

Religious liberty in jeopardy

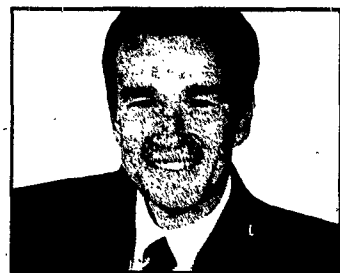
The spirit of giving was in the air last December — well, everywhere perhaps, but in state assemblies. There, the state giveth and the state taketh away — or so some states claim in two pending cases: one before the U.S. Supreme Court and one argued the same day in early December on behalf of Catholic Charities in the California Supreme Court.

In the federal case, Joshua Davey was awarded one of Washington state's "promise scholarships." But Joshua wanted to study theology in college. No way, said the state officials. That would violate a state constitutional provision strictly separating church and state.

Joshua thought differently. While the state has no obligation to have a scholarship program that includes private religious schools, Joshua argued, if it undertakes such a broadly available program it cannot discriminate against him because he freely chooses to study religion.

In the California matter, the state court is considering whether the state can require all employers who supply prescription-drug coverage to employees to cover prescriptive contraceptives. Catholic Charities objected in the legislative process, but then Gov. Gray Davis signed it into law. The legislation had a suspiciously narrow religious exemption that Catholic Charities could not possibly meet.

Catholic Charities, for example, extends social services to all regardless of re-



Douglas W. Kmiec

ligious persuasion; that was enough to make the charity insufficiently "religious" to qualify for exemption.

The two cases are different in that one involves exclusion from the state's common education fund on the basis of faith and one involves the imposition of a state regulation in conscious disregard of faith. Both cases, however, implicate the same First Amendment guarantee: "Congress shall make no law prohibiting the free exercise [of religion]."

Both cases also involve a rather unique interplay of state and federal law. The states proclaim that they enhance liberty when state law mandates a greater separation of church and state than is required by the federal Constitution. Of course, there is nearsightedness here, since the notion of expanding the state's liberty to do as it chooses necessarily constricts the religious freedom of individual believers.

Washington's contention that it can spend state money however it chooses is too sweeping a claim to be credited. Private property, of course, allows us to choose to whom to sell, but no one today would assert that such

discretion permits turning a prospective buyer away because of race. Joshua Davey's right of religious liberty is no less important.

True, Washington, like 36 other states, wrote harsh and exclusionary state constitutional provisions (so-called "Blaine amendments") in the 19th century to financially disable disliked Catholic and Jewish immigrants, but that history is more a shameful practice of bigotry to be discarded than a reasoned justification for sustaining state censorship of Joshua's belief or study.

So, too, when exemptions from regulations are drafted, the rule of law demands that they not anoint the state to assess the relative importance of religious belief. Catholic Charities does not seek to be a law unto itself. It merely asks that it not suffer the regulatory lash for refusing to fund contraceptive practices that separate the unitive and procreative aspects of physical intimacy. Whether or not the state agrees with this longstanding teaching of the church, the state has no constitutional license to write laws specifically denying all but a narrow subset of believers the right to subscribe to it.

With respect to the unalienable right of religious liberty, the state does not giveth — God did — and therefore, the state cannot taketh away.

Douglas W. Kmiec is a columnist for Catholic News Service.

She stands by her facts

To the editor:

It recently came to my attention that the *Catholic Courier* published a letter several months ago by Mr. Ed Groszewski in which he claimed I had written a column containing "many serious errors of fact." This column ("History ignored, repeats," Aug. 14) was on how, in times of war, civil rights are always in danger of being a casualty, particularly if certain people are deemed to be possible "enemies" or "unpatriotic."

I pointed out how "wartime hysteria" after the United States entered World War I (1917-18) had led to severe injustices against thousands of Germans, Austrians and Hungarians, taken from their homes and brought to Ellis Island after President Woodrow Wilson set up the Committee on Public Information to whip up patriotism.

Mr. Groszewski claimed I was "unfamiliar even with the outlines of the past," that, furthermore, I had "besmirched the reputation of President Wilson," and asked, "Is Ms. Bosco so lazy she could not check her sources?"

As a professional writer, a Catholic News Service columnist for 29 years, and a longtime editor of a secular newspaper, almost fanatical about accuracy, I would like *Courier* readers to know that I more than checked my "sources." In fact, at the re-

quest of Facts on File, a major New York publisher of historical books, I am the author of the expanded version of "World War I," a book originally written by my late son Peter. It was published in Spring 2003. I have some 50 books on WWI in my personal library, all of which I have read. It is important to me that my readers know I check my "sources."

With gratitude to all associated with the *Courier*.

Antoinette Bosco

CDs preserve sage counsel

To the editor:

In the October 30 *Catholic Courier* Gerard J. Messmer's letter mentioned that Father Albert Shamon's 40 years of writings should not be allowed to disappear. I agree!!

All interested readers should know that the "timeless truths" that Father Shamon has so eloquently spoken about in the *Courier* will not fade into eternity. We in Auburn, with Father Shamon's permission, have recorded some of his teachings about our rich Catholic faith on compact disc. The series is entitled "Father Shamon Speaks." There are a total of 45 discs with an average of four talks on each. You can purchase a single CD or the whole collection. Enjoy Father Shamon for years to come and pass the gems of our faith down to your children and grandchildren. To order or to receive a list of titles contact Tyburn Academy at 315/252-2937 or e-mail info@tyburnacademy.com.

Robert L. Faiola
 Morris Street
 Auburn

Seeks shuffle in columnists

To the editor:

Gerard Messmer's exhortation ("Columns are timeless gift," Oct. 30) to print re-runs of Father Albert Shamon's columns was written before Father Shamon's

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