

App. No. 06-2741

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
EIGHTH CIRCUIT

**AMERICANS UNITED FOR
SEPARATION OF CHURCH AND STATE, et al.,**
Plaintiffs-Appellees,

– vs –

PRISON FELLOWSHIP MINISTRIES, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CASE No. 4:03-cv-90074-RP-TJS

**BRIEF OF THE CATHOLIC LEAGUE FOR CIVIL AND RELIGIOUS
RIGHTS AS *AMICUS CURIAE*
IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus* Catholic League for Civil and Religious Rights hereby discloses that it has no parent corporations and that it has no publicly held stock.

Dated: September 22, 2006 Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*

The Catholic League for Religious and Civil Rights is the nation's largest Catholic civil-rights organization. The League's headquarters is in New York City; its cooperating affiliates across the Country assist in activities national in scope. Founded in 1973 by the late Father Virgil C. Blum, S.J., the Catholic League defends the right of Catholics – lay and clergy alike – to participate in American public life without defamation or discrimination. The Catholic League aims to expose and correct stereotypes of Catholic belief and of the Church in the media, in popular culture, and in government actions.

This Brief serves to correct the District Court's caricature of Evangelical Christians in general, and Prison Fellowship Ministries in particular, as anti-Catholic. In fact, Prison Fellowship and its founder Dr. Charles Colson have been long-time leaders in Evangelical-Catholic dialogue. The cause of fighting all-too-prevalent anti-Catholic bigotry is ill-served by painting friends of Catholicism as its enemies.

All parties have consented to the filing of this Brief.

ARGUMENT

Introduction

Our goal with this Brief is simple: We urge this Court not to endorse, incorporate, or in any way rely on the lower court's suggestion in the opinion below that Prison Fellowship Ministries and its work are animated or tainted by anti-Catholicism. In fact, Prison Fellowship Ministries and its founder, Dr. Charles W. Colson, have been prime contributors to the ecumenical dialogue known as "Evangelicals and Catholics Together." Catholics work as Prison Fellowship staffers, serve on its board of directors, and a Catholic, Michael Timmis, will take over as the Chairman of Prison Fellowship in the fall. Even Dr. Colson's wife, Patty Colson, is a practicing Catholic.

Indeed, Prison Fellowship's statement of faith—subjected to a dubious theological analysis by the court below—has been vetted by Avery Cardinal Dulles, one of the Church's most prominent theologians. If this Court is to engage in the ill-advised business of deciding whether Prison Fellowship's beliefs contradict Catholic beliefs, it had better rely on a Catholic theologian rather than a federal district judge.

I. Background: Anti-Catholicism in America

It should be noted that anti-Catholicism has long been a part of American history, law, policy, and culture. From the Puritans to the Framers and beyond, anti-“popery” was thick in the cultural air breathed by the early Americans, who were raised on tales of Armadas and Inquisitions, Puritan heroism and Bloody Mary, Jesuit schemes and Gunpowder Plots, and lecherous confessors and baby-killing nuns. *See generally, e.g.,* RAY ALLEN BILLINGTON, *THE PROTESTANT CRUSADE 1800-1860* (1938); PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* (2002). Monsignor John Tracy Ellis proposed, in his seminal 1956 work *American Catholicism*, that a “universal anti-Catholic bias was brought to Jamestown in 1607 and vigorously cultivated in all the thirteen colonies from Massachusetts to Georgia.” JOHN TRACY ELLIS, *AMERICAN CATHOLICISM* 151 (2d ed, 1969). Certainly, Thomas Paine’s diagnosis would have enjoyed broad support, when he lamented in 1775 that those in “the popish world at this day by not knowing the full manifestation of spiritual freedom, enjoy but a shadow of political liberty.” JOHN T. MCGREEVY, *CATHOLICISM AND AMERICAN FREEDOM* 11 (2003) (quoting Thomas Paine, *Thoughts on Defensive War*, in *COMMON SENSE AND RELATED WRITINGS* 68 (Thomas P. Slaughter ed., 2001)). We believe it is important for scholars, courts, and citizens to

acknowledge the role that anti-Catholicism has played in American history and life, and to identify and eliminate any features of our legal doctrines and policies that continue to reflect it. *See, e.g., Mitchell v. Helms*, 530 U.S. 793, 829 (2000) (plurality op.) (“[N]othing in the Establishment Clause requires the exclusion of pervasively sectarian schools from otherwise permissible aid programs This doctrine, born of bigotry, should be buried now.”).

Moreover, it should be recognized that, even now, anti-Catholicism persists, and is not a spent force in American culture, law, or politics. Indeed, some scholars have suggested that it remains our last acceptable prejudice. *See generally, e.g.,* PHILIP JENKINS, *THE NEW ANTI-CATHOLICISM* (2003); MARK S. MASSA, *ANTI-CATHOLICISM IN AMERICA* (2003); James Martin, S.J., *The Last Acceptable Prejudice?*, *AMERICA*, Vol. 182, No. 10 (March 25, 2000).

Amicus is gratified that over the last 30 years, it has been the preeminent voice speaking out against anti-Catholicism. We know anti-Catholicism quite well. And there is not even a hint of it at Prison Fellowship.

II. Prison Fellowship Ministries Is Not Anti-Catholic

A disturbingly large portion of the opinion below is devoted to what can only be described as the district court's own theological analysis—a discussion of Evangelical Christianity's theories on the nature of salvation, the relative roles of Scripture and Sacraments, the nature of the Resurrection, etc., as compared to those of other Christian communions. This leads into a theological analysis of Prison Fellowship Ministries' Statement of Faith and influence on InnerChange's "transformational model" of rehabilitation. *See Americans United for Separation of Church and State v. Prison Fellowship Ministries*, 432 F. Supp. 2d 862, 878-81 (S.D. Iowa 2006).

We agree with the district court, certainly, that Evangelical Christianity is one among many Christian expressions, which contrast in many non-trivial ways with each other. But these various differences do not necessarily make each tradition the antithesis of the other. Presbyterians are not *ipso facto* "anti-Methodists," Calvinists are not by definition "anti-Lutherans" and Evangelicals—particularly Prison Fellowship—are most certainly not anti-Catholic. More importantly, it is not for district courts to discern that they are. *Thomas v. Review Board*, 450 U.S. 707, 716 (1981).

Nevertheless, the opinion of the court below, in several places, suggests or implies that Evangelical Christians in general, and Prison

Fellowship in particular, are anti-Catholic. *See, e.g.*, 432 F. Supp. 2d at 872 n.9 (stating that understanding Prison Fellowship Ministries’ Evangelical Christian commitments is “help[ful]” in “understanding, in what sense, those who do not share InnerChange’s theological position may face discrimination”); *id.* at 874 (noting that several characteristics of Evangelical Christianity, “along with the theological commitments in the Prison Fellowship and InnerChange Statement of Faith, place the Evangelical Christianity of Prison Fellowship and InnerChange at odds with members of Christian groups who would not consider themselves to be part of the Evangelical Christian camp”); *ibid.* (“The Prison Fellowship and InnerChange theological position would be suspicious, if not contemptuous, of Roman Catholic reliance on papal authority, Marian devotion, and the veneration of saints.”); *id.* at 896 n. 29.

The district court’s theology is not only improper, it is mistaken. The district court’s theology cannot be squared with the assessment of one of the most eminent Catholic theologians in the world—Avery (now Cardinal) Dulles, who at Dr. Colson’s request analyzed Prison Fellowship’s Statement of Faith to determine whether it was consonant with Catholic doctrine. Noting first that Prison Fellowship’s “generous and faith-filled commitment to Christ and the gospel have been an inspiration to many, including

myself,” Dulles stated that Prison Fellowship “does so much to restore hope to people in situations that humanly speaking could be seen as hopeless.” Letter from Avery Dulles, S.J., to Charles W. Colson, Dec. 20, 1989 (attached as Appendix A). After describing some of the differences in vocabulary between Prison Fellowship’s statement of faith and traditional Catholic creedal formulations, Dulles concluded that he did “not find it contrary to anything I believe[.]” *Ibid.*

In fact, a few years after this exchange, Cardinal Dulles and Dr. Colson co-founded the “Evangelicals and Catholics Together” project, collaborating in a number of respectful and enlightening joint statements, which are candid about disagreements but also enthusiastic about identifying common ground. *See, e.g., Evangelicals and Catholics Together: The Christian Mission in the Third Millennium*, 43 *FIRST THINGS* 15-22 (1994); CHARLES COLSON & RICHARD JOHN NEUHAUS, EDS., *EVANGELICALS AND CATHOLICS TOGETHER: TOWARD A COMMON MISSION* (1995); CHARLES COLSON & RICHARD JOHN NEUHAUS, EDS., *YOUR WORD IS TRUTH: A PROJECT OF EVANGELICALS AND CATHOLICS TOGETHER* (2002). This project does much to *lessen*, not increase, anti-Catholicism.

Similarly, Dr. Colson has on many occasions publicly expressed his admiration for the late Pope John Paul II. When the Pope died, Mr. Colson released this statement:

Pope John Paul II was one of the truly heroic figures of the 20th century. He will be remembered not only as a great leader, but as one of the handful of people singularly responsible for the collapse of the Soviet empire. Stalin once derisively asked, 'How many divisions does the Pope have?' John Paul II answered that question and changed the world.

I had the honor of meeting his Holiness, and I have actively been a part of a collaborative fellowship called Evangelicals and Catholics Together. The Pope's willingness to reach out to Christians outside of the Roman Catholic faith was critical to promoting unity across the Christian family. His vision, his determination, and his loving spirit will be missed by Christians around the world.

Prison Fellowship Newsroom, Press Kit, *Chuck Colson Lauds Pope John Paul II as Promoter of Christian Unity* (Apr. 2, 2005). This is not the voice of anti-Catholicism.

III. Federal Judges Should Not Pronounce on Questions of Catholic (or Evangelical) Theology

Though it is clear that Prison Fellowship is on solid ecumenical ground, the footing of the district court looks rather more precarious. Judge Pratt's cartoonish contrast of Evangelicals and Catholics befuddles even the Catholics he attempts to compare them with. The Court has before it the

opinion of Cardinal Dulles. Another Catholic heavyweight, Father Richard John Neuhaus, has put it ably:

Herewith a few items from Judge Pratt's opinion. Evangelicalism, he says, "is quite distinct from other self-described Christian faiths, such as Roman Catholicism, Mormonism, and Greek Orthodoxy . . . and is also distinct from the beliefs held by self-described Protestant Christian denominations such as Lutheran, United Methodist, Episcopalian, and Presbyterian, again to name only a few." (One notes the oddity that Mormonism is named as solidly in the historic tradition of Christian faith.) The fact, of course, is that evangelicalism—understood in terms of being born again, believing in the Bible, and wanting to share one's faith with others—is widespread throughout Catholic and Protestant communities. Prison Fellowship's statement of faith, opines Judge Pratt, "contains beliefs common to many types of Christian groups, but it is also significantly different in many respects." Never mind that the statement of faith was cooperatively produced by Christians from a variety of denominations and in consultation with notables such as Avery Cardinal Dulles. . . .

. . . .

[Much] of Judge Pratt's decision is given over to establishing that the evangelicalism to which Prison Fellowship and IFI are committed is a sinister, schismatic cult that is trying to entice prisoners into its clutches. Which is pretty much the caricature peddled by Americans United and uncritically repeated by Judge Pratt.

Richard John Neuhaus, *While We're At It*, 165 FIRST THINGS 74-75 (Aug./Sep. 2006).

In short, the District Court should not have engaged in the same kind of stereotyping that it accused Prison Fellowship of. There is enough

religious tension in the United States without the federal courts becoming pamphleteers. This theological amateur hour, and its resulting conclusions, is an insult to both Catholics and Evangelicals, as well as their mutual friends at Prison Fellowship.

CONCLUSION

We agree entirely with the court's observation that it lacks "theological expertise," 432 F. Supp. 2d at 866, and, like the court below, we endorse without reservation James Madison's statement that religion is, "for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it," *id.* at 867 n.5 (citing James Madison, *The Complete Bill of Rights* 69, June 6, 1788, Virginia State Convention). Under the Constitution of the United States, the institutions of religion and government are separate, not to constrain religion, and not because the Framers feared faith, but in order to protect religion, and to check the ambitions and powers of government. Nothing in this Brief is intended to suggest that the courts of the United States ought not to protect religious freedom by protecting the freedom of believers and of the Church from government interference. But this Court's consideration of the work of InnerChange and Prison Fellowship Ministries should be undertaken without the taint of the district

court's homebrewed theological analysis of that work as narrow, prejudiced, or anti-Catholic, when in fact its is quite the opposite: open-minded, generous, and ecumenically cooperative.

Dated: September 22, 2006.

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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. 32(a)(7)(C)

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that the brief of the Catholic League for Civil and Religious Rights as *Amicus Curiae* complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B)(i). The brief consists of 2,042 words. The font used is Times New Roman at 14-point type. The word count was performed by the word count function on the word processing program used to prepare the brief (Microsoft Word 2000).

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 28A(d)(2)

Pursuant to Circuit Rule 28A(d)(2), I hereby certify that the submitted PDF brief been scanned for viruses and that no virus has been detected.

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I hereby certify that on this 22nd day of September, 2006, I caused a copy of the foregoing brief of the Catholic League for Civil and Religious Rights as *Amicus Curiae* to be served, via overnight delivery, upon:

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