



## Why Constitutional Interpretation Matters

by John R. Hendrickson

“Indeed, it could be added that the Court has almost succeeded in establishing a new religion: secular humanism.”

Robert Bork<sup>1</sup>

In June the U.S. District Court for the Southern District of Iowa ruled that Prison Fellowship Ministries InnerChange Freedom Initiative (IFI) program violated the 1<sup>st</sup> Amendment of the Constitution. The ruling is a direct challenge to faith-based organizations, in this case, a program that helps to reform and rehabilitate criminals. In addition, IFI has proven to reduce recidivism. The decision represents why the issue of constitutional interpretation is so crucial in the debate over the heart and soul of America.

Prison Fellowship was founded in 1976 by Charles Colson. “Prison fellowship partners with local churches across the country to minister to a group that society often scorns and neglects: prisoners, ex-prisoners, and their families.”<sup>2</sup> In 1997 Prison Fellowship initiated the IFI program,<sup>3</sup> a faith-based reentry program. IFI’s mission “is to create and maintain a prison environment that fosters respect for God’s law and rights of others, and to encourage the spiritual and moral regeneration of prisoners.”<sup>4</sup> The program is a cooperative venture between IFI and the respective state. “The state continues to provide food, clothing, shelter, and security to the inmates while IFI staff provides the intensive program.”<sup>5</sup> “IFI programs now operate in Texas, Kansas, Minnesota, Iowa, and Arkansas.”<sup>6</sup>

Americans United for the Separation of Church and State (AU) brought suit against Prison Fellowship based on the argument that it violated the establishment clause of the 1<sup>st</sup> Amendment, in addition to Article 1, Section 3 of the Iowa Constitution. AU argues for a strict church-state wall to be established, and advocates often cite Thomas Jefferson’s famous 1802 letter to the Danbury Baptists arguing for a “wall of separation.” This has been the thrust of the main argument to attack such public religious conventions as the Ten Commandments, the Pledge of Allegiance, prayer in schools, the slogan “In God We Trust,” and a whole host of other public religious issues.

In Iowa the Court ruled that IFI violated the establishment clause, because the program “is based on the teachings of Jesus Christ.”<sup>7</sup> IFI is a voluntary program, that is, prisoners choose whether or not to participate. In addition Mark Early, President of Prison Fellowship, argued that 60 percent of the funding for IFI was from private donors, and state funding was “used only for nonsectarian aspects of the program.”<sup>8</sup>

In response to the religious aspect of the program Early wrote:

Every single prisoner who testified at trial said that he was not coerced into enrolling in the program. Participants are exposed to the religious aspects of the program only as a result of their voluntary choice to enroll. Every potential participant is told about the religious aspects of the program. And participants may leave it at any time without penalty.<sup>9</sup>

Religion in the public square, especially Christianity, is under siege by judicial activists who believe in the mythical wall of separation. It is true the Constitution forbids a state-mandated religion, but it does not translate into voiding all religious aspects out of the public sphere.

Russell Kirk wrote that the “United States is a Christian nation. This is a simple statement of fact, not an argument to advance the American cause.”<sup>10</sup> In addition religion was thought in high regard by many of the Founders. As John Adams said, “Our Constitution was made only for a moral and religious people.”<sup>11</sup> And as Kenneth Starr wrote: “To the contrary, religion was widely seen, even by nonbelievers such as Jefferson, as necessary to the maintenance of a good society.”<sup>12</sup>

Recent judicial trends have shown a judiciary that is less than friendly to religion, and the Prison Fellowship case in Iowa is just another example. Prison Fellowship has appealed the ruling and the IFI program is not backing down. In Minnesota the IFI program is looking at expanding into the Shakopee women’s prison.<sup>13</sup>

It is quite clear the outcome of this case will have a substantial influence on other faith-based initiatives that serve a public good.

In this circumstance the original intent of the 1<sup>st</sup> Amendment was neglected in favor of the more politically correct secularized version. As Robert Bork noted:

No one reading the establishment clause when it was ratified in 1791 could have anticipated the unhistorical sweep it would develop under the sway of modern liberalism to produce, as Richard John Neuhaus put it, a ‘public square naked of religious symbol and substance.’<sup>14</sup>

The IFI program is providing a private-public sector solution to a problem that must be addressed, prisoner rehabilitation, which is in the interest of all citizens. The Founders would have saluted Chuck Colson and Prison Fellowship for providing a moral solution and direction for the criminal justice system. This is just one more example, out of too many examples, why judicial philosophy should be taken seriously.

## End Notes

<sup>1</sup> Robert H. Bork, *Coercing Virtue: The Worldwide Rule of Judges*, Washington, D.C.: AEI Press, 2003, 69.

<sup>2</sup> *Ibid.*

<sup>3</sup> For more details of the program, please visit <<http://www.ifiprison.org>>.

<sup>4</sup> Prison Fellowship, “About IFI,” n.d., <<http://www.ifiprison.org>> (13 July 2006).

<sup>5</sup> *Ibid.*

<sup>6</sup> Prison Fellowship, “IFI and the Ruling,” n.d., <<http://www.pfm.org>> (14 July 2006).

<sup>7</sup> Mark. L. Early, “Striking Down Hopes for Inmates,” *washingtonpost.com*, June 30, 2006, <[http://www.washingtonpost.com/wp-dyn/content/article/2006/06/29/AR2006062901777\\_p](http://www.washingtonpost.com/wp-dyn/content/article/2006/06/29/AR2006062901777_p)> (13 July 2006).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Russell Kirk, *The American Cause*, Wilmington, Delaware: ISI Books, 2002, 17.

<sup>11</sup> Matthew Spalding, *The Founders’ Almanac: A Practical Guide to the Notable Events, Greatest Leaders & Most Eloquent Words of the American Founding*, Washington, DC: The Heritage Foundation, 2002, 191.

<sup>12</sup> Kenneth W. Starr, *First Among Equals: The Supreme Court In American Life*, New York: Warner Books, 2002, 90.

<sup>13</sup> Dave Orrick, “Faith-based prison program to expand,” *St. Paul Pioneer Press*, July 15, 2006, <<http://www.twincities.com/mld/twincities/news/15043674.htm?template=contentModules>> (17 July 2006).

<sup>14</sup> *Bork*, 68.

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