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Lotus Club

10-18-63

An examination of our files on legislative items indicates that we have had more mail on the Supreme Court's decision relative to the use of Bible reading and prayer in schools than on any other subject.

You will remember that last June the Supreme Court ruled in an 8-1 decision that the states could not require the use of the Bible and the Lord's Prayer in the opening sessions of the public schools. This was done although the Bible was to be read without comment and, in the case of Pennsylvania, Protestant and Catholic versions as well as the Jewish Holy Scriptures has been used.

In both Maryland and Pennsylvania where the cases originated participation by students was voluntary and the parents involved had not availed themselves of the opportunity to have their children excused from the opening exercises. Neither had these parents proved that being excused from the exercises would have injured their children in any way. Yet the Court struck down the state laws as unconstitutional under the First Amendment.



I think it is interesting to note that one Justice
 consumed 77 pages to tell why he concurred in the 23-page
 controlling opinion of the Court. Justice Potter Stewart, who was
 born in Michigan, was at Yale Law School about the same time I was,
 and who served on the 6th Circuit Court of Appeals which includes
 Michigan, wrote a dissenting opinion.

I was deeply impressed with his opinion which seemd to
 me to be eminently sound, recognizing the need for the broad view
 if our children are to have the most comprehensive educational
 experience.

I want to quote a few sentences from Justice Stewart's
 opinion which seem to me to highlight what he had to say. For
 instance, he quoted a previous Supreme Court decision to the effect
 that "State power is no more to be used so as to handicap religions
 than it is to favor them." He went on to point out "That the central
 value embodied in the First Amendment--and, more particularly, in
 the guarantee of 'liberty' contained in the Fourteenth--is the
 safeguarding of an individual's right to free exercise of his religion
 has been consistently recognized."



Justice Stewart then went on to say, "It might also be argued that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time. With all its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases. For a compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at the least, as government support of the beliefs of those who think that religious exercises should be conducted only in private."



As he concluded his opinion, Justice Stewart pointed out what the Constitution protects and indicated his faith in the various local school boards to meet the problem of coercion in a constructive manner. He said, "What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government.

It is conceivable that these school boards, or even all school boards, might eventually find it impossible to administer a system of religious exercises during school hours in such a way as to meet this constitutional standard--in such a way as completely to free from any kind of official coercion those who do not affirmatively want to participate. But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal."

Now that the Supreme Court has spoken it will take a Constitutional amendment to alter the law as interpreted by the Court.



Upwards of 50 resolutions have been introduced in the House of Representatives calling for the submission of a constitutional amendment to the states. All the resolutions have been referred to the House Committee on the Judiciary which to date has taken no action on them.

Personally I believe the committee should report one of the resolutions to the floor of the House, and I believe the Congress should approve such a resolution and submit it to the states for ratification. I take this position because I think that the dissenting opinion of Justice Potter Stewart was the more accurate interpretation of the Constitution.

I have written the chairman of the Committee on the Judiciary urging ~~the committee~~ action and have taken a second step which I believe I have done only twice in 15 years in Congress, and that is to sign a discharge petition to bring the resolution to the floor of the House if the committee does not act.

I believe that this issue is of sufficient importance to bypass the committee if it refuses to act. To date 93 members of

