

## Americans United for Separation of Church and State

*Barry Lynn Spearheads Campaign to Defeat School Choice*

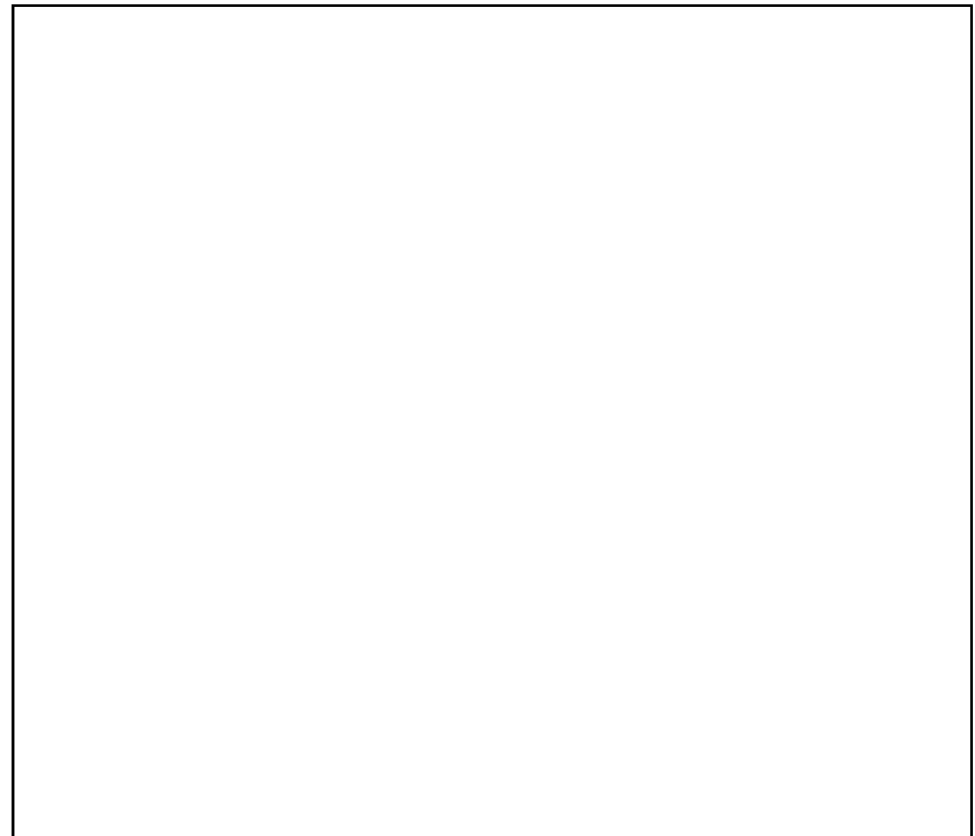
By Morgan Bergman

*Summary: For more than a half-century, Americans United for Separation of Church and State has led the Left's crusade against virtually any involvement of religious groups in public life. To this end, AU lawyers file lawsuits against school choice voucher programs, prayer at high school graduation ceremonies and the display of the Ten Commandments in government buildings.*

**A**mericans United for Separation of Church and State is a watchdog group dedicated in principle to keeping the government and the church out of each other's affairs. In reality, the organization focuses on elbowing religious groups away from involvement in public life. Its efforts to expel the church from society are not polite affairs, and they have led to bruising confrontations. In the words of its executive director, Barry Lynn, Americans United (AU) has been "bat-tling religious extremism in politics long before anybody else noticed a 'Religious Right.'"

Founded in 1947, AU boasts a membership of over 60,000, a staff of 30, and an annual budget of over \$4 million. Based in Washington, D.C., the organization plays tough in policy debates, filing lawsuits and organizing protests. Its aim: to promote controversies over the role of faith in public life in order to drive religion from the public square.

AU questions the right of religious groups with which it disagrees to participate in politics and public policy. It opposes the presence of religion in public settings—from the saying of prayers at school graduation ceremonies to displaying the Ten Commandments in public buildings. It has challenged the tax exemption of churches and urged that



Americans United files lawsuits to stop religious organizations from legitimately participating in public life (*Mormon Church in Nauvoo, Illinois*).

their nonprofit status be revoked. And it opposes government spending for social programs initiated by religious groups, asserting that their claims for equal treatment of faith-based groups violate the First Amendment.

In recent years, a principle aim of Americans United has been to stop the school choice movement. AU was prominent among the liberal activist groups that tried to stop a voucher program in Cleveland, Ohio that allows parents to remove

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their children from failing public schools and enroll them in other schools of their choosing. After the U.S. Supreme Court ruled this summer that the Cleveland program was constitutional, AU vowed to redouble its efforts – and escalate its anti-religious rhetoric – to stop school choice in the states.

## History

Americans United (the group's new shortened name) was originally called Protestants and Other Americans United for Separation of Church and State (POAU) when it was founded in 1947 by Seventh-day Adventists, members of the American Secular Humanist Association, the American Ethical Union, and other leading liberals of the day. (The Seventh-day Adventists have since withdrawn their support, citing AU's hostility to the free exercise of religion.) POAU's first executive secretary, Joseph Martin Dawson, was a Baptist pastor and social activist who opposed federal aid to church hospitals and sectarian instruction in public schools. In 1951 he led a successful campaign to defeat President Harry Truman's attempt

to appoint an ambassador to the Vatican. POAU's general counsel, Paul Blanshard, wrote *American Freedom and Catholic Power*, a best-selling anti-Catholic screed which claimed that parochial schools threatened to subvert America's common culture. And its first president, Methodist Bishop G. Bromley Oxnam, was a past president of Planned Parenthood who chaired the Massachusetts Council of American-Soviet Friendship.

POAU's creation was prompted by an important 1947 U.S. Supreme Court decision, *Everson v. Board of Education of the Township of Ewing*. The case concerned a New Jersey law authorizing school boards to pay for the bus transportation of children attending parochial schools. While the Court asserted that "The First Amendment has erected a wall between church and state," it ruled 5-4 that New Jersey had not breached it. By allowing government to reimburse parents for school transportation costs New Jersey conferred a public benefit on religious believers and nonbelievers alike. The high court said the law's neutrality towards religion did not violate the Constitution.

POAU thought otherwise, and it has opposed this type of argument for the past half-century. It protests laws and legislation that it believes offer support to religion, especially the Catholic Church. For instance, in 1967 POAU sued the Postmaster General for issuing a Madonna and Child postage stamp. Over time POAU shortened its name: first to Americans United for the Separation of Church and State and, most recently, to Americans United. It has also re-directed its attacks from the Catholic Church toward what it terms the Religious Right.

## Barry Lynn

AU's guiding star and principal spokesman is Barry Lynn, an ordained minister in the United Church of Christ, perhaps the most liberal major Protestant denomination in the U.S. A graduate of Dickenson College and Boston University School of Theology, Lynn received a law degree from Georgetown University and became legislative counsel for the Washington office of the American Civil Liber-

ties Union in 1984. He became AU executive director in 1992.

Lynn, who has co-hosted syndicated radio shows with Pat Buchanan and Oliver North, shares AU writing and speaking duties with Rob Boston, author of *Close Encounters with the Religious Right* (2000) and *The Most Dangerous Man in America? Pat Robertson and the Rise of the Christian Coalition* (1996).

Lynn has reoriented AU's issues agenda in recent years. Instead of primarily monitoring Catholic Church activities, AU now attacks the "Religious Right," opposes private school vouchers and President Bush's Faith-Based Initiative, and polices churches for evidence of political support for conservative candidates.

## Organization and Finances

Americans United is a 501(c)(3) charitable organization with 47 chapters in 26 states and national headquarters in Washington DC. Its 30-person staff includes three full-time lawyers. Its network of member volunteers is active in all states. For a \$25 annual fee, members get a year's subscription to AU's magazine *Church & State* and periodic updates on church-state issues.

According to its 2001 IRS form 990, AU had more than \$4,250,000 in revenue and assets of nearly \$12 million. AU is funded almost entirely by private donations and its 60,000 dues-paying members. In 1999 and 2000, it received \$120,000 in foundation grants. Major foundation funders were the Deer Creek Foundation (\$50,000), which supports projects to promote majority rule and constitutional rights; the Foundation for the Carolinas (\$25,000), the largest community foundation in the Carolinas; and the Esther A. & Joseph Klingenstein Fund Inc. (\$45,000), which supports projects in arts and culture, independent schools education, public policy, neuroscience/epilepsy and animal research.

In 2000 American United divided its \$4 million budget among Publications (over \$1 million); Field Services, which maintains contacts with local chapters, gov-

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ernment and church officials (\$762,282); and its Legal Division (\$462,902), which handles ongoing litigation and legal strategy. An additional \$57,301 went toward trustee and national advisory council meetings.

## Opponent of School Choice

The fight against school choice is the apple of Barry Lynn's eye. Lynn sees no benefit in giving parents the freedom to choose where their children are educated and the means to exercise their choice through vouchers or tax credits. Instead, he believes school choice programs undercut public schools—"a good independent reason," he says, to oppose vouchers even when they don't go to religious schools.

A passionate advocate of public education, Lynn wants more money to go to public schools for new programs that are "tested, tried, true." But debating Lynn on PBS' "NewsHour" last February, Clint Bolick, vice president of the pro-school choice Institute for Justice, answered: "Every single urban school system in the United States remains lousy even though many of them are now spending 13 or 14,000 dollars [per student per year]." Bolick and Lynn have often squared off in debating the constitutionality of school choice programs in cases before the Supreme Courts of Wisconsin, Ohio and Arizona, and culminating last June in the U.S. Supreme Court case *Zelman v. Simmons-Harris*, which found school choice constitutional.

Lynn has said, "My bedrock reason for opposing [vouchers] is constitutional: these plans violate the separation of church and state." If giving vouchers to parents is equivalent to direct state support of the church, then Lynn believes the door is open to taxpayer financing of all sorts of religious organizations. Lynn suggests that the government could support the schools of Jerry Falwell, Louis Farrakhan, or the neo-Nazi Worldwide Church of the Creator.

Lynn is unfazed by arguments that the G.I. Bill and Pell Grants program for years have let students use public grants

to pay tuition to religious colleges without incident. As the U.S. Supreme Court explained in the *Zelman* case: allowing parents to spend public funds at a school of their choice hardly 'establishes religion.'

## AU Takes Battle to States

Americans United waged a losing 7-year legal battle to defeat the Cleveland voucher plan. Part of an informal coalition that included the NAACP, National Education Association, People for the American Way, and the National School Boards Association, it participated in strategy sessions, filed amicus briefs, and issued a blizzard of press releases and public statements against the program, enacted by the Ohio legislature in 1995, which gives parents \$2,500 vouchers to send their children to private, sectarian or other public schools in Cleveland. (For more information on People For the American Way and its opposition to school choice, see the October 2002 *Organization Trends*.)

After the Court decided Cleveland's program was constitutional, Lynn changed the focus of his argument. He vowed, "Every time that this issue of vouchers comes up at any state legislature or in the Congress, we're going to make the argument that this is bad policy and does not help kids."

Of course, the Supreme Court decision does not mandate new voucher programs—it simply allows existing voucher programs by finding them constitutional. If school choice options are to become available to more parents across America they must overcome their next potential impediment—individual state constitutions. (See the September 2002 *Organization Trends* article "What Next After The Education Voucher Victory?").

Two kinds of provisions are found in many state constitutions that may thwart reformers. The Blaine Amendment was a failed late 19th century effort to amend the federal Constitution to preclude public appropriations to sectarian institutions and organizations. Fostered by a wave of anti-Catholic sentiment, similar

amendments are attached to the constitutions of 36 states and Puerto Rico. Twenty-nine state constitutions also contain provisions dating back to colonial times providing that no person shall be compelled to support any ministry without his consent. They also could be used in state battles to void school voucher programs.

Voucher supporters argue that it's now clear the First Amendment requires states to be neutral towards religious and non-religious programs. But Americans United will not back away from impending state battles. AU spokesman Steve Benen says, "The Supreme Court decision wasn't the end, it is just the beginning of the fight. The battle will go from the courtrooms to the state capitals and AU will be there telling legislators, media, and lobbyists that vouchers are just bad policy."

Americans United concedes that religious bigotry often motivated the enactment of Blaine statutes but maintains that many state laws barring government aid to parochial schools predate them. "The origins of the 'no-aid' rule predate by about 10 years the first drive by the Catholic Church to receive funding for its schools," says Steven Green, a law professor and former AU legal director. "That does not deny the concept was sometimes used against Catholics, but the constitutional principle against funding religious institutions developed apart from anti-Catholic animus."

Lynn claims to be confident that AU and the public education lobby will prevail, but he is already resorting to vulgar accusations that school choice programs will use public education as a "cash cow" for private religious schools: "If Americans don't give their state legislators and members of Congress an earful, they may soon be paying taxes to support religious indoctrination. America, watch your wallet or it may soon end up in a collection plate."

## Watchdog of the "Religious Right"

Americans United probably raises most of its money off its claim to track the activities of the so-called "Religious Right" and religious fundamentalists. The bigotry of

## Recent Legal Cases of Americans United

### **Zelman v. Simmons-Harris (Ohio)**

After the Ohio Legislature enacted a voucher program in 1999 to pay tuition costs for children in Cleveland to attend sectarian schools, Americans United and its allies immediately challenged the program in federal court, asserting that it violates the federal Establishment Clause. In December 1999, the federal district court found the program unconstitutional. In December 2000, the Sixth Circuit Court of Appeals upheld the lower court decision, reaffirming that the program violates the Establishment Clause. But on June 27, 2002, Americans United suffered a serious setback when the United States Supreme Court reversed the circuit's decision, finding that the breadth of choices beyond the traditional public school systems – namely, the numerous charter and magnet school options – gives parents “true private choice” among a diverse array of schools, such that the inclusion of sectarian schools in the Ohio voucher program passes constitutional muster.

### **Holmes v. Bush (Florida)**

The Florida Legislature enacted the nation's first statewide voucher program in 1999. The program is available to schools designated as “failing” and allows students to attend participating private schools or neighboring public schools. Americans United challenged the program in state court, asserting that it violates the federal and state constitutions. In March 2000, the trial court struck down the program on state constitutional grounds that limit state-funded education to a system of public schools. In October 2000, the Florida District Court of Appeals reversed the trial court. In April 2001, the Florida Supreme Court declined to consider an appeal from this ruling and sent the case back to the trial court for consideration of AU's claim that the voucher program violates the church-state separation provisions of the U.S. and Florida Constitutions. In January 2002, Americans United filed a motion for summary judgment on its claim that Florida's voucher program violates the state constitutional provision that prohibits state revenue from being used “directly or indirectly in aid of . . . any sectarian institution.” The oral argument on the motion was held on July 9, 2002, and the motion was taken under submission by the Court. Americans United withdrew its federal Establishment Clause claim after the U.S. Supreme Court's ruling in *Zelman v. Simmons-Harris*.

### **Deveny v. Board of Education of Kanawha County (West Virginia)**

In May 2002, Americans United, at the request of the West Virginia ACLU, took up the cause of a senior at St. Albans High School in St. Albans, West Virginia to prevent the inclusion of a prayer in his graduation ceremony. Americans United lawyers obtained a hearing the day of the graduation ceremony and, hours before the ceremony was to begin, the judge issued an order prohibiting the prayer. Americans United is currently in settlement negotiations with the County's attorney and vows to prosecute the case in the event that it is not settled.

### **Glassroth v. Moore (Alabama)**

The Chief Justice of the Alabama Supreme Court, Roy Moore, commissioned a monument to the Ten Commandments that he placed in the rotunda of the State Judicial Building, which houses the Alabama Supreme Court and Courts of Appeal. In addition to the engraved Ten Commandments, the monument also displays religious references from the Declaration of Independence, the Pledge of Allegiance, the Alabama Constitution as well as religious quotes of the founding fathers. In October 2001, Americans United joined the Alabama ACLU and the Southern Poverty Law Center in a lawsuit that seeks the removal of the monument. A trial date is set for mid-October 2002.

one of its most controversial ads was explicit, stating in block letters, “MAYBE WESHOULDJUSTLETRELIGIOUSFUNDAMENTALISTS TAKE OVER THE UNITED STATES (AFTER ALL, IT’S WORKED SO WELL IN IRAN.)”

AU has its own “defund the Right” strategy. It has urged the IRS to monitor churches and church-affiliate nonprofits and require them to pay taxes on unrelated business income. Some AU members believe churches should pay property taxes because they receive public benefits (e.g. roads and sewers, fire and police protection, etc.). However, others argue that property taxes would unfairly burden inner-city churches and instead advocate some type of income tax.

Lynn has worked to revoke the non-profit status of churches engaging in conservative politics. AU reported on a New York church that in 1992 ran full-page ads in *USA Today* and the *Washington Times* soliciting tax-deductible contributions to help defeat then-presidential candidate Bill Clinton. The IRS investigated and revoked the church’s tax-exempt status. Said Lynn: “This decision is a major blow to TV preacher Pat Robertson and other Religious Right leaders who have tried to politicize churches. From now on, houses of worship that consider risking their tax exemption to get involved in electioneering had better realize that it’s a gamble they’re likely to lose.”

Similarly, AU has attacked Christian Coalition “Voter’s Guides” distributed to churches during election seasons. In an October 2001 letter addressed to nearly 300,000 houses of worship nationwide, Lynn wrote that “Christian Coalition voter guides ‘made clear which candidates the Coalition preferred.’” He went on to warn churches that they “should be extremely wary of distributing voter guides.” He reminded them that the IRS had revoked the tax status of the New York church and cited another case where the IRS reprimanded a minister. Lynn then offered churches assistance in making the right decision through information offered on his website by “Project Fair Play.”

Earlier this year, Lynn testified against H.R. 2357 (“Houses of Worship Political Speech Protection Act) and H.R. 2931 (“Bright-Line Act) before the House Ways and Means Committee. These bills would change federal tax law to permit churches to use their tax-exempt resources to support political candidates who champion their views on moral issues. Lynn argues that “Churchgoers should be able to assume that their \$20 bill in the collection plate will be used for the ministry and not shunted off to attack ads or political bumper stickers.” AU’s strategy is to deliberately harass churches that don’t accept liberal opinion on social and moral questions.

### Special Treatment or Equal Rights?

This year the White House reached agreement with Senators Rick Santorum (R-PA) and Joseph Lieberman (D-CT), who negotiated a legislative framework for the President’s initiative to support faith-based groups that help the needy. Entitled the “CARE Act of 2002” (Charity Aid, Recovery and Empowerment), the bill provides tax incentives to spur more donations to charities. It has broad bipartisan support. But Lynn declares the bill unconstitutional, stating “The White House claims this plan will offer equal treatment for all groups, but it actually gives special treatment to religious groups.” Lynn also wants to apply non-discrimination laws to currently-exempt religious organizations, requiring them to hire employees not of their faith or living contrary to their doctrine. He states, “If a religious group receives public funds, they should display an American flag, not a crucifix.”

AU would expunge even the most innocuous references to religion in public places. For instance, on May 29, 2002 AU and the ACLU of West Virginia filed a federal lawsuit to stop a St. Albans, West Virginia public school from including a school-sponsored prayer at its graduation ceremony. “School officials have no business promoting religion at an official school event,” commented Lynn, who rejects the idea that the county’s graduation prayer policy merely allows the free exercise of religion. St. Albans is in

Kanawha County, whose policy allows students to vote on whether to include a prayer at school graduation ceremonies. The prayers must be non-sectarian and have the school principal’s approval before the event. Even so, Judge John T. Copenhaver, Jr. agreed with AU and the ACLU that the prayer violated the religious liberty of one student who objected to it. But what of the religious liberty of a majority of the students who voted for prayer?

### Conclusion

It’s curious: The crusade Americans United has carried on for so long against religion’s influence on public life smacks of the intolerance and zealotry that Barry Lynn attributes to religious groups. Lynn welcomes the vigorous expression of secular, ideological doctrines but tries to exclude anything based on religious faith. By trampling on the constitutional rights of Americans to practice their faith, Lynn and his merry band of zealots weaken the American traditions of tolerance and free expression they claim to profess.

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# BrieflyNoted

The little-known **National Council of Women's Organizations** (NCWO) won widespread media exposure after it attacked the Augusta National Country Club's all-male membership policy. In June, NCWO chairwoman Martha Burke demanded that Augusta National, site of the Masters golf tournament, admit women. The private club rejected the request and has since severed ties with three major tournament sponsors – Citigroup, IBM and Coca-Cola – rather than allow outside pressure to influence its membership policies. NCWO, with a \$500,000 budget and staff of four, was a minor player in women's issues before it attacked Augusta National. Cited in only 82 news stories in the four years prior, Burke and her group were mentioned in more than 800 stories after the controversy erupted. Says Burke, "There's no question Augusta has given us a wonderful opening to talk about the issues that are really important to us." A networker among 160 women's associations, NCWO's most well-known member is the National Organization for Women (NOW).

The **Employment Policies Institute** (EPI) has released a new study on the drive for "living wage" laws. The movement, which lobbies local governments to set minimum wages above the \$5.25 federal minimum, has enjoyed significant success. The EPI study notes that more than 80 cities and counties have implemented living wage laws in the last seven years, and over 100 communities are considering living wage ordinances. EPI calculates that activists have spent more than \$150 million pressing for laws that have raised the local minimum wage. Initially, most living wage laws were narrowly drawn to cover only employees of local governments or their contractors. For instance, in 1999 Miami-Dade County implemented a living wage ordinance that requires the county and contractors to pay their employees \$8.81 with benefits, or \$10.09 without benefits. Increasingly, the living wage movement has been advocating high minimum wages that would cover all private sector employers in designated geographic areas. But an attempt to enact a broad-based living wage in Santa Monica, California failed in the November elections. Voters narrowly defeated a referendum that would have required employers to pay as much as \$12.25 an hour.

An environmental group claims the nation's growing use of cellphones threatens the environment. **INFORM**, an organization that recommends "environmentally sustainable" business practices, technologies and products, has issued a report, funded by the Environmental Protection Agency, warning of the ecological consequences of cellphone use. By 2005, it says, 130 million cellphones will be discarded annually, adding an annual 65,000 tons of waste to landfills and incinerators. INFORM recommends that companies adopt take-back programs offering discounts on new phones or phone service in exchange for returned equipment.

Leftist groups are wasting no time in pressing the Democratic Party to adopt a more hard-line political agenda in the wake of its poor election showing. The **Progressive Majority**, a political action committee based in Washington, DC, says "the pro-business, me-too Democrats have had their turn" and "it's time to embrace a proactive, progressive agenda that voters can understand and support." Progressive Majority aims to build "a nationwide member network that will provide much-needed early support to progressive candidates." Progressive Majority Advisory Committee members will soon hold a strategy meeting to devise a 2004 election plan. Advisory Committee members include Rep. Nancy Pelosi (D-CA), the new Democratic House Minority Leader, Senator John Corzine (D-NJ), and Rep. George Miller (D-CA). Candidates supported by Progressive Majority in 2002 included Chris Van Hollen who defeated incumbent Connie Morella (R-MD), and incoming Illinois governor Rod Blagojevich.

