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FROM WASHINGTON OFFICE
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June 5, 1964

Court Bans Required
Religion In Florida

WASHINGTON (BP)-- The United States Supreme Court here ruled unconstitutional government-sponsored prayers and state-required reading of the Bible in the public schools of Florida.

At the same time the Court dismissed "for want of properly presented federal questions" the problems of baccalaureate services in public schools, school-conducted religious census of pupils, and religious tests for teachers.

The Florida case had previously been before the United States Supreme Court, but it had been remanded back to the Florida Supreme Court to be decided there in the light of the Schempp and Murray cases banning government-sponsored religious exercises in public schools.

The Florida Court refused to void the religious practices in the schools of Florida, and the case was appealed again to the United States Supreme Court. The case was then decided without argument by a simple court order reversing the Florida decision on prayer and Bible reading and dismissing the other questions.

The Florida law in question is as follows: "Members of the instructional staff of the public schools, subject to the rules and regulations of the state board and of the county board, shall perform the following functions: (2) Bible Reading.- Have, once every school day, readings in the presence of the pupils from the Holy Bible, without sectarian comment."

Outside of the Bible reading requirement there was no statutory requirement for the religious practices in the schools. These practices were prescribed and regulated by the local school boards.

The case was filed by Leo Pfeffer against the Dade County Board of Public Instruction, Dade County, Fla., on behalf of Howard Chamberlin, Edward Renick, Philip Stern, and Mrs. Elsie Thorner. Pfeffer is chief counsel for the American Jewish Congress. The others are parents of children in the public schools of Dade County.

In its decision banning the school-sponsored prayers and Bible readings the Supreme Court ignored the argument of the Dade County school board that the exercises were not religious but were for moral instruction. The Court accepted as obvious the fact that reading of the Bible and praying is a religious exercises.

In refusing to rule on baccalaureate services, a religious census of school pupils and religious tests for teachers the Court heeded the reasoning of the school Board. The pupils involved were students in elementary school (one was a high school student) but baccalaureate services involve only the members of the graduating class. No evidence was presented that pupils involved signed religious census cards provided by the schools. Questions involving religious tests for teachers could properly be presented only by teachers and not by pupils.

The ruling of the Supreme Court was 8 to 1, with Justice Stewart disagreeing. He would have had the Court to have a full hearing of the issues in the case rather than summarily dismissing it as the other justices did.

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News Service of the Southern Baptist Convention. W. C. Fields, director;
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Justice Douglas and Justice Black added concurring comments to the Court's order. Some observers found in these comments a source of comfort that earlier fears that the Court is anti-religious are unfounded.

Commentator James E. Clayton in the Washington Post said, "Justice Black wrote the Court's opinion in the first Bible reading and prayer case and his words, too, have been expanded far beyond their meaning in an effort to show that the Justices are against religion."

The new decision in the Florida case does not change the status of religion in public schools beyond what was done in the Pennsylvania and Maryland cases banning required devotions and in the New York case banning official prayers.

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Leading Law Teachers
Hit Prayer Amendment

(6-5-64)

by W. Barry Garrett

WASHINGTON (BP)-- Seven weeks of hearings on proposed "prayer amendments" before the House Judiciary Committee here ended with a plea from 223 constitutional lawyers and teachers for Congress not to tamper with the Bill of Rights.

The focal point of the hearings was the "Becker amendment" along with numerous variations which purported to reverse the 1962 and 1963 decisions of the United States Supreme Court regarding prayers and Bible reading in public schools.

The Supreme Court in 1962 ruled out of the public schools official prayers composed by government agencies. In 1963 it ruled out required devotions.

The Bill of Rights is the first 10 amendments to the Constitution. They protect the people against the powers of government.

The religion part of the First Amendment says: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." The Fourteenth Amendment makes the Bill of Rights applicable to the state governments as well as to the federal government.

Hitting hard at efforts for a prayer amendment, the 223 lawyers and teachers said, "If the first clause of the Bill of Rights, forbidding laws respecting an establishment of religion, should prove so easily susceptible to impairment by amendment none of the succeeding clauses will be secure."

(Those clauses include freedom of speech and of the press, and the right of the people peaceably to assemble and to petition the government for redress of grievances.)

The statement was circulated by four of the country's leading authorities on constitutional law: Robert F. Drinan, S. J., dean of the Boston College Law School; Paul A. Freund of Harvard Law School; Wilber G. Katz of the University of Wisconsin Law School; and Leo Pfeffer, general counsel of the American Jewish Congress. They said:

"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."

The lawyers added: "A grave responsibility rests upon the Congress in taking 'this first experiment on our liberties.' Whatever disagreements some may have with the Bible-prayer decisions, we believe strongly that they do not justify this experiment. Accordingly, we urge that Congress approve no measures to amend the First Amendment in order to over-rule these decisions."

At their meetings at Atlantic City both the American and Southern Baptist Conventions took strong positions similar to this one by the law experts.

During the hearings before the Judiciary Committee opponents of the Supreme Court generally agreed that they merely wanted the situation restored that prevailed in the country before the decisions. They uniformly failed to state what those conditions were.

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Defenders of the First Amendment as interpreted by the Supreme Court agreed that religion is not within the scope of government and that amendments to the Constitution "allowing" or "permitting" people to pray are not necessary.

Now that the hearings have concluded, what will happen?

The Judiciary Committee will conduct executive or "closed" meetings to decide what course of action it will take. Several alternatives face the Committee:

1. It can approve the Becker amendment or one of the others and send it to the Rules Committee which would send it to the floor of the House of Representatives for debate. This course seems unlikely, because the defects of the phraseology of the proposed amendments were repeatedly pointed out during the hearings.

2. The Committee can take all of the proposed amendments into consideration and rewrite one of its own. This will be a very difficult task, because of the effect that any new amendment might have on the guarantees of freedom now found in the First Amendment.

3. The Committee can recommend a simple resolution that would express the sentiment of the Congress regarding the Supreme Court's decisions. At first, this seemed to be a way to "get off the hook" by the Congressmen. But strong support of the Court's decisions by the nation's religious leaders, now leaves such a course questionable.

4. The Committee could report on the Supreme Court decisions with complete candor, stripped of emotional reaction, political knifing, or special interest favor. This will be difficult for the Congressmen because many of them have already committed themselves to hard positions before they realized the full import of the hearings.

5. The Committee could vote not to recommend a change in the Constitution. The members have been so evenly divided, that it is hard to predict with precision at present how such a vote might turn out. The shift in expression of opinion from the public, however, might have changed enough minds on the Committee that this is a possible solution.

6. The Committee could drag its feet indefinitely and make no decision. In this event Rep. Frank J. Becker (R., N. Y.) holds the threat of a discharge petition over the heads of the Committee. It takes 218 signers of a discharge petition to force an issue out of a Committee directly to the floor of the House of Representatives. It is unlikely at this time that such an effort will be successful.

A constitutional amendment would require passage by two-thirds of both Houses of Congress and then by three-fourths of the States. Another method would be a constitutional convention called by two-thirds of the States and then the change must be ratified by conventions in three-fourths of the States.

Among the signers of the statement by lawyers and teachers were 55 law school deans, including Jefferson B. Fordham, University of Pennsylvania; Erwin N. Griswold, Harvard University; Vernon X. Miller, Catholic University; Phil C. Neal, University of Chicago; Frank C. Newman, University of California; and Eugene V. Rostow, Yale University.

Other recognized experts in constitutional law signing the statement included Professors Edmond Cahn, New York University; Richard J. Childress, St. Louis University; Vern Countryman, Harvard; Norman Dorsen, New York University; Thomas I. Emerson, Yale; Walter Gellhorn, Columbia; Fowler Harper, Yale; Harold C. Havighurst, Northwestern; Mark DeWolfe Howe, Harvard; Harry Kalven, Jr., University of Chicago; Milton R. Konvitz, Cornell; Philip B. Kurland, University of Chicago, Harold D. Lasswell, Yale; Norman Redlich, New York University; and Telford Taylor, Columbia.

Eighty-three American law schools are represented among the signers of the statement, plus Haile Selassie I University in Addis Ababa. James C. N. Paul, on leave from the University of Pennsylvania Law School to serve as Dean of the Faculty of Law at the Ethiopian University, wrote that his "experiences abroad, even in dramatically different settings," had strengthened his view of the "correctness of the court's decision."

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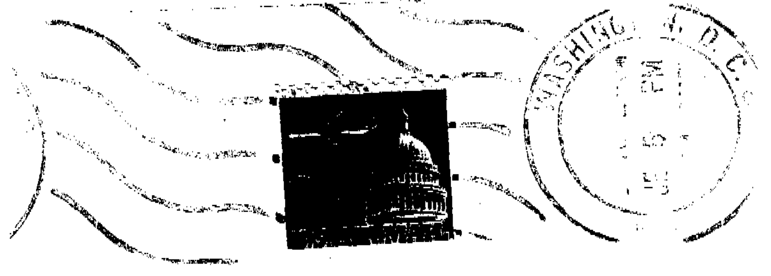

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