear Sam:

Re: Wolman vs Essex

You inquired as to the position of the Cincinnati Chapter concerning the intervention of AJC in the Supreme Court appeal relative to the support by the State of Ohio of auxiliary educational services in parochial schools.

We have no committee with direct responsibility in this area so that no formal position could be adopted by the chapter until our next Executive Board Meeting, which is too late in March to guide your actions. However, I and Albert Neman, the other lawyer on the Executive Board with some knowledge in this field, both feel very strongly that if AJC cannot, because of the policy of its new Board of Governors, intervene in favor of the ACLU appeal in the above matter, then it should not intervene at all.

Albert Neman (also a former chapter chairman) is inclined to agree with the Board of Governors that we should cease fighting so hard against the use of public money to assist the Catholic schools. In this I disagree with him. We both agree, however, that we certainly should not fight in favor of the payment of public funds for parochial education.

For your information, we will let you know the position of the chapter after its March meeting, but it is scheduled too late for you to act in relationship to filing a brief on the 26th.

Best regards.

Sincerely,

  
Charles H. Tobias, Jr.

CHT/mf



*Part of the*  
*Richie*

PHILADELPHIA CHAPTER  
AMERICAN JEWISH COMMITTEE  
1502 FOX BUILDING  
1612 MARKET STREET  
PHILADELPHIA, PENNA. 19103

January 21, 1977

JAN 27 1977

Hr. Richard Maass, Chairman  
Board of Governors  
P. O. Box #270  
White Plains, New York 10602

Dear Richie:

The Board of Directors of the Philadelphia Chapter met the evening of January 19 and had before us the matter of auxiliary services in parochial schools again as a result of actions taken in the state looking toward challenging such legislation in the courts.

We learned through Jules Whitman, Chairman of our Civil Liberties and Education Committee, that the Supreme Court recently agreed to deal with a similar law in Ohio in terms of its constitutionality. I wanted to let you know that our Board voted to recommend to the American Jewish Committee that it file an amicus brief in the Ohio case as a means of implementing both our national policy in this matter and protecting the Pennsylvania legislation in which we have interested ourselves.

We look forward to meeting with you and Bert Gold on February 9 in New York.

Cordially,

Richard J. Fox  
Chairman of the Board

RJF: r

cc: Bert Gold  
Prof. Howard L. Greenberger, Chairman  
Legal Committee



THE AMERICAN JEWISH COMMITTEE

APPENDIX "A"

MODIFICATION OF AJC POLICY ON  
"RELIGION AND PUBLIC EDUCATION" \*

"\* \* \* However, benefits directly to the child, such as lunches and medical and dental services should be available to all children at public expense, regardless of the school they attend, provided there is public supervision and control of such programs, while others, educationally diagnostic and remedial in nature, such as guidance, counseling, testing and services for the improvement of the educationally disadvantaged, where offered public school students, may also be made available to all children at public expense, regardless of the school they attend, provided however that such programs shall be administered by public agencies and shall be in public facilities and do not preclude intermingling of public and private school students where feasible."

\* See page 16

Adopted by the  
Board of Governors  
June 15, 1976



January 4, 1978

Teresa Kulka

Samuel Rabinove

Christmas decorations in public schools

Black columnist Bill Russell's article in the Seattle Times of December 25, opposing Christmas decorations in public schools, is noteworthy, even though many of our people probably would not oppose non-Christological decorations. If it hasn't already been done, it seems to me important to express our appreciation for his courage in taking the stand he did. It's almost a certainty that some people on the other side of this issue will toss brickbats at him. Which is all the more reason to give him some support, preferably privately rather than publicly.

SR:rbk  
encl.

cc: Marc Tanenbaum ✓





## Bill Russell

The other day my daughter came home from high school visibly agitated. As I do once or twice a year, I asked her how her day had been, to which I got a vague, "Oh, it was all right."

So much for communication between the generations.

After moping around most of the evening, she finally decided to tell me what was bothering her.

"You know, B-Will, they won't let us put up any Christmas decorations at school."

I pondered this for a moment. No Christmas decorations? This was a complaint? So, I asked her why.

She replied, "Because the Jewish kids might get upset, but I wouldn't care if they put up Hanukkah decorations. Why can't everybody put up whatever religious stuff they want to so long as everybody got equal time?"

This sounded reasonable, and the issue is an important one: freedom of religion. Our country is one of the very few in history to have never undertaken systematic religious persecution, thanks to the First Amendment to the Constitution. That's a pretty significant record, so I decided to call the principal of my daughter's high school.

He explained over the phone that their policy was to eliminate all forms of sectarian religious references from the school's activity. They had even gone so far as renaming Christmas and Easter vacations as "Winter Break" and "Spring Break," respectively. He went on, "The way I understand the Constitution, that's what we have to do. Seasonal references, including decorations, are fine, but no sectarian activities or symbols."

These days, it's hard to think of Christmas as "sectarian." It's become so commercialized and exhausted of religious significance. Maybe Santa Claus is a Christian figure (he is, or was; a Catholic saint till they gave him his walking papers as a pagan in disguise), but the Soviet Communists use him, too, although his beard is groomed more like Karl Marx's.

SO, HERE I WAS confronted with two very different

# There's no room for 4th R

interpretations of the constitutional protection of freedom of religion, my daughter's and her principal's. Which is closer to the spirit of the Constitution: a total laissez-faire tolerance policy on religious activity in the schools; or a complete prohibition?

We all know that freedom of religion is part of the reason America was founded in the first place. The Pilgrims came here to escape religious persecution at a time when the English kings were alternating between being Catholic and Protestant, and alternating between whom they were persecuting. Of course, that didn't stop the Pilgrims from persecuting a few folks on their own; as I read once in a Boston newspaper: "When the Pilgrims landed, first they fell on their knees, then they fell on the aborigines."

What does the Constitution REALLY say?

The very first words of the First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." Now, it always struck me as odd that all the freedoms the Constitution guarantees us are tacked on the end, sort of after the fact. But, that was the idea; after the Founding Fathers realized how strong a central government they had created, they decided they had better rein it in a bit with the Bill of Rights.

It's significant that the very first limit they put on it was to prohibit it from establishing religion, an official state religion. They had seen what happened when the state had gotten together with the church in Europe, and Tom Jefferson and the gang were determined that it would not happen here. The purpose of the First Amendment is to keep government out of the religious scene altogether — no involvement, no interference, no stake in people's religious beliefs whatsoever.

MY DAUGHTER'S IDEA for accomplishing this is a total tolerance policy: Let everybody exercise their religious beliefs in school, Christian or Jewish, or Muslim, or Buddhist, or Hindu, or Shinto, or Confucianist, or Taoist, or whatever.

The Christians can put up Christmas decorations and Easter decorations. The Jews can put up Hanukkah decorations. The Muslims can skip lunch during Ramadan. The

Hindus . . . well, they have so many different deities and rites that they can do whatever they do, and the Buddhists can do their trip and so can the Confucianists. But, then, the Buddhists and the Confucianists aren't so fond of each other, nor are the Taoists, and the Muslims have their problems with the Hindus, not to mention the Christians.

Well, the schools will just have to sort all of this out. Granted, the cafeteria schedule is going to be a bit confused what with one religion's feast day falling on another's fast. And the halls will be a little crowded with all those sacred cows and monkeys wandering about and an occasional juggernaut rumbling through. It might be a little difficult, too, to see the blackboard with all the crucifixes and saints and avatars and incense burners jammed into the classroom.

Whoops, I almost forgot about the atheists. I guess they won't have to go to school anymore, and the agnostics, well, they can stand around thinking about it.

More over three "r's, here comes the fourth, "R", and it's capitalized and it spells Religion!

SOMEHOW, I JUST don't think my daughter's solution is going to work. Her principal had the right idea: the Constitution prohibits the establishment of any religion and all religions by the government. The best intentions of religious tolerance won't save us if we ever let the camel's nose into the tent. Keep the church and the state as far away from each other as possible, otherwise we'll inevitably have government regulating and dictating what and how we worship. Those who are the most adamant in their faith should be the most adamant in demanding that there be no "Fourth R" in school.

Just the first three r's. That's what schools are supposed to be all about, at least theoretically. Religion is not their business — it's the business of churches and families and individual conscience. Most importantly it's our own business — how we feel about ourselves and other people and how we behave toward them, because that's what religion ultimately boils down to.

My daughter just reminded me that our house is not non-sectarian and I have to go and help with the tree.

Oh! Lots of love, happiness, and most of all, Merry Christmas.

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January 10, 1978

Bob Blumenthal

Samuel Rabinove

Nativity scene in Orange County public school

Harold shared with me your recent memo and newspaper clippings describing the problem that arose over a Nativity scene in a play in a South Laguna public school. An effort to have the scene removed, predictably, resulted in a public furor and a subsequent "compromise" in which the scene was not the central focus on the stage but rather a part of a larger "Santa's workshop" scene.

You advised us that Neil has consulted with the Orange County Federation CRC and that you plan to work with Jewish leaders in the county to set up meetings with key Christian leaders to explain our concerns about this kind of program in public schools.

I am forwarding herewith an assortment of materials which should be helpful to you in your endeavors. It is absolutely vital to enlist the support of respected Christian leaders, both clergy and laity, to achieve a successful result. In this connection, your attention is invited in particular to the NCCJ publication, "If Christmas Brings Conflict". You should know too that in recent years there has been progress in school districts in various parts of the country in removing devotional and Christological elements from public school holiday observances. The best time to pursue such matters, of course, is a reasonable time after the Christmas season. Let us know what happens.

SR:rbk

cc: Harold Applebaum

Marc Tanenbaum✓

encls.





TEMPLE UNIVERSITY  
COLLEGE OF LIBERAL ARTS  
PHILADELPHIA, PENNSYLVANIA 19122

DEPARTMENT OF RELIGION

June 29, 1977

Rabbi Marc H. Tanenbaum  
AJC  
167 E. 56 St.  
New York City, New York 10022

Dear Marc:

I am sending along a paper I did recently in one of our areas of mutual concern: Religious Liberty. I think it to be one of the most important "think-pieces" I've done in several years, and I would be most grateful for your critique and/or corrections if sometime this summer you have time to respond.

In general, my concern is that we Americans have "painted ourselves into a corner" on First Amendment liberties--and stand fair to lose some vital landmarks as people and courts react against a purely mechanical and abstract approach. In my own corner, at least, I have seen several absurdities in recent years: 1) the lives of children and health patients sacrificed to ideological slogans; 2) child pornography and other crimes and obscenities defended by technicians citing the First Amendment, when the purpose of our specific liberties is primarily to protect the open discussion essential to liberty and self-government; 3) Neo-Nazi conspiracies, physically threatening to decent fellow-citizens, defended by legal idiots long in abstractions and short in common sense; 4) colleagues eager to attack any appearance of the establishment of religion who in other cases show great uncertainty as to the free exercise of religion (which is both logically and philosophically prior and ethically more important).

Fraternally yours,

Franklin H. Littell  
Chairman

FHL:nh  
Enclosure



July 14, 1978

Seymour Samet

Samuel Rabinove



## AMERICAN JEWISH

The attached correspondence is self-explanatory. Regrettably, it seems necessary to consider again the matter of agency internal discipline, which is raised by the two editorials in Long Island Catholic that refer to Marc's views. Quite simply, the publication uses Marc's views to shoot down AJC's position. The question, of course, is whether it is proper for any staff professional to publicly espouse views which are in conflict with and which serve to undercut declared AJC policies. I believe it is not.

SR/rbk  
encls.

cc: H. Applebaum  
M. Braveman  
B. H. Gold  
P. Saperia  
M. Tanenbaum ✓



# Keen disappointment

LONG ISLAND CATHOLIC 6-15-78

In a statement issued last Sunday, the American Jewish Committee declared its opposition to tuition tax credits for parents of nonpublic elementary and secondary school children.

The Committee dutifully incanted the "principle of separation of church and state" as the basis for its rejection of this "unsound expenditure of public funds" and made the familiar hypothetical assertions about the decline of public schools and their becoming a dumping ground for the unwanted.

The Committee's statement is a keen disappointment. AJC is, of course, entitled to its opinion. But the organization, billing itself as a "leader in the struggle for the rights of all people since its founding in 1906," never addresses itself to the rights of parents who must, directly or indirectly, pay school taxes, but who can benefit from these compulsory taxes only if they send their children to the public school.

A while back, we thought the American Jewish Committee was evolving a new position on this issue. Some statements from Rabbi Marc Tanenbaum showed real sensitivity to the plight of Jewish, Protestant and Catholic parents who, exercising both parental rights and religious liberty, send their children to synagogue- or church-related schools. Most Orthodox Jews, of course, stand together with Catholics on this human rights and social justice issue.

The Oregon School Case of 1925, which AJC laudably helped to win, and the Universal Declaration of Human Rights (Article 26, par. 3) categorically affirm that "parents have a prior right to choose the kind of education that shall be given to their children." This right is grievously burdened in the United States because those parents who choose a nonpublic, religiously-oriented school must pay twice for the education of their children. What has AJC to say about this?

Implicit in the AJC policy statement and in many like statements, we believe, is the position, not, perhaps, consciously recognized by its supporters, that the public school, which all Americans rightly support and value, is a kind of god; that other schools are only tolerated concessions to off-beat people who really don't understand what's good for America.

We continue to believe and to urge that tuition tax credits be granted as a matter of justice to elementary and secondary school parents who pay tuition for their children at nonsegregated, nonprofit, nonpublic schools. All other considerations about tuition tax credits for such parents, we believe, must revert to this fundamental question of parental rights and the effective nullifying of such rights by a compulsory tax policy that benefits only one kind of school. The "separation of church and state" cannot mean that some citizens are effectively denied basic human rights.

We regret that the American Jewish Committee statement nowhere addresses this fundamental question. It is a keen disappointment.



6/29/78 LONG ISLAND CATHOLIC

# LETTERS

## to the editor

We welcome letters from our readers. Publication implies no support for a letter's content. Letters must be signed; they must also include the writer's address and telephone number (which will not be printed) for verification purposes. Names will be withheld upon request. We reserve the right to edit and/or shorten any letter. Letters over 300 WORDS are ordinarily edited or excerpted.

### American Jewish Committee & tuition tax credits

Editor: The editorial in The Long Island Catholic of June 15 takes the American Jewish Committee to task for declaring its opposition to tuition tax credits for parents of non-public elementary and secondary school children. The editorial states that AJC "never addresses itself to rights of parents who must, directly or indirectly, pay school taxes, but who can benefit from these compulsory taxes only if they send their children to the public school" and that "those parents who choose a non-public, religiously-oriented school must pay twice for the education of their children." It goes on to ask: "what has AJC to say about this?"

It is hardly possible in a brief letter to communicate in a convincing way the rationale for AJC's position on this controversial issue. But since the editorial invites our response, let it be noted at least that millions of childless couples and single persons without children also pay school taxes, directly or indirectly, for a public service they do not use. Building on the reasoning of The Long Island Catholic, it would seem that all of these persons should be fully relieved of this burden. But what kind of society would we have if citizens were to be taxed only for those public services they actually utilize — whether schools, parks, playgrounds, hospitals, libraries etc. Is that what you would wish?

We believe that tuition tax credits for private school parents will do harm to

public schools. In this regard, it is worthy of note that every time the issue of public aid to non-public schools has been submitted to public referendum, it has been rejected by a majority of voters, mainly because such measures have been seen as a threat to public schools. This has happened in 10 different states, including states as far flung as Maryland, Michigan, Missouri, Nebraska and Washington.

In terms of constitutionality under the First Amendment, we believe that it is not a proper function of government to subsidize schools whose chief reason for being is to propagate a religious faith — whether that faith happens to be Jewish, Catholic, Lutheran, Black Muslim, Unification Church, Hare Krishna or whatever. In substance, that is what the U.S. Supreme

Court has held in a number of key decisions throughout the years.

Samuel Oberman  
President

Long Island Chapter

The American Jewish Committee

(Editor's note: See related editorial.)



[start]

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# THE LONG ISLAND CATHOLIC

P.O. Box 700  
Hempstead, N.Y. 11551  
(516) 538-8800

6/29/78



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## EDITORIALS

### A right denied

The Long Island Chapter president of the American Jewish Committee writes us this week (see letters column) to advance the dialogue on tuition tax credit legislation that includes parents of nonpublic elementary and secondary school children. A public dialogue on this subject is greatly to be encouraged.

Our correspondent does not build, however, "on the reasoning of The Long Island Catholic." We have never claimed that any persons should be fully relieved of tax burdens. The single and childless, like nonpublic school parents before their children enter school and after they have completed school, are not utilizing a school. They are not paying twice. Their circumstances give them no title to be partially or fully relieved of a tax burden levied for the public welfare.

Once they do utilize a school, however, their fundamental human and constitutionally-protected right to choose a nonpublic school cries out for relief against a public policy that 1) compels them to send their children to school; 2) compels them to pay school taxes; but 3) denies them virtually every benefit from these taxes unless they choose a state-operated school. Now they are exercising this right; and now they must pay twice to do so.

Should such parents be fully relieved of school tax burdens? We answer our correspondent directly, no, not at all. But they should be given a measure of equity. Other Western democracies respect the prior parental right in education and provide this equity. Should not the United States do so, too?

The analogy with parks, playgrounds, hospitals, libraries and so forth builds upon that tiresome shanterism: Public schools are like public pools; if you don't like what's provided, pay for your own. But no citizen has a natural and constitutional right to any particular kind of park, playground, hospital, library or pool. Every citizen does have, however, a natural and constitutionally protected right to choose the school his or her child shall attend.

This distinction can forcefully be seen by considering the Universal Declaration of Human Rights (Article 26, par. 3): "Parents have a prior right to choose the kind of education that shall be given to their children." If anyone were to substitute "park, playground or pool" for "kind of education," the sentence would become quite silly. It requires little thought to grasp the essential difference between, on the one hand, a school and, on the other hand, a park, playground or pool.

Our correspondent asserts that tuition tax credits for nonpublic school parents "will do harm to public schools," that some forms of proposed public aid to nonpublic schools have been rejected in certain states because of a perceived "threat to public schools." What is gratuitously asserted — the harm or threat — deserves to be gratuitously denied. We should also ask to what extent the perceived harm or

threat has been generated by a coalition of organizations opposed to such aid rather than by cogent evidence that such harm will result. A great many commentators are convinced that a little more competition for public schools can only help them. Not harm them.

Two years ago, at a Bicentennial Conference on Religious Liberty, Rabbi Marc H. Tanenbaum of the American Jewish Committee said: "It bothers me terribly that many good Catholic people, friends and neighbors and parents of children who are friends of my children, feel they are being dealt with unfairly by American society. . . . For some time now, a number of us at the American Jewish Committee have felt that the time is long past due to take a different stance; namely, that of turning to find what we can do positively to aid our Catholic neighbors and fellow citizens."

We thank you, Rabbi Tanenbaum. What bothers him bothers many Orthodox Jewish, Protestant and Catholic parents, too, terribly. They believe that a right grievously burdened is a right effectively denied. They don't want a subsidy — that sounds like a handout — but rather some equity in the various kinds of taxes for education they have already paid. They hope many more members of the American Jewish Committee will heed Rabbi Tanenbaum's advice.



[end]

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