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EXEMPTION OF RELIGIOUS OBJECTORS FROM UNION SHOP DUES OBLIGATIONS

INSTRUMENTS

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THE
KANSAS STATE UNIVERSITY

HEARING BEFORE THE SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS OF THE COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 1528

TO AMEND THE NATIONAL LABOR RELATIONS ACT TO PRO-
VIDE THAT ANY EMPLOYEE WHO IS A MEMBER OF A RE-
LIGION OR SECT HISTORICALLY HOLDING CONSCIENTIOUS
OBJECTION TO JOINING OR FINANCIALLY SUPPORTING A
LABOR ORGANIZATION SHALL NOT BE REQUIRED TO DO SO

HEARING HELD IN WASHINGTON, D.C.
JULY 28, 1976

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*



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EXEMPTION OF RELIGIOUS OBJECTORS FROM UNION SHOP DUES OBLIGATIONS

WEDNESDAY, JULY 28, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS
OF THE COMMITTEE ON EDUCATION AND LABOR,

Washington, D.C.

The subcommittee met, pursuant to notice, at 10:35 a.m., in room 2261, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee) presiding.

Member present: Representative Thompson.

Staff present: Daniel H. Pollitt, counsel; Jeunesse M. Beaumont, subcommittee clerk; and Edith C. Baum, minority counsel for labor.

Mr. THOMPSON. The subcommittee will be in order.

Today's hearing is on H.R. 1528, a bill introduced by Representative Erlenborn to extend the provisions of section 19 beyond the health care industry to include all industries covered by the National Labor Relations Act.

[Text of H.R. 1528 follows:]

A BILL To amend the National Labor Relations Act of provide that any employee who is a member of a religion or sect historically holding conscientious objection to joining or financially supporting a labor organization shall not be required to do so

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 19 of the National Labor Relations Act (29 U.S.C. 169) is amended by—

(1) striking out "of a health care institution" after "Any employee" and inserting in lieu thereof "including any employee of a health care institution)", and

(2) striking out "such institution" and inserting in lieu thereof "the employer (including an employer which is a health care institution)".

Mr. THOMPSON. The problem of accommodating the values of the "union shop" agreement with the values of religious freedom has been with us for some time. It was with us in 1965 in the effort to repeal section 14(b); in 1970 during the postal reform, in 1974 during the health care amendments, and this past summer in the common situs amendments. But it is now coming to a head.

For many years, the courts have held that it is not a violation of the free exercise clause of the first amendment when an employee is discharged pursuant to a "union shop" agreement because, for reasons of religious beliefs, the employee refuses to pay the union dues. *Ottens v. Baltimore and Ohio RR*, decided by the Court of Appeals for the Second Circuit, in 1953, is typical.

But that seems to be changing. The 1972 amendments to the Civil Rights Act require that an employer "accommodate" the employees'

religious observance and practice, if he can do so "without undue hardship."

The Equal Employment Opportunity Commission, in decision No. 74-107, has ruled that the union as well as the employer must make the "accommodation"; and the Court of Appeals for the Fifth Circuit this past June agreed with this position, in the case of *Cooper v. General Dynamics*.

It seems that the "accommodation" will be made in the Federal district courts, or it will be made here in Congress.

Despite the lack of inclusion in the past, I am constrained to state some of my background which relates principally to the subject of conscientious objection. Although I was raised in the Roman Catholic Church, my father and his family for many generations were Quakers and came to the United States because of their conscientious objections, so I feel very strongly about this subject, just as I do about conscientious objection with respect to the military and why I am an advocate of complete amnesty for those whose religious beliefs led them to refuse service in the war in Southeast Asia, indeed, in any other war.

So I look forward with interest to the hearings this morning.

Our first witness is Hon. Robert Duncan, a Representative from the State of Oregon and a longtime friend of ours. Good morning.

Mr. DUNCAN. Good morning, Mr. Chairman.

STATEMENT OF HON. ROBERT B. DUNCAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DUNCAN. I am appearing here this morning in support of H.R. 1528, Mr. Erlenborn's bill to amend section 19 of the National Labor Relations Act and better known as the "conscience amendment."

I appear here as a strong supporter of organized labor and what it has done for the Nation, not only in the field of wages, hours, and working conditions, but also because of the initiative and support it has given for all kinds of legislation, such as education, medical care, national defense, et cetera, which has benefited the entire Nation. I consider the labor movement today to be at the same time both progressive and one of the single most stabilizing influences on our society.

I also appear as a strong supporter of the first amendment, and of the words therein that "Congress shall make no laws respecting the establishment of religion, or prohibiting the free exercise thereof. . . ."

I suppose it would not be an overstatement to suggest that religious freedom, the desire to escape from religious persecution, stimulated the exploration and development of the United States more than any other one factor. I think it important that that freedom be preserved and, though the problem we are addressing today may seem unimportant to most, it is vitally important to some. We ought not to force choices to be made between one's religious conscience and obedience to the law, and certainly not here where such a choice is not really necessary.

This issue first came to my attention in 1965 as an amendment offered by my then-colleague from Oregon to a bill repealing section 14(b), also known as the Right-to-Work Act. I supported that

amendment, which was resisted by the committee, not, as I now recall, on its merits, but simply because it would have been an unwise move to sanction it on the floor, where such a controversial bill as 14(b) was involved.

Mr. THOMPSON. If the gentleman would yield at that point, I was, at that time, the author and floor manager of that bill.

Mr. DUNCAN. That is right.

Mr. THOMPSON. The fact is, as your former colleague introduced the amendment, it was ruled not to be germane to that bill.

Mr. DUNCAN. Well, my memory may not be as accurate as yours, and undoubtedly is not, but we both had the same general recollection.

Mr. THOMPSON. It was offered.

Mr. DUNCAN. It was offered, and I remember it was resisted. It may have been decided as you indicate—and I have no reason to disbelieve it—on a point of order, which I assume was raised by the chairman.

Again, having had some responsibility for leadership of a legislative body myself, I understood this position by the committee and I went to the then—and still now—chairman of the subcommittee for assurance that the “conscience amendment” would be heard with all due dispatch in his committee.

I got that assurance from him most willingly, and of course I am referring to you, Mr. Chairman. You do not remember that, I am sure.

Mr. THOMPSON. Yes; I do.

Mr. DUNCAN. I then went to the Speaker and got an assurance from him that if the bill emerged from the committee it would be scheduled promptly, and that satisfied me so that I could accept the deletion of the conscience amendment and still support the repeal of 14(b). Everything cannot be accomplished in one piece of legislation.

I assumed on my return to the Congress that this amendment had become the law of the land. I was surprised, therefore, to learn that it had in 1974, but only with respect to employees of “a health care institution.”

Accordingly, about a month ago, I prepared my own bill very similar to Mr. Erlenborn’s before becoming aware that he had one in. I have that now circulating out among my constituents and labor, and so on, for comments. I am aware, as you indicated, that general legislation of this sort has been introduced several times over the years with no success and very little action.

A related problem arose while I was speaker of the Oregon House. On the morning of the consideration of a new act for juveniles, a member of the Christian Science faith came to my office and objected to the language therein which gave the juvenile court the right to order medical care for dependent children.

The question he raised, of course, involved such children of the Christian Science faith. We brushed aside the question of whether the children were Christian Scientists or the children of Christian Scientists, and I asked if the bill would be acceptable if we added after the provision authorizing the Court to order medical care the words “or such other care or treatment as the Court may deem appropriate.”

The lobbyist demurred, saying that no Court would so order a Christian Science practitioner. I responded that all any of us can

demand is an equal opportunity for our ideas, religious or otherwise, to prevail; that we could not force on others, even the Court, our own views; that all he could reasonably expect was that Christian Science practitioners not be excluded. He agreed.

We pulled the bill off the floor, amended it accordingly, and, as far as I know, such is still the law in Oregon.

It is possible, thus, to resolve some of these real and apparent conflicts with which our Constitution and our laws are replete. There are times when this accommodation can be accomplished with minimal or no impact on the rights of others, and such, it seems to me, is what the Erlernborn amendment does.

It puts into the law a solution to this small but difficult problem which has been advanced, offered, and suggested by labor itself in innumerable individual cases on an informal, ad hoc basis.

I recognize that there are many cases which hold that this problem does not rise to the status of a first amendment problem, though the reasoning seems to me to be somewhat convoluted. And even though the Courts have generally avoided the constitutional problem, it remains in the minds of a substantial number of adherents to sundry religious organizations. And the first amendment problem has been recognized in other labor cases, though not directly on point.

Again, I say it is possible to eliminate this problem for a substantial number of our citizens by a device not only utilized by segments of labor itself, but recognized by the Courts as a "reasonable accommodation" between the union security provisions of the NLRB and the Civil Rights Act prohibiting discrimination because of religion.

It may be suggested that while the Erlernborn amendment will satisfy the Seventh Day Adventists it will not the Plymouth Brethren IV. Nor will it extend to those who object to joining a labor union for conscientious reasons other than religious.

The argument that the amendment should be defeated because it does not solve all the problems is no more valid as a reason to oppose the Erlernborn amendment than the failure to include the conscience amendment was a valid reason to vote against the repeal of 14(b).

No one piece of legislation can accomplish everything. And, furthermore, it seems to me that the Erlernborn proposal does satisfy the first amendment problems for the Plymouth Brethren IV as well as the Seventh Day Adventists. It has been said that the Seventh Day Adventists " * * * are willing to pay the dues-equivalent to designated charities." The members of Plymouth Brethren IV " * * * are not."

The willingness or unwillingness to contribute to a charity in lieu of an association with the unbelievers, or a payment of dues thereto, is irrelevant to the first amendment. For both we will have to satisfy their religious objections to the association and support of a labor union.

I have seen no suggestion that charity is inimical to the religious views of any group. We are seeking a reasonable accommodation.

For my part, refusal to contribute to a charity, and an insistence upon a free ride, is unreasonable per se, and thus Congress could properly leave those who are unwilling to their other option of seeking employment elsewhere than in a union security situation.

In any event, there is evidence that Plymouth Brethren IV have recanted and are now willing to make the equivalency payments to a

charity. At least one of their leaders so testified in front of the Post Office and Civil Service Committee on July 16, 1974.

In summary, I support the Erlenborn amendment and hope that this committee will report it out, and that it becomes law. I believe it to be a reasonable accommodation between the legitimate rights of organized labor to union security, and the equally reasonable rights of others to as complete religious freedom as a human institution can provide.

I believe that it does little more than codify many judicial decisions and that its passage would thus settle the law and avoid the necessity for continuing litigation; thus resolving to some small extent the already overburdened judicial system from further stress.

The amendment substantially solves the problem and even though there may be areas that it does not touch, it is better to solve what we can today, leaving tomorrow's problems to tomorrow, than to fail to do what we can today.

In closing, I would simply say that the States of Oregon, Washington, Montana and, I think, Alaska have also included such a provision in their laws, only with respect to public employees.

I thank you, Mr. Chairman, for the opportunity to testify.

Mr. THOMPSON. I thank you. I cannot help but comment on what a really splendid statement you have made. The case citations in it are all thoroughly familiar to us. We have been giving this very careful thought in several contexts.

I was particularly interested in your action while you were the Speaker of your State legislature; in 1954 I was the minority leader in the New Jersey Legislature, and we had a Democratic Governor.

Mr. DUNCAN. We did not.

Mr. THOMPSON. I helped to support a piece of legislation advocated by the Christian Scientists to develop an alternative or, in effect, to give them the right to refuse certain inoculations for their children. The Governor vetoed that bill, and I provided the one vote necessary to override that veto, which was the first under the 1948 constitution, the first override.

The legislature adjourned and I went home, only to read in the newspaper the next day that I was no longer the minority leader.

I went to visit the Governor and had a discussion with him about other possible vetoes that I could help override, and later in the day, I became the minority leader again, so I was able to have my cake and eat it too, as a matter of principle.

Mr. DUNCAN. You made him an offer he could not refuse.

Mr. THOMPSON. Thank you very much.

Mr. DUNCAN. Thank you very much, Mr. Chairman.

Mr. THOMPSON. Our next witness is Hon. Floyd Hicks of Tacoma, Wash.

Good morning.

Mr. HICKS. Good morning, Mr. Chairman.

[Prepared statement of Hon. Floyd V. Hicks follows:]

PREPARED STATEMENT OF HON. FLOYD V. HICKS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WASHINGTON

My purpose in making this brief statement before this committee is to go on record on behalf of a principle that transcends party lines and goes directly to the heart of the American way of life.

As I understand it, the Civil Rights Act, as amended in 1972, was an effort to eradicate discrimination in employment from whatever source it comes. When any individual is willing to suffer loss of his or her opportunity to earn a living, rather than to act contrary to what he feels deep in his heart God would have him do, we should not shove these people aside lightly. Our country was founded by those who wished to escape just such penalties for their beliefs—beliefs that did not conform to the prevailing patterns of the society in which they found themselves.

We must no longer give mere lip service to the religious discrimination provisions of Title VII. I come from a state that has taken the lead in this area for public employees. Our legislature in the State of Washington has had a statute similar to H.R. 1528 on its books for public employees since 1973. To date, there have been no noted ill effects to the labor movement as a result. In fact, it has aided all concerned by removing the religious issue from the employment scene and the courts and civil rights agencies are less involved with having to deal with this area of religious discrimination.

Now, this subcommittee is considering legislation to amend the National Labor Relations Act to protect conscience. I was pleased, though not surprised, to hear that the Subcommittee Chairman, the gentleman from New Jersey, has called for an expansion of the action taken in 1974 relating to health care institutions to include all employers and employees under the National Labor Relations Act. Mr. Chairman, it is long overdue. Enough people have needlessly been thrown onto the public assistance rolls. I urge this committee to deal with this single, noncontroversial issue without bringing in other side issues that will complicate it and its consideration.

I urge the passage of H.R. 1528.

STATEMENT OF HON. FLOYD V. HICKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Hicks. I do not appear here to attempt to add to the knowledge that you and your subcommittee have on this matter, because it is far more wide-ranging than mine on this subject and Mr. Duncan has thought a lot about this, since he gave a very moving statement, and I was probably more impressed than you were, Mr. Chairman. But I have some friends in the Seventh-day Adventists church in Takoma that I admire and respect very much and they asked if I would appear before this committee and say, "Me too," as far as this particular legislation is concerned.

I have a very short statement which I am not going to read because it has no erudition, no cases cited. It just says that I believe that this is a fair thing to do, and I just want to be added as one Member of the House of Representatives who will certainly support you on the floor and urge that you do adopt this principle, whether it is the bill as Mr. Erlenborn has drafted, or some amendment thereto.

But I certainly support the principle and hope that this can be added to take this one source of irritation out of the law.

Thank you, very much. What would you like me to do with my statement?

Mr. THOMPSON. Without objection, your statement will be made a part of the record, and I would like to express my appreciation to you. This has been amazingly dragged out and in many ways, a difficult subject.

I hope, as I indicated in my opening remarks that its time has come with changes in other laws, and I am constrained to agree with Mr. Duncan's statement with respect to the effect of the first amendment involvement. So that I think that it is admirable of you to represent the Seventh-day Adventists from your District and of course, their attitude is a universal one, so in a sense, you are speaking for all of them. I am very grateful.

Mr. HICKS. Thank you, Mr. Chairman.

Mr. THOMPSON. Our next witness is Mr. Melvin Adams, Director, Public Affairs and Religious Liberty Department of the General Conference of Seventh-day Adventists.

Good morning, sir.

Mr. ADAMS. Good morning.

Mr. THOMPSON. If you will identify the gentleman with you for the benefit of the stenographer, we would appreciate it.

Mr. ADAMS. Mr. Chairman, my name, as you have said, is Melvin Adams. I am the Director of Public Affairs and Religious Liberty Department of the Seventh-day Adventist Church. I appear before you on behalf of the over 3,000 Seventh-day Adventist congregations in the United States.

With me, on my right, is Mr. Robert Nixon, associate director of the Department of Public Affairs and legal advisor, and on my left, Mr. Gordon Engen, another associate director of our Department of Public Affairs and Religious Liberty and a specialist in some of these labor relations problems.

With your permission, I do not intend to read my statement. I would appreciate it becoming a part of the record, then we will just summarize some of the points.

Mr. THOMPSON. Without objection, Mr. Adams, your statement will be made a part of the record in full and you may summarize and your colleagues are most welcome this morning.

Mr. ADAMS. Thank you.

[Prepared statement of W. Melvin Adams follows:]

PREPARED STATEMENT OF W. MELVIN ADAMS, IN BEHALF OF THE SEVENTH-DAY ADVENTIST CHURCHES

Representative Frank Thompson, Members of the Subcommittee on Labor, my name is W. Melvin Adams. I am director of the Department of Public Affairs and Religious Liberty of the General Conference of Seventh-day Adventists in Washington, D.C., the world headquarters of the Seventh-day Adventist Church. I am an ordained minister, having served at the world headquarters in the area of religious liberty since 1959.

My two associates today are Robert Nixon, an associate director and legal advisor to the Department of Public Affairs and Religious Liberty; and Gordon Engen, associate director of Public Affairs and Religious Liberty and a specialist in labor relations problems at the grassroots level. Both of these men will share in my testimony today and all three of us will be available for any questions.

It is a pleasure for us to be here today. We feel we are among friends.

For many years, members of the Seventh-day Adventist Church, as well as a few other religious denominations holding similar religious convictions, have had to face a decision between conscience and economic survival. For those who chose conscience, the predominant record is only too well known. It has been a long uphill struggle against seemingly insurmountable odds. For a time, it seemed no one was listening, but then as legislators, judges, employers, and labor union officials here and there began to see that the individuals of whom we are speaking were genuinely sincere and were willing to sacrifice their jobs, their homes, their security, and even the bread and butter on their tables, in order to be faithful to the voice of God as they heard it speaking in their hearts, changes began to take place.

Individuals such as Congresswoman Edith Green and the late Senator Wayne Morse, both of the state of Oregon, were instrumental in helping to develop what has become known over the years as the conscience clause. The states of Oregon, Washington, Montana, and Alaska, all have similar conscience clauses enacted into law, protecting the religious freedom of public employees. Washington State Senator Gary Grant has been a guiding light in the enactment of the Washington law, knowing from personal experience in his dual role as a labor union president

that these conscience clauses pose no threat to unionism. The state of Michigan enacted a joint resolution, "exhorting" public employers and bargaining representatives to enter into conscience clause agreements. As a result, Bill Marshall and the Michigan State AFL-CIO Executive Board by unanimous action reaffirmed the policy of the national AFL-CIO taken in 1965 to accommodate individual religious conscientious convictions along the lines of the conscience clause. Similar positions were taken by the Washington State Labor Council, Joe Davis, president. The Michigan Council 55 of the American Federation of State, County, and Municipal Employees went on record in a similar way.

It was in 1965 that I first testified before this Committee. More than one Congressman was shocked to learn that people in several churches were religiously opposed to joining or supporting labor organizations. We are grateful to you, Mr. Chairman, for arranging for that first hearing on this matter of conscience.

The next time this matter was brought before the Congress was in 1970 in connection with the Postal Reform Bill. At that time, a conscience clause amendment introduced and adopted by the U.S. House Postal and Civil Service Committee on May 7, 1970, and by the U.S. Senate Postal and Civil Service Committee on May 25, 1970, and later adopted in identical wording by both houses of Congress stated:

"No individual who is a member of a religious sect, or division thereof, the established and traditional tenets or teaching of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such individual pays to the Treasurer of the United States a sum equal to the initiation fees and periodic dues uniformly required as a condition of acquiring and retaining membership in a labor organization which is representative of the employee unless said individual and said labor organization mutually agree upon some other condition of employment."

The Senate Bill contained both the conscience clause amendment and the Right to Work amendment. The House Bill contained only the conscience clause amendment. Later, in conference, the conferees agreed to the following language which protects the religious objector:

"Each employee of the Postal Service shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right."

Again in 1971 and 1974 the matter of the religious convictions of individuals who cannot join or support labor unions came to the attention of Congress, and thanks to you, Mr. Chairman, Congressman John Erlenborn, and others, Public Law 93-360 was enacted into law for private health-care institutions. With the enactment of this law, our problems in the labor relations field in private health-care institutions have ceased. It's been a tremendous success. Some labor unions working in hospitals not under the jurisdiction of Public Law 93-360 are voluntarily accepting the formula and recognizing the religious convictions of health-care individuals in public hospitals. A case in point is the Retail Store Employees Union, David Jarvis, president, with the assistance and guidance of representation from the national office of AFL-CIO, Carl Herwath, voluntarily adopting the provisions of Public Law 93-360 when conducting a unionizing drive at the Pawating Hospital in Niles, Michigan. Even though the hospital did not come under Section 19 of PL 93-360, the local union officials, as well as Mr. Herwath from the international office, endorsed its principles and voluntarily accepted them as their own.

Mrs. Margaret Gatz, a nurse at the Gladwyn Hospital, was reduced from full-time employment status to part-time employment upon the demand of the United Steelworkers of America because of her conscientious convictions regarding labor union membership and support. Upon the enactment of PL 93-360 with its conscience clause, she was reinstated as a full-time nurse without complications or difficulties.

In other areas of private employment, numerous individuals have been summarily dismissed. In only a few instances, negotiations have resulted in reinstatement such as with Fred Pulcer who was dismissed because of a union security agreement between the Canteen Company and the Teamsters. A similar reinstatement took place in Coos Bay, Oregon, involving John Campbell and the Teamsters.

The private employment sector remains the largest area where relief along the lines of the conscience clause has made little headway. Every few days reports come to my office of members from coast to coast who have either lost their jobs,

have been refused employment, or have switched employment under duress because of their consciences and the unwillingness of local labor organizations to make accommodations.

Long before this Committee announced this hearing, church leaders in the Northwest began to prepare a survey of Seventh-day Adventists to get an idea of how widespread the labor union problem has been during the past few years. On Saturday, July 24, 1976, a preliminary questionnaire was given at two large meetings with a total of 3,500 people in attendance. Over 300 incidents were reported where Adventist members did not apply for work because of union shop agreements. Seventy-five people quit jobs once they were confronted with the requirement to join or pay agency fees, while 32 waited until they were fired. Thirty-six were refused employment when the prospective employers learned of the applicants' stand on the labor union issue. In the public sector, accommodation of religious convictions is required by law in four states in the Northwest. A handful of people have stood up and fought for their convictions. Several accommodation agreements have resulted. Other cases are still in court, some with the help of the Equal Employment Opportunity Commission and state civil rights agencies.

When Congress addressed itself to the problem of discrimination, it included in its net all forms of discrimination—including that based on religion, as well as race, sex, national origin and color. At first, religious discrimination was thought to mean only that overt discrimination based on prejudice. We have often heard it said, "You can believe anything you want to believe. We don't care what religion you are as long as you abide by all of the conditions of employment."

As Congress took a second look at it, they began to realize that religious discrimination was being interpreted much more shallowly than they had anticipated. Thus, in 1972, the Civil Rights Act of 1964 was amended to spell out just what was meant by "religion". In effect, what you ladies and gentlemen of the Congress said was that unless freedom of religion granted freedom to PRACTICE the religious beliefs, it was in fact no freedom at all, that employers were expected to make every attempt to find a reasonable accommodation to religious beliefs and practices; and that labor unions were not to cause employers to be guilty of religious discrimination.

Some attorneys have argued that the courts can determine what will or will not violate a person's conscience. We do not believe that is so. From the language of the 1972 amendment, we do not believe you feel it is so, either. The personal religious convictions of an individual are to be accommodated, not someone else's interpretation of what they think the convictions ought to be. The question centers around the accommodation, not the religious conviction. Altogether too many people get bogged down over the religious conviction rather than trying to work out an accommodation for the given conviction.

Another point of confusion arises over accommodation and compromise. They are not interchangeable. Conscience is not negotiable. There is no such thing as being just a little bit pregnant. People will at times violate their consciences or give up their beliefs. But that is not accommodation as found in the Civil Rights Act or as interpreted by the courts.

The Act envisions (and the courts have concurred) that there may be occasions where accommodations are impossible. We feel that this is a question of extreme importance to this Committee. Have accommodations been tried? What have the results been? What have been the reasons for failure to accommodate—inability or unwillingness?

The national AFL-CIO, as well as state organizations, have indicated that local unions are autonomous and that if they refuse to make accommodation there is little that the higher organization can do to force them to follow the national policy. It is because of this that cases such as *Cooper v. General Dynamics* entered the courts. The three Seventh-day Adventist employees in Dallas, Texas, offered to pay the equivalent of their dues to an agreed-upon charity, but this offer was refused. The case in the district court went against them. However, in the court of appeals for the sixth circuit on June 9, 1976, the lower court's decision was overturned by a unanimous finding of the court. Unions do have a duty to assist the employers in avoiding the violation of Title VII of the Civil Rights Act involving religious discrimination, the court said.

Perhaps the most encouraging development to us in our efforts to gain meaningful religious liberty in this area came on July 24, 1975, the date when you, Mr. Thompson, made the statement quoted in the *Congressional Record* as follows:

"I might say, parenthetically, that I have an agreement with the gentleman from Illinois (Mr. Erlenborn) to do to the whole National Labor Relations Act

what we did in the Hospital Act of last year. This is not, in my judgment, germane to this bill. It should be offered as a separate act, perhaps jointly sponsored and initiated by the gentleman from Illinois (Mr. Erlenborn) and myself to prevent all throughout the National Labor Relations Act discrimination on account of religious beliefs."

In our subsequent visits with you in your office, we have been encouraged to hear you say that you, too, are convinced that the time is ripe for action along this line. This is evidenced by the fact that you have called this hearing on the bill introduced by Mr. Erlenborn, a bill that would expand the conscience clause to all segments of labor coming under the National Labor Relations Act.

We believe that this is a non-controversial issue. We believe that it should be kept as a single issue, uncomplicated by other factors that might tend to be partisan or controversial in the labor-management area. The speedy enactment of this bill affecting the entire National Labor Relations Act would save a great deal of manpower that is now being wasted—men and women across the country who are among the finest employees, whose work records are good, whose only crime is a religious conviction against supporting labor unions. They should not be added to the unemployment rolls. Money paid by union members would not need to be spent to defend lawsuits that have been incurred. Money contributed by church members should not have to be used to defend individuals whose religious civil rights have been violated; we could all get on much more quickly with the more important work we all have to do, each in our own areas.

Such action would be in step with the great historic traditions of this country and such action would nobly follow those unique exceptions which were made to meet unique circumstances such as:

Draft Laws.—Provision for those young men whose consciences do not permit them to take other men's lives.

State Sunday Laws.—Provision for individuals observing Saturday.

Social Security.—Provision made to exempt Amish because their religious convictions prohibit any kind of life insurance.

School Attendance Laws.—Provision made to exempt Amish because their religious convictions prevent them from sending their children to school beyond the eighth grade.

Pledge of Allegiance to Flag.—Provision made to exempt those who cannot pledge their allegiance because of religious convictions.

Abortion and Sterilization.—Provision made to protect individuals and institutions who have religious convictions against these procedures.

I urge you, Mr. Chairman, and Members of this Committee, to do whatever is necessary to bring this legislation speedily to its completion.

STATEMENT OF MELVIN ADAMS, DIRECTOR, PUBLIC AFFAIRS AND RELIGIOUS LIBERTY DEPARTMENT, GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, ACCOMPANIED BY ROBERT NIXON, ASSOCIATE DIRECTOR AND LEGAL ADVISOR TO THE DEPARTMENT OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY, AND GORDON ENGEN, ASSOCIATE DIRECTOR OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY

Mr. ADAMS. It is a pleasure to be here today with you. We feel that we are with a friend.

You will recall, I am sure, as someone else has recalled, in 1965 that it was before that very hearing of the repeal of section 14(b), H.R. 77 which was the first time, I believe, before your subcommittee and even before the Congress, that this matter of religious conviction concerning labor unions or the support of labor unions came to the attention of our congressional leaders.

To many of them, it was a shock. It was strange. It was new. Many of them had not heard of it before.

Thanks to you, a special hearing very much the same as we have today was called, at which time the religious issue was given a full chance to be heard.

I had the privilege, at that time, of representing the Seventh-day Adventist Church. There were others who were with us. We heard one way or the other from the Amish, from the Menonites, from the Plymouth Brethren IV. We heard from segments of the National Association of Evangelicals, from Christian Missionary Alliance, from the old German Baptists.

They were all making one plea, and that was that some relief be found for the discrimination that was being forced upon their members by the National Labor Relations Act.

No action was taken at this time, but the hearing was not in vain, because it was, I believe, at that time that the seed was planted. In the soil of the American tradition; it was bound to take root; it did.

The first action that took place in a positive way was in the postal reform bill of 1970. At that time, identical wording came from both the House and the Senate, in their committees, and then from the House floor and the Senate floor identical wording was produced on this matter of the conscience clause.

Again, in 1974, as you have already recalled, I do not need to explain it to you, because you, with Congressman Erlenborn and others, helped to make Public Law 93-360 possible.

Following the record that the Congress has set and the interest that Congress has shown in this matter, the States have also moved into this area and while Congressman Duncan has already mentioned Washington, Oregon, Alaska, and Montana, a number of others have been holding hearings. There is considerable interest around the country in this area.

The State of Michigan enacted a joint resolution, not in the form of a law, but in the form of a recommendation, to both labor and employers to recognize the religious convictions of people and work the conscience clause into their contracts.

A great deal of help has also come from the civil rights law, in particular the 1972 amendments, because EEOC is now taking a positive interest in the matter of religious convictions.

With EEOC taking that interest, most of the State civil rights commissions or human rights commissions or various names that they go under are also taking a positive interest in this, and we are noticing an increasing number of favorable decisions coming from these various areas.

Mr. THOMPSON. I am pleased to say—if I may interrupt you—that last Friday I had a visit from New Jersey's public advocate who has adopted the very same position within the State of New Jersey, although they have yet to have legislation on the subject.

Mr. ADAMS. I am happy to hear that. We appreciate that information.

As a result of the 1965 hearings, Mr. George Meany responded, as you will recall, with a letter directed to you as the chairman in which he stated the interest of organized labor in finding a way to accommodate these religious convictions. As a result of his interests and his actions, the Executive Committee of the AFL-CIO issued a policy statement indicating that it was the policy of the National AFL-CIO. State AFL-CIO's, such as the one in Michigan, have taken the same action, reaffirming in their State the action of the National AFL-CIO.

The Washington State Labor Council has reaffirmed the same position.

As has already been mentioned, the outlook in the courts was rather black to begin with, but after the 1972 amendment to the civil rights law was enacted and cases began to flow through the courts, there was a change that took place. *Cooper v. General Dynamics* is a case in point. Undoubtedly, the courts will settle this issue, if given time, and I believe that they will settle it in favor of the religious convictions of individuals.

There are a large number of cases in the pipeline today on this matter of religious issues in the lower courts. Congress can settle the issue. Congress can do it and save labor unions hundreds of thousands of dollars in litigation, as well as churches.

We are also happy to report, Mr. Chairman, that the personal support of labor leaders, concurring that a conscience clause is increasing. A case in point is a Mr. Gary Grant, local labor union leader in Seattle, Wash. Mr. Grant is also a State senator in the State of Washington. He also happens to be on the labor committee, and, as I recall, is the chairman of the labor committee for the senate for the State of Washington.

Mr. Grant has stated publicly on a number of occasions that he never allows a bill dealing with labor unions—and this will be in the public sector, primarily—to go through the State of Washington's Legislature or to leave his committee without a conscience clause being attached to it. He is a labor leader.

If he is asked why, he says it is right and he says furthermore, that he has had opportunity as a labor leader to observe how the conscience clause operates. He believes experience indicates the conscience clause does no damage to the labor union, nor in any way threatens its existence.

The same kind of success story has surrounded the conscience clause that was attached to the health care amendments. This is being received with a great deal of appreciation. It is protecting the few people with these religious convictions here and there in the private health sector, and not only is it working very well from that standpoint, but public health institutions, labor union leaders who are dealing with city hospitals, and others, have taken a very close look at it, and in at least one incident that we know of, have decided voluntarily to adopt the formula of the conscience clause in the Health Care Act to their public health or city hospital, as I believe it is.

Mr. THOMPSON. That is becoming a rather widespread attitude, I am glad to report. It was rather difficult to develop that ostensibly simple language to the Hospital Act, but, as it turns out, thanks to Mr. Pollitt's legal advice and the cooperation from Mr. Erlenborn and Senator Taft, Senator Williams of New Jersey, and others, it was rather enthusiastically accepted and was, parenthetically, really the first viable opportunity to do it that I had between the years 1965 and that date—this has not been brushed aside because of any opposition on my part.

Labor legislation is a terribly difficult, probably the most difficult of all situations. It brings the NLRA to the floor. It was for that reason in the debate of July 25 of last year, cited in your testimony, that I remarked that I did not think it was germane to that particular piece of legislation, and pledged a hearing as we have today.

Mr. ADAMS. We are very grateful, Mr. Chairman, for that hospital conscience clause. It has meant a great deal all around.

As I said earlier, I believe the seed that was planted in that hearing back in 1965 has not only sprouted, it has grown, it has borne fruit, but the tragedy of it all is that only a very small number of these people with these religious convictions are protected or have any way of really being covered in these. They are still losing their jobs. They are still being turned away from jobs because of union security clauses.

Personal friends, people that are writing to our office week after week, are bringing the message: Is there not some way that we can get the hospital clause extended, that we can get some protection from the courts, that we can get some protection from EEOC, and thus far, that has not been possible.

Long before this hearing was announced, church leaders in the Northwest began to prepare a survey to determine and get some idea of how much problem the labor union issue was for Seventh-day Adventists.

On Saturday, July 24, 1976, just this very month, a preliminary questionnaire was given to two large meetings with a total of 3,500 people in attendance. Out of those 3,500, over 300 reported that they did not apply for work in various areas because the union security clause was in effect. They knew the ultimate results.

Seventy-five indicated that they had quit their jobs once they were confronted with the requirement to either join or pay dues to a labor union. Thirty-two indicated that when a union was organized within their shop they had waited it out and had finally been fired.

Thirty-six indicated that they were refused employment because their prospective employers learned that they had religious convictions against either joining or supporting a labor union.

This is our problem. It is simple. It is the same as it was in 1965, except that there is one big difference. A lot of people understand it today, and we are grateful for that. That is why we are very grateful to you, Mr. Chairman, for this hearing. We are grateful for the interest that you have taken in it. We are grateful for the strong support that has been evidenced here today and that we hear about from other of your colleagues here in the House along this line.

Now, as I indicated, we have Mr. Nixon and Mr. Engen with us. They will be available for questions, but before the questions, Mr. Engen has had considerable experience in working with labor unions and working out accommodations, and some of this might be of interest for the record.

Mr. THOMPSON. Thank you.

Mr. ENGEN. I just have two brief instances. I had prepared for an earlier meeting that we had—and we had a list of some 25 or 26 times where I had personal knowledge of, or had been working with, individuals where accommodations had been worked out.

So often I have been told personally that it is impossible to do, it cannot be done or there is no possible way to do it. I often wonder whether it is really impossible or if there just was not a desire to try to work it, so I have been interested in the times when it has worked out to see how successful it has been.

I have not gotten any feedback from one of these instances that we worked out that there has been a problem that has arisen since. It

seems that since once that conclusion has been arrived at and the conscience clause is effected on the local union employer and conscientious objector that it seems to work.

Mr. THOMPSON. I think that I might add that there is one more element involved and at least from my experience in talking to any number of labor union officials, there is a degree of insecurity upon their part as to what the law is. I think that is more predominant, really, than resistance, as Mr. Adams has pointed out today and many other times, and I might say in connection with Mr. Adams and the others that I have long admired him very deeply as an individual, his convictions and those convictions of the faith that he represents.

He has been constructive, and an admirable champion of a very good cause.

Mr. ENGEN. I wanted to add that when we were able to actually get down to it in an area of an impasse and work out an agreement, these problems, the unwillingness and apprehensions seemed to evaporate once it was seen that there was a solution for them.

Mrs. Margaret Gatz was an employee, a nurse at a hospital in Michigan. She had these convictions. She called my office to get some help in this regard.

There was no solution. The union asked the hospital to put her from a full-time nurse down to a part-time employee, where they were not covered under the agreement; she did not have to belong to the union.

When the Hospital Act came along I sent a copy of it to the hospital. Immediately she was put back on full-time employment status, and it has worked out beautifully since. I have not heard of a single comment since that happened.

At the hospital in Niles, Mich., there was an organizing drive for the employees in the Pawating Hospital. As you would expect, some employees of the hospital called my office and said, What shall we do?

The first thing that I did was write a letter to the president of the local and he contacted me and said, let's have a meeting. We got together, talked the whole thing over. Mr. Herwirth, a representative from the AFL-CIO office was there as well.

We worked it out where they gave a statement, even though the hospital did not come under the act, incorporating the same conscience clause, and that we will voluntarily come under it.

Mr. THOMPSON. A municipal hospital?

Mr. ENGEN. A municipal hospital.

They voluntarily adopted it. If you are interested, I have a copy of the letter that they sent me, as well as my inquiry, first of all to them, then my response.

Mr. THOMPSON. I would appreciate your leaving them, and without objection, they will be made a part of the record.

Mr. ENGEN. Thank you, Mr. Chairman.

[The letters referred to follow:]

DECEMBER 20, 1974.

Mr. DAVID JARVIS, *President,*
Retail Store Employees' Union, Local 36
Kalamazoo, Mich.

DEAR Mr. JARVIS: Several members of the Seventh-day Adventist Church have contacted our office expressing grave concern over the possibility that a union shop will be voted at the Pawating Hospital in Niles, Michigan, by your union.

As you know, the Seventh-day Adventist Church has historically taught that its members should not be involved in labor union activity either by membership or by payment of dues. However, in order to show good faith, our members have volunteered to pay the equivalent of dues to a non-religious, non-union charity.

What provisions do you propose for making an accommodation for religious beliefs and practices of our members who work there, as required by Title VII of the Civil Rights Act?

I would recommend that you adopt as your policy the provision of the new law covering private hospitals passed by the U.S. Congress, PL 93-360 (copy enclosed). This same principle was spelled out for public employees in a joint resolution No. 173 passed by the Michigan legislature (copy enclosed).

We feel that this is the appropriate time for you to state your position in this regard.

I will be happy to discuss this with you either in private or on the phone at your convenience.

I will be looking forward to your early reply.

Sincerely your,

GORDON ENGEN,
Religious Liberty Secretary.

RETAIL STORE EMPLOYEES UNION,
LOCAL NO. 36 OF SOUTHERN MICHIGAN
Kalamazoo, Mich. January 13, 1975.

Mr. GORDON ENGEN,
*Religious Liberty Director, Lake Union Conference of Seventh Day Adventists,
Berrien Springs, Mich.*

DEAR MR. ENGEN: This is to confirm the understanding which was made between yourself, Elder Eckman and Ray Sones, John Barry and Carl Herwarth at Niles on Thursday January 9, 1975 in regard to exclusion of individuals with religious convictions from union membership at Pawating Hospital.

It is the intent of Local 36 to abide fully with Public Law 93-360 and in particular with Section 19 which states as follows:

INDIVIDUALS WITH RELIGIOUS CONVICTIONS

Sect. 19. Any employee of a health care institution who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required, in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a non-religious charitable fund exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employees." Sect. 4. The amendments made by this Act shall become effective on the thirtieth day after its date of enactment. Approved July 26, 1974.

It is our intent to propose the above provision when contract negotiations are entered into with Pawating Hospital and you may rest assured that Local 36 will not require Union membership of any individual who would come under the provisions of Section 19 of the Act.

If we may be of any further assistance in any way please do not hesitate to contact me.

With kindest regards, I am

DAVID JARVIS, *President.*

MARCH 10, 1975.

Mr. DAVID JARVIS,
*President, Retail Store Employees Union
Kalamazoo, Mich.*

DEAR MR. JARVIS: I have waited to answer your letter of January 13, until I learned some more specifics concerning the NLRB election in Niles at Pawating Hospital. I understand now that things had been postponed.

I appreciated your letter very much and I immediately contacted your Adventist employees at the hospital informing them of the position that your union had

taken. As I explained to Mr. Herwarth, when there is no issue of conscience involved and there is protection for individual religious freedoms the church does not enter into unionizing activities one way or the other from that point on, for we are not engaged in any activity which either is intended to campaign for or against labor. As a church we are interested in the sole area of the preservation of individual freedoms, both for members of our church and for those of other faiths.

We sincerely appreciate your efforts in this area and we will be interested to follow through with any further details that should come up in the future.

Sincerely yours,

GORDON ENGEN,
Religious Liberty Director.

Mr. ADAMS. We just have one short comment to make further; I ask Mr. Nixon to make it, that illustrates when the conscience idea is incorporated, there is no flood. That is one of the things that labor is fearful of, that everybody is going to go through that door.

Mr. Nixon, would you explain that particular incident?

Mr. NIXON. In 1965 when the Executive Council of the AFL-CIO—

Mr. THOMPSON. I dislike interrupting you, but this is now a live quorum. With your indulgence, we will recess for approximately 10 minutes, to give ourselves an opportunity to answer it.

[A brief recess was taken.]

Mr. THOMPSON. The subcommittee will come to order.

Mr. Nixon?

Mr. NIXON. My comment is that in 1965 when the AFL-CIO Executive Committee recommended that all internationals set up programs for religious dissenters, there was one international, the Communications Workers of America, that did set up such a program.

Up until January 1 of this year, the Communications Workers did not have a union security clause in their national agreement with the phone companies but in 1976 they had a security clause. So we had a few calls from Seventh-day Adventists who began to say, I cannot pay funds to the labor organization.

We immediately contacted the Communications Workers of America and discussed this program they had. We showed this program to the members who had contacted us. We published it in church papers for anyone who wanted to take advantage of it.

What is the result? Of the approximately 500,000 members in the Communications Workers bargaining units, five took advantage of this program. This is approximately one one-thousandth of 1 percent.

The argument we sometimes hear is that the conscience clause will open the floodgates. But the Communications Workers covers a wide spectrum of workers across the whole Nation. And this is the result that we had.

Mr. THOMPSON. I quite agree. Mr. Clausen and I went together to answer the rollcall and then came back together, and we agreed there will not be any floodgate. There might be a few persons who represent themselves as belonging to an organization when in fact they do not, or making a misstatement.

That is a matter, I do not think, of great concern. It is a matter of a person being able to live with his conscience after doing a thing like that.

It is impossible to draft legislation which is perfect. It is impossible to legislate morals. It just cannot be done.

Mr. NIXON. Personally, I feel that the requirement that they pay the equivalent fee will knock out those who are not sincere in this.

Mr. THOMPSON. In conclusion, I want to express my gratitude to you and I have just one comment, rather a question.

We think that we avoided some major problems in drafting the language in the Hospital Act by the requirement that the charities to be chosen by the individuals in lieu of dues money be paid to a charity not related to his own faith.

Do you find yourselves comfortable with that?

Mr. ADAMS. We are very comfortable with that. We are very much opposed that the idea ever got started that we are trying to turn it to any church or church charity. We are not.

We are merely trying to show good faith that we are not trying to get a financial advantage.

Mr. THOMPSON. Thank you.

Mr. ADAMS. Thank you for giving us the opportunity.

STATEMENT OF HON. DON H. CLAUSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CLAUSEN. Mr. Chairman, with the understanding that the testimony will be included in the record as if read in full, we would like to proceed as you stated. Mrs. Pettis has another session.

At the outset, I want to state as emphatically as I can to you, sir, how much we genuinely appreciate your commitment and the obvious display of convictions that you have toward religious freedom and this conscience clause. It is very satisfying in a day and time when there is so much in the way of basic criticisms of Congress and some of the individuals as an institution, when we can deal with a chairman who keeps his word.

You sir, have told me, and I am stating this on the record—you have told me on a number of occasions precisely what you would do, and we are here today. I am deeply grateful to you for having given us this opportunity.

Mr. THOMPSON. Thank you for your kindness and your interest. I deeply appreciate it.

Mr. CLAUSEN. During the debate on the proposed Bill of Rights—and I am just going to summarize what I think are the salient portions—the proposed Bill of Rights of the First Continental Congress, Representative Daniel Carroll of Maryland sounded the warning that could be well echoed as we consider H.R. 1528. “The rights of conscience are, in their nature, of peculiar delicacy and will little bear the gentlest touch of Government hand.”

H.R. 1528 would protect the rights of the conscience of thousands of sincere people who believe it to be the violation of Biblical principles to join or financially support a labor union.

The central issue is the preservation of full religious liberty for the country and, in particular, those religious organizations in our country who have consistently demonstrated strict adherence to these matters of conscience that are inherent in the accepted principles of their belief.

Specifically, there are some seven religious groups—and I might state parenthetically that I am privileged to represent a very substantial segment of the Seventh-day Adventist organization in my

own congressional district. They have educational institutions, medical facilities, and I have had a chance to work with them closely in a very close matter, as have many of you.

We do not need to share the viewpoint of all of these religious organizations. In fact, we do not even have to understand it to stand emphatically in support of these people's conscientious convictions. Religious liberty is not, after all, simply to respect a man's religion. It is to protect his right to practice a religion we may not respect.

This Bicentennial year is a particularly appropriate time for us to reflect upon and act upon that remarkable tradition of religious liberty that has truly made our country a haven for all of those whose religious views have been punished or scorned in their original homelands.

The very first permanent arrivals from the Old World sought religious refuge here. We should never forget this.

Succeeding generations have come to enjoy the freedom that has flourished and the true religious liberty and diversity that has been so prevalent in this country. The Virginia Statute for Religious Freedom, adopted in 1786 and which served as the statutory model for our American public policy with regard to the free exercise of religious beliefs states, "be it enacted by the General Assembly that no man be compelled to frequent or support any religious worship place or ministry whatsoever, nor shall be enforced, restrained, molested or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief, but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, that the same shall in no wise diminish, enlarge or affect their civil capacities."

I think it is very conclusive and can serve, as you can understand, as a guideline.

Unless we act, the present condition can continue, which can force an individual to give up gainful employment if a vote is taken to take union membership as a condition of employment. Religious liberty means nothing if it does not allow the minority in such a situation its opportunity to follow its conscience.

There are few situations in the United States of America where we allow discrimination for religious reasons. Even during periods when our national sovereignty has been under attack by other nations, those people whose religious views have prevented them from bearing arms have been excused from combat. At no time, may I add, have they asked to be excused from sharing their burden of alternative service.

My son-in-law is an example. He served as a medic, side by side with those who made the commitment in Vietnam.

We can do no less than this in every area if we are to maintain our nation as an example for others to follow.

"The rights of conscience are a peculiar delicacy." Let us be remembered as statesmen who recognized this fact and who acted resolutely and intelligently in the defense of, and for the cause of, religious freedom in America.

You, Mr. Chairman, the members of this committee, I think, will be recognized in the year 1976 as the champion of religious liberty.

I think we have an opportunity in this Bicentennial year to do something for individuals who carry these deep convictions.

Thank you.

Mr. THOMPSON. I thank you.

May I say, over a long period of time, you have expressed a very deep and sincere interest in this subject. I am delighted that finally we have the opportunity to have the hearing you have requested so many times.

Mrs. PETTIS.

STATEMENT OF HON. SHIRLEY H. PETTIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. PETTIS. Let me express my deep appreciation to you for affording me this opportunity to appear before you today in support of H.R. 1528. I commend you for your interest in this legislation which, in my view, directly involves the constitutional guarantee of freedom of religion.

The tenets of my religion prohibit union membership. Ellen White, the founder of the Seventh-day Adventist Church said: "Those who claim to be children of God are in no case to bind up with the labor unions that are formed or that shall be formed. This the Lord forbids."

While there are theological arguments among Adventists about the exact meaning of the term "bind up," many believe the prohibition covers agency fee arrangements as well as literal union membership.

For these people, H.R. 1528 is vitally necessary if they are to be permitted to seek and hold jobs in their chosen field. Now, in effect, they must choose between their religion and their job.

In fact, I have with me a list of 32 names of men and women in my congressional district who, over the past several years, have either lost or been refused jobs because of religious beliefs which prohibit them from financially supporting a labor organization.

It is not my desire to operate a special class of religious "free riders" or to allow Adventists, or any other group, to take advantage of benefits negotiated by the union for which they do not pay. However, the provisions of H.R. 1528, which allow the payment of an amount equivalent to initiation fees and membership dues to a nonreligious charity, would seem to be an equitable compromise. This is not an antilabor measure and should not be so considered. It is an attempt, as Congressman Erlenborn has noted, to preserve the religious liberties guaranteed by our forefathers.

I am not an attorney, much less an expert on constitutional law. My good friend John Erlenborn has and will discuss the questions involving exercise and establishment of religion far more knowledgeably than I could. Very simply, however, as I read the first amendment it gives me the right to freely exercise my religion. Section 8(a)(3) of the National Labor Relations Act and section 211 of the Railway Labor Act, which permit union security agreements and agency fee arrangements, directly contravene that right in many areas of employment. It is this discrepancy which H.R. 1528 seeks to correct.

I believe this both a viable and an equitable approach.

Mr. Chairman, one international union—the Communications Workers of America—provides this accommodation. Under that union's special program for religious dissenters, a worker's agency fee is deposited in a separate account. Biannually, these moneys are distributed to nonreligious, nonunion charities such as the American Red Cross and the American Cancer Society. Many locals have developed analogous working arrangements with individuals whose religion prohibits union membership.

However, despite an AFL-CIO policy statement endorsing a "conscience clause" and George Meany's public statement supporting the concept, the member unions of the AFL-CIO—excepting the CWA—do not, even now, have a clear, consistent policy to deal with religious dissent.

As I am sure you know, in several instances recently, Seventh-day Adventists have sued specific unions in the Federal courts seeking to use the provisions of title VII of the Civil Rights Act to prevent religious discrimination under the union security proviso of the NLRA.

To cite one example, in *Cooper v. General Dynamics*, several individuals with religious objections to the payment of an agency fee—in this case, the union involved was the International Association of Machinists—proposed that instead they contribute an equivalent amount to a nonreligious charity.

The IAM rejected this compromise and, subsequently, under the terms of the General Dynamics-IAM contract, Cooper and his fellow workers were fired as a direct result of their refusal to pay the agency fee.

The fifth circuit court of appeals has now held that in this case title VII does apply—with the limitation that the arrangement does not create an undue hardship to the conduct of the employer's business or to the union. The case has been remanded to the district court for further consideration and no decision is expected before sometime next year.

However, even if this specific case is resolved in Cooper's favor, the procedure will still involve a time-consuming and expensive process each time the issue is raised. Individuals in a similar situation will have to go into the Federal courts, with all that entails, each time the problem arises. I believe it would be far better for the Congress to resolve this issue once and for all by providing a consistent, coordinated, and equitable procedure which applies equally to all unions.

In order to illustrate the real scope of the problems the law creates for religious dissenters, I would like to digress briefly. Back in May, the Department of Agriculture issued new food stamp regulations. The Department has, of course, been enjoined from implementing the regulations and it remains to be seen exactly what the final outcome of these proceedings may be.

However, the work requirement mandated by the regulations has a direct bearing on the issue we are discussing.

Under these rules, a food stamp recipient is required to seek and accept employment—even if union membership is a condition of that employment. Refusal to accept a job which has been offered results in the loss of food stamp eligibility. Here, again, religious scruples have detrimentally affected the individual. In this situation,

H.R. 1528 would also provide a solution which is fair to everyone involved.

Finally, the NLRA currently provides this accommodation for employees of health care facilities. To date, all available evidence indicates the provision has not interfered with either union achievements or the smooth functioning of these institutions. It does not, in fact, create an "undue hardship." In my view, it is time we extended this protection to all employees whose religious beliefs do not permit them to participate in labor union activities and I strongly support H.R. 1528.

Again, Mr. Chairman, my thanks for giving me the opportunity to appear and for taking the valuable time of your subcommittee to consider this issue. My thanks, too, to Congressman Erlenborn for his strong and continued support for legislation to protect the rights of religious minorities.

Mr. THOMPSON. Thank you very much, Mrs. Pettis, for a very splendid statement. I wish that your tenets prohibited your being a member of the Republican Party but allowed you to be a member of the Democratic Party.

Ms. PETTIS. Thank you, Mr. Chairman.

Mr. THOMPSON. Thank you very much.

I know that the group that you are going to address shortly will be as charmed by you and as impressed by you as I am.

Mr. CLAUSEN. I wonder if I could ask unanimous consent of the committee that we, as a panel, be permitted to offer supplementary extraneous materials, such as letters, that would coincide with the testimony?

Mr. THOMPSON. Certainly; without objection, we will keep the record open for a period of 10 days for that purpose.

Mr. CLAUSEN. Thank you very much.

Mr. THOMPSON. Mr. Leonard Baldwin, of the Plymouth Brethren, has a statement.

Mr. Baldwin, do you want the statement included in the record, or do you care to read it?

Mr. BALDWIN. We would like for it to be entered into the record.

Mr. THOMPSON. Rather than your reading it?

Mr. BALDWIN. I will make a brief statement, yes.

Mr. THOMPSON. Please have a seat at the table. Without objection, your statement will be made a part of the record, and you may read it all or summarize it, as you wish.

[Transcript of statements of Messrs. Frederick N. Walker, Robert A. Smith and Jack Walley, representatives of Plymouth Brethren No. 4, at a hearing on July 16, 1974, before the Subcommittee on Manpower and Civil Service, Committee on Post Office and Civil Service, U.S. House of Representatives, submitted by Mr. Baldwin in support of his testimony before the Subcommittee on Labor-Management Relations follows:]

STATEMENT OF FREDERICK N. WALKER, PLYMOUTH BRETHREN NO. 4,
ACCOMPANIED BY ROBERT A. SMITH AND JACK WALLEY, JULY 14, 1974

Mr. WALKER. Thank you, Mr. Henderson.

We do appreciate the fact that we have this opportunity to present testimony to our Government. I have on my right, Bob Smith with the TVA in Knoxville, Tenn., and Jack Walley with Social Security in Baltimore.

It seems wise to have at least two members of our church who are working currently for the Federal Government present, because I think they can, in their own simple language—we are not professionals—bear witness to the fact that we are believers in the Lord Jesus Christ, the Son of God. He, having died for each of us, has laid claim to us in our lives. We desire to be regulated in our lives practically by the word of God.

As Bob and Jack will bring out in their short testimony, scripture is a governing factor in our lives. They will refer to certain scriptures specifically. We, as a group known as Plymouth Brethren No. 4 in Government records, have meeting places in about 40 different cities across the country.

Actually, Mr. Henderson, our petition this morning is simplified by action that has been taken this month by both the House of Representatives and the Senate. We are departing somewhat from what we were going to say. I will take the liberty, if I may, of reading a couple of excerpts from documents, first of all, Mr. Perkin's conference report, dated July 3, 1974, Coverage of Nonprofit Hospitals under the National Labor Relations Act. It is very much in accord with our concern.

There was included in the hospital legislation as you would well know, a conscience clause as a result of the conference between the House and the Senate. It says in section 19 of the National Labor Relations Act as amended:

"Any employee of a health care institution who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required, in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a non-religious charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code chosen by such employee from a list of at least three such funds, designated in a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employee."

It is interesting that the wording of that amendment is similar to the conscious amendment passed by the full Senate Committee on Labor on August 19, 1965, that is attached to our statement which is before you.

Because history has jumped right into the present month of 1974 we will refrain from going into a lot of historical background. I would like to leave with the committee a small documentary for your perusal. It gives excerpts from the Congressional Record of 1965 and letters—for instance, from Senator Williams and from Vice President Humphrey—which indicate strong sympathy with our plea.

I note that this conference report was signed by Mr. Perkins, Mr. Thompson, Mr. William D. Ford of this committee, Mr. Clay of this committee, Mr. Quie and Mr. Ashbrook, as well as 12 Senators including Senator Williams, Senator Randolph, and Senator Javits.

It was Senator Javits who carried forward that conscience amendment of August 1965 from the Senate Labor Committee and introduced it as his own bill, S. 3203, on April 6, 1966.

One more excerpt, if I may, from the Congressional Record of July 11, 1974. Mr. Frank Thompson, Jr., says:

"This bill, S. 3203, was passed by the House six weeks ago by a vote of 240 to 58. The Conference Report is supported by the Administration, Labor Organizations, several State Hospital Associations—Republicans and Democrats alike. The only differences between the House and Senate Bills are two House amendments: the Religious Convictions Amendment; and the Cooling-Off Amendment. In the case of both amendments, Mr. Speaker, the Senate receded to the House with an amendment. In each instance the intent of the House amendment was not only retained, but perfected and made more workable.

The Religious Convictions Amendment would exempt from union security agreements those health-care industry employees who belong to a religion with historically-held convictions against joining or financially supporting a union. In other words, Mr. Speaker, such an employee would not have to join a union, or pay dues or initiation fees in order to work.

The conferees on the part of the House insisted on this amendment.

The Senate receded with a proviso that such employees may be required to pay an amount equivalent to dues and initiation fees to a non-religious charity.

It is safe to say that virtually everyone connected with S. 3203 is pleased with the action of the conferees."

Finally, Mr. Thompson says later:

"The Conference Report before us, as well as the bill S. 3203, represents honest compromise. As Secretary of Labor Peter Brennan said in his letter of July 8, 1974, expressing the Administration's support for the Conference Report: "although reasonable minds may disagree as to particular provisions of the Conference Report, we feel that the Conferees have resolved the differences between the House of Representatives and Senate in a reasonable way."

"That Conference Report was adopted by the Senate yesterday by a vote of 64 to 29."

We understand the House did pass the revised amendment and the bill went yesterday to the President for signature.

I would say before these two gentlemen render their testimony that as far as we can see—and we didn't see this conference report until this morning—that this amendment for conscience in the hospital legislation is perfectly suited to our requirement in the Federal service legislation before this committee. In fact, we would like to see it extended to any employee, regardless of type of occupation, in the National Labor Relations Act.

This is Bob Smith from Knoxville.

Mr. SMITH. Mr. Henderson, other members of the committee. I am Robert Smith of Knoxville, Tenn., employed by the Tennessee Valley Authority. I believe in the Lord Jesus Christ and desire to be governed by the Bible, the word of God, without compromise. We desire that good conscience before God, spoken of in Acts 23, verse 1, should be fully recognized and protected.

I have worked 5 years for the Tennessee Valley Authority in Knoxville. Employees who are not union members are passed over when promotions come up. We cannot belong to or pay into associations, trade unions, and so forth. The Bible says: "Be ye not unequally yoked together with unbelievers." Second Corinthians 6, verse 14.

I am prepared to have the equivalent of union dues and initiation fees deducted from my pay to be given to a suitable charitable organization.

George Washington wrote in his copybook: "Labour to keep alive in your breast that little spark of celestial fire—conscience."

I served in the Army for 2 years, was glad that my conscience was recognized there. Many of us served in this way, and some were turned away when applying for civilian jobs because of their consciences. Why can't there be provisions for faithful employees with genuine conscience?

We fully respect Government and laws and authority. "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God." Romans 13, verse 1.

In addition to the Military Training and Service Act, we are glad for previous provisions for genuine conscience in the legislation dealing with social security, naturalization, education, and so forth.

H.R. 10700, section 7108 seems to provide protection for our conscience, although we would prefer to see specific provision for the protection of conscience along the lines of the S. 3203 conscience amendment. This relates to nonprofit hospitals under the National Labor Relations Act; this bill has been passed and is on the President's desk for signature.

Our appeal is based simply on genuine conscience before God and is not political or in opposition to unionism. We say, "We ought to obey God rather than men." Acts 5, verse 29.

Mr. HENDERSON. Thank you very much.

Mr. WALKER. Shall we go on to the next witness?

Mr. HENDERSON. Yes, please.

Mr. WALLEY. Mr. Chairman and members of the subcommittee: I am John G. Walley, known by my brethren as Jack. I am also a believer in the Lord Jesus Christ. Being a believer, I must abide by His word, which is the Holy Bible, in its totality.

I would like to speak of two scriptures to begin with. The first is Acts 5, verse 29. The Apostle Peter in speaking to the High Priest said, God must be obeyed rather than men.

The second scripture, which has already been spoken of by Bob, I would like to emphasize: Second Corinthians, chapter 6, verse 14. It says "Be ye not unequally yoked together with unbelievers: For what fellowship hath righteousness with unrighteousness?" Therefore, we have come to appeal to you that provision be made for the conscience of a sincere believer in the Lord Jesus Christ.

I would like to stress the personal disadvantages of a union shop. There are many persons with whom I walk in fellowship who would be affected if union

shops were introduced into the Federal Government with no provision for conscience.

On the basis of having a pure conscience before God, we would not be able to join or financially support the union. Many of the persons have been working for the Government for many years and would have to suffer the loss of their jobs. Quite a lot of our brethren, not in the Federal Government, have lost their jobs or been put to some other type of disadvantage because they would not join the union.

I, myself, work for the Social Security Administration, and I have tried to do my job as best I can. I have worked there for 6 years. Many times I was asked to join the union, but I have refused on the basis of the divine principle of an unequal or diverse, yoke.

Whereas I appreciate what trade unions have done in employee-management relationships, I cannot forget what is said in Second Timothy, chapter 2, verse 19: "The foundation of God standeth sure, having this seal. The Lord knoweth them that are His. And, let everyone that nameth the name of Christ depart from iniquity."

I hope this Government under God which passed the Equal Employment Act of 1972, making it unlawful to discriminate against any employees because of religion, will provide for the conscience of my fellow believers; for without this provision, as I said before, we will lose our jobs.

Provision was made for Daniel in the old Testament Scriptures by King Nebuchadnezzar. Daniel and his friends would not eat of the king's food or bow to his image of gold. The king said, "Blessed be the God of Shadrach, Meshach and Abednego, who hath sent his angel, and delivered his servants that trusted in him, and have changed the king's word, and yielded their bodies, that they might not serve nor worship any god, except their own god." Daniel 3:28.

Provision has been made in other countries such as Australia, New Zealand and Manitoba, Canada. We have references to these provisions in our little package which we present to you.

In conclusion, we believe that section 7108 of H.R. 10700 provides protection that we need, although we prefer specific protection for conscience as in the S. 3203 amendment to National Labor Relations Act that was passed by the Senate and the House and is on the President's desk for signature.

I would like to add that in my stand in not belonging to unions, or contributing to their funds, we would be willing that some like amount of money be contributed to a nonunion charitable organization.

Thank you, gentlemen.

Mr. WALKER. Thank you.

Mr. Henderson, just one or two more comments and we will be through.

As we all know, the Pilgrim Fathers and others that came to this country in the early days were seeking religious freedom. We do pray, as our brethren here have said, that this Government under God may protect that religious freedom so vital to not only ourselves but for other believers as well.

As a personal touch, my son is up in Camp Drum on 2 weeks' Reserve training. He was in the Army, like Bob here, like myself, and very thankful to have his conscience respected in military duty.

Many of our brethren were in the front lines of Europe and over in the Far East during World War II, helping save the lives of others as medics. Some were injured. We do not want to shirk our duty. We would like to have this simple matter of our conscience protected.

It seems that the Taft-Hartley law as it now stands is really putting an employer, potentially, in conflict with the Equal Employment Opportunity Act. It appears to us that an employer with a union shop agreement may be forced to discriminate against an employee on ground of religion because of this conscience matter.

One more thing as to Manitoba, Canada, that Jack referred to. It was 2 years ago that a strong labor government listened to the testimony of our brethren in Winnipeg. They put through legislation which provides expressly for exemption from membership and paying dues provided the equivalent of union dues is paid to a mutually agreeable charitable organization.

Thank you very much.

Mr. HENDERSON. Well, can you give us an estimate of how many of your members are federally employed?

Mr. WALKER. There are not too many. To be fair, in answering the question, if we were to include postal employees—I think your committee is not directly concerned with that, but it would have a bearing on it, perhaps. I would say three of four dozen across the country.

Mr. HENDERSON. Including postal?

Mr. WALKER. Right.

Mr. HENDERSON. Do you have any questions, Mr. Taylor?

Mr. TAYLOR. I believe not.

Thank you, sir.

Mr. HENDERSON. On behalf of the subcommittee, I want to thank you and your colleagues for your appearance this morning. I think your testimony is clear and concise. We understand what you would like to see in the legislation. I feel sure we will make every effort to protect the right that you have referred to.

Thank you very much.

Mr. WALKER. We appreciate that.

May God bless the members of this subcommittee.

STATEMENT OF LEONARD BALDWIN, PLYMOUTH BRETHREN NO. 4, TAKOMA PARK, MD.

Mr. BALDWIN. We are thankful for this hearing and for the support. I really cannot add anything to it.

It is really like bringing us back to the basic principles of religious freedom which are God-given rights under the Constitution, really, and it has been, I might say, a departure and the other pieces of legislation that have mentioned are like stepping stones to this bill.

As I mentioned before, I am a believer in the Lord, Jesus Christ, and the Christians which I walk with, as you know, are known in Government records as Plymouth Brethren No. 4. I am happy to voice their support for this bill. I stopped at Monticello on the way back from Knoxville, Tenn., last year, I think it was, and noticed Thomas Jefferson and one of his writings on the wall. I tried to get a copy, but have never been able to get a copy of it.

He said something to the effect that to allow organizations and associations of man to override consciences of individuals was really tyranny. Of course, as we know, he was very strong for religious freedom. It is not by chance that he had such a part in writing the Constitution. It is a man like that that God watches over, I am sure.

And so that it has already been mentioned that if this bill is passed and enacted into law, it really will be a landmark for religious freedom for the Bicentennial.

To allow a law to go into effect that would mean compulsive union membership and the payment of dues for everybody working in the United States would mean that our religious freedom would be going down the drain.

We are very thankful for the work that has been done in this. You remember our testimony in 1965 before your committee which was an earnest appeal at that time, and we are thankful that it was being held up by one man in the Senate, Mr. Dirksen, but it did not go through.

So we just wanted to let you know that we are in support of this. There must have been some question as to our agreement to it, but as you know, in 1965, it was stated, to contribute to the U.S. Treasury. But we are in full agreement with this bill.

Mr. THOMPSON. I thank you very much, and I think that you will make it easier, both for yourselves and for us, by the change in your position with respect to the Treasury vis-a-vis charities.

Thank you very much.

Mr. BALDWIN. Thank you very much, Mr. Chairman.

Mr. THOMPSON. I wonder if I could ask one question of you, Mr. Baldwin.

How many Plymouth Brethren No. 4 are there?

Mr. BALDWIN. We are a minority group. I could not give you an overall estimate, but we are very small compared to the others across the country.

Mr. THOMPSON. Thank you.

We now have to conclude, with a representative of the National Right to Work Committee. Mr. Reed Larson is listed, but this is another gentleman.

Mr. BAILEY. I am Charles W. Bailey, vice president of the National Right To Work Committee.

Mr. Larson is in the West to attend the marriage of a daughter and is currently fulfilling business commitments there.

Mr. THOMPSON. I am pleased to extend to him my congratulations and best wishes. I have always enjoyed jousting with him.

STATEMENT OF CHARLES W. BAILEY, VICE PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE

Mr. BAILEY. As you well know, our organization is dedicated to the total elimination of compulsory unionism. We do appreciate this opportunity to present our view on 1528.

As advocates of the principle of voluntary unionism, we applaud the intent of this bill. It recognizes that a serious moral and constitutional injustice exists when individuals are forced—with the sanction of their Government—to support private organizations whose policies are incompatible with their religious beliefs.

However, H.R. 1528, as written disregards a much broader constitutional question: May a free citizen be compelled to support an unwanted labor organization whether his or her objection is, or is not, related to religious beliefs?

This legislation brings another important question into focus: Is it proper for Government to (1) establish one standard for individuals whose religious beliefs conflict with compulsory unionism and (2) employ a different standard for individuals who resist compulsory unionism for other reasons?

We contend that it is hypocritical and unconscionable to compel anyone to contribute a part of his earnings to a union whose representation he did not seek and does not want.

Through the instrument of the first amendment to the Constitution, the Nation's Founding Fathers denied Congress the authority to enact any law "respecting an establishment of religion or prohibiting the free exercise thereof."

Rabbi Jakob Petuchowski, research professor of Jewish theology and liturgy at Hebrew Union College, put this issue in clear perspective recently. He wrote that compulsory support of a union is "no more tolerable than forced support of a particular religious or political or social doctrine."

Many people of good conscience want no part of labor unions—especially those which resort to violence to achieve their ends and those whose officials are preoccupied with partisan politics. Only one out of every five wage earners in the Nation's workforce is affiliated with organized labor.

Many union members—if not most of them—are captives whose jobs depend on their payment of compulsory dues. Votes against union representation were cast by 64 percent of the 382,000 workers who participated in elections supervised by the National Labor Relations Board during its 1974-75 fiscal year.

H.R. 1528 accepts the dangerous premise that a citizen should be penalized for refusing to pay tribute to a labor organization—good, bad, or indifferent. It leaves undisturbed that part of section 19 which now provides that a Seventh-Day Adventist, for example, can retain his job only by paying the equivalent of union dues to a union-approved charity. Therefore, H.R. 1528 condones the practice of obligating members of religious sects to make charitable contributions as a condition of employment.

This proposal also tends to validate the specious argument that all workers invariably benefit from union representation. If that argument is valid, the millions of nonunion workers in this country would be flocking to union halls to sign up as voluntary members.

While we favor this effort to restrict the reach of compulsory unionism, we submit the public interest would be better served by positive action on the Crane bill, H.R. 4279. Designed to repeal the existing authorizations of compulsory unionism, it was referred to the Education and Labor Committee nearly 17 months ago.

We also favor repeal of the exclusive representation provisions in Federal labor laws. Those provisions empower a union to represent and bind all employees in a bargaining unit if that union is supported by a bare majority of those employees.

We respectfully invite your attention to an essay published last year in the University of Pennsylvania Law Review. Written by Prof. George Schatzki, of the University of Texas, it is entitled, "Majority Rule, Exclusive Representation, and the Interest of Individual Workers, Should Exclusivity Be Abolished?"

Mr. THOMPSON. Thank you for calling it to our attention. We have a copy of it.

Mr. BAILEY. In conclusion, we would say H.R. 1528 represents a small step toward the remedy favored by an overwhelming majority of the American people.

Thank you for your time and attention, sir.

Mr. THOMPSON. You are indeed welcome.

I got one paragraph behind you. I suddenly recalled that you were kind enough to provide us with a copy of that Law Review article on the occasion of our hearings on H.R. 77.

Mr. BAILEY. H.R. 77?

Mr. THOMPSON. The public employee legislation.

Thank you very much, sir.

Mr. BAILEY. Thank you, Mr. Chairman.

Mr. THOMPSON. The subcommittee will now adjourn, subject to the call of the Chair.

[Whereupon, at 12:10 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. JOHN N. ERLBORN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ILLINOIS

A principle that is central to both our constitutional system and our religious traditions comes under close scrutiny today at this hearing on H.R. 1528, the "Religious Freedom" amendment.

I want to express my sincere appreciation to the Chairman of the Subcommittee for holding this hearing and for this opportunity to testify on a subject with which he and I have been in agreement for many years.

H.R. 1528 amends Section 19 of the National Labor Relations Act by providing that all employees—not just employees of health care institutions—who are members of and adhere to teachings of a bona fide religion which has historically held conscientious objections to joining or financially supporting unions will not be required to do so, but may be required to contribute the equivalent in dues and fees to a non-religious charity.

In view of our constitutional heritage, one may ask why such an amendment the NLRA is necessary: doesn't the Constitution protect our freedom of religion?

My answer is that yes, it does, but that the developing law could be interpreted to erode that freedom in a manner unforeseen by protectors of that freedom. Just questioning whether the exercise or practice of religious conscience may be denied under our national labor law is sufficient reason to set the record straight and amend our law to be compatible with our First Amendment rights.

Specifically, Amendment I of the Constitution reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

My bill simply removes any question as to whether the first phrase of the First Amendment has any meaning under our national labor law.

My bill is necessary to resolve any ambiguity between constitutional rights and union security provisions of our labor laws. In 1947, Congress passed the National Labor Relations Act, which contained in Section 8(a)(3) a provision for union security. (That provision is similar in content to the subsequently enacted Section 2 Eleventh of the Railway Labor Act, which represented a change in the direction of railroad industry bargaining away from consistently advocating "freedom of choice".) Section 8(a)(3) of the NLRA allows a labor organization and an employer to enter into a collective bargaining agreement requiring, as a condition of continued employment, membership in the labor organization after 30 days, although "membership" has been since defined as the payment of, dues and fees, uniformly required.

It is clear that the proviso to Section 8(a)(3) was enacted to require the "free rider"—to pay his or her proportionate share of the cost of the benefits provided by collective bargaining. There was to be a sharing of the burden of maintenance by all of the beneficiaries of union activity. Protections were offered to safeguard the rights of dissenters in that their employment relationship could not be interfered with, except for their failure to tender the periodic dues and fees uniformly required.

Despite that attempt to protect dissenters, there were, unfortunately, no protections offered to a relatively unknown minority—and a very small minority at that. That is the minority of those who hold religious beliefs against joining or financially supporting labor organizations or similar organizations. To my knowledge there are seven such religious groups, including Plymouth Brethern IV and Mennonites. Probably the largest such religion is the Seventh-day Adventist Church which has about 500,000 members.

In my view, and the view of the Chairman, as I interpret his views, those with such religious convictions are entitled to the exercise of those convictions. They should not have to choose between their religion and their jobs. In seeking to exempt individuals whose religious scruples prohibit them from associating with labor organizations from union shop agreements, I would not propose to call them "freeloaders" or "free riders." All groups, as far as I know, are willing to pay the equivalent of dues and fees to a mutually acceptable charity.

Religious liberty has always been, and should continue to be, a matter of the highest priority. Many Federal laws have provided special treatment because of religious belief. These include:

1. The Postal Reorganization Act of 1970;
2. The Military Selective Service Act;

3. The Immigration and Nationality Act;
 4. The Social Security Act;
 5. The Federal Aviation Act;
 6. The Civil Rights Act of 1964 (Title VII), 1968 (Housing), and 1972;
 7. The Jury Selection and Service Act;
 8. The Public Health Service Act Amendments of 1973, and
 9. The 1974 "Health Care" amendments to the National Labor Relations Act.
- I hope that this Congress can continue to demonstrate the Government's concern for the preservation of full religious liberty to even the smallest groups which strictly adhere to matters of conscience.

The cases most cited to support the union shop are *Railway Employees' Department v. Hanson*, 351 U.S. 225 (1961); *International Association of Machinists v. Street*, 367 U.S. 740 (1963); and *Brotherhood of Railway Clerks v. Allen*, 373 U.S. 113. However, relative to this issue of religious freedom, I find those cases not only distinguishable, but not even applicable.

The *Hanson* case dealt, first, with the right of association since it was alleged dues money was being spent for political purposes—it did not deal with the religion issue. Secondly, its holding was very narrow, interpreting only the language of the Railway Labor Act without regard to facts. The court held only that enactment of Section 2 Eleventh of the Railway Labor Act was a valid exercise by Congress of its powers under the Commerce Clause and did not violate the First Amendment or the Due Process Clause of the Fifth Amendment. However, there was nothing in the record, as it reached the Supreme Court, to show the extent to which the union was spending dues money to meet the cost of political activity, and nothing to show the employees were opposed to the use of their dues money for any particular political objective.

Following *Hanson* came the *Street* and *Allen* cases, both cases involving the Railway Labor Act, and again neither case involving the religious issue. The interesting facet of those cases was the extent to which the Supreme Court went to by-pass the Constitutional issue in order to avoid finding a federal statute unconstitutional. The Court did this by interpreting the union security provisions of the Railway Labor Act to require the unions to establish a rebate procedure so that political dissenters could recapture that portion of their dues which were spent for political purposes. Vigorous dissents pointed out, correctly, that such a "rebate procedure" was not considered by Congress in its debates or raised in hearings, but that Congress was aware of the political involvement of unions, particularly railway unions, when it enacted the Railway Labor Act.

No case involving the religious issue has been determined by the Supreme Court. The case most commonly cited as sustaining the constitutionality of union security provisions as they apply to religious dissenters is *Otten v. Baltimore and Ohio RR*, 205 F.2d 58 (C.A. 2, 1953). In that case, often, a member of Plymouth Brethren IV refused to join the union or pay union dues, despite the fact the union sought to dispense with the formal membership requirement and would deposit dues in a fund for retired members. After Otten refused those offers, he was discharged pursuant to a valid union security clause between the union and the railroad. The Second Circuit sustained the discharge. In doing so, the Second Circuit stated a proposition that has become popular in many of our Courts of Appeal—that there is the necessity for *accommodation*. In this regard, the Court said:

"The First Amendment . . . gives no one the right to insist that in the pursuit of their own interests others must conform their conduct to his own religious necessities . . . We must accommodate our idiosyncracies, religious as well as secular; and we can hope for no reward for the sacrifices this may require beyond our satisfaction from within, or our expectations of a better world."

Unfortunately, no case involving the religious constitutional issue reached the Supreme Court before Title VII of the Civil Rights Act of 1964 became law. In interpreting Title VII, the Equal Employment Opportunity Commission promulgated guidelines requiring employers to make "reasonable accommodation," short of undue hardship, to the religious practices of employees, and in 1972, the "reasonable accommodation" became part of the Civil Rights statute itself. The focus of litigation is now centered on Title VII, rather than the First Amendment of the Constitution, but I believe that Title VII, as amended in 1972, is an attempt to return our legislative direction to our forefather's original constitutional intentions.

An interesting case recently decided is *Cooper v. General Dynamics*, C.A. 5, No. 74-3151, June 9, 1976, —F2d—, 12 FEP Cases 1549. There, the employer and union maintained an agency shop provision in the collective bargaining contract and certain Seventh-day Adventist employees refused, consistent with the Seventh-day Adventist Church's religious principles, to support the labor organization financially. In interpreting Title VII, but not the Constitution, the Court held that the employer and the union must make reasonable accommodations to adjust to the religious practices of the employees, although there was some disagreement as to the union's duty to accommodate and what constitutes undue union hardship.

The need for H.R. 1528 is underscored in a dissent by Judge Rives in the *Cooper* case. Despite the clear Congressional concern for religious freedom, Judge Rives would not make exceptions to the national labor policy as expressed in the union security provisions of the National Labor Relations Act "unless clearly or expressly provided." In reaching this conclusion, Judge Rives noted that: (1) the legislative history of the Equal Employment Opportunity Act of 1972 is void of any indication that Congress intended to exempt employees on religious grounds from coverage under permitted union security agreements; and (2) the legislative history of the 1974 health care amendments to the NLRA indicates that Congress did not believe that Title VII already even provided a possible exemption to the union security provisions of the NLRA for religious belief.

The confusion raised by attempted interpretation of religious freedom as set out in the Constitution, Title VIII, and amendments to the NLRA when applied against the union security provisions of Section 8(a)(3) of the NLRA needs the clarification that H.R. 1528 would provide. Furthermore, the *Cooper* case points up the fact that not all unions are amenable to accommodating religious beliefs, making such an amendment a necessity if we are to live up to our constitutional heritage.

Let me say that H.R. 1528 does not "establish" a religion, nor does it favor one religion over another. As I previously stated, I have been unable to locate even one religious group which would not agree to substitute for their dues and fees a contribution to a non-religious charity. In fact, in 1974 testimony before the House Committee on Post Office and Civil Service, members of the Plymouth Brethren IV, which was a party to the previously mentioned *Otten* case, stated their willingness to make such payments.

H.R. 1528 does not deal with political dissenters, nor does it involve those who are conscientiously opposed to participation in a war—a concept whose rationale is somewhat different from objections to support of labor organizations. The bill deals only with conscientious objection based on religion because, in attempting to insure constitutional principles, it only addresses constitutional rights, i.e., "Congress shall make no law . . . prohibiting the free exercise (of religion)."

Finally, H.R. 1528 does not interfere with an employer or a union's right to enter into a union security agreement. Those parties are still free to contract. They would no longer be free, however, to contract away an individual's constitutional right to the free exercise of his religious practice or belief.

H.R. 1528 is, simply, a bill to rationalize the Constitutional guarantee of freedom of religion and freedom to practice religion and our federal labor laws.

There can be, and is, little, if any, opposition to this type of legislation. It would seem to me that this bill could move quickly through Committee and pass the House by the suspension route. That this is so is evidenced by the AFL-CIO official policy, the sympathetic reception of the health care religious freedom amendments by Members of Congress, and by the bi-partisan support of this legislation during various Committee sessions and House Floor debates.

Accommodation to an individual's religious conviction will eventually be made. Accommodation can be more rapidly achieved through Congressional action than through costly and protracted court litigation. In accommodating an individual's constitutional freedom of religion with the union security provisions of the National Labor Relations Act, there are no other accommodations to be made. It has been asserted that labor organizations should be compensated in some way for this legislation which grants an individual his constitutional rights. I disagree. There is no trade-off: there is no *quid pro quo*. If we seek to "accommodate" labor organizations simply because we grant a small minority of individuals rights to which they are already constitutionally entitled, don't we have to balance that "accommodation" by also granting something to the employer? Such form of accommodating could continue *ad infinitum*. Such form of accommodation necessarily will affect portions of the National Labor Relations Act, such as 8(a)(3) or 14(b), which have little germaneness to the issue at hand.

Contrary to supporting any trade-off with either unions or employers, both of which continue to be beneficiaries of the proviso to Section 8(a)(3), I urge only that individuals be restored their previous and continuing constitutional rights—rights which have been inhibited during union security and civil rights debate and litigation. To assert that there must be compromise on constitutional guarantees is repugnant to constitutional ideals. All I ask, all I urge, all that is sought is that the federal labor law accepts the principle of full religious liberty as guaranteed by the First Amendment to our Constitution.

PREPARED STATEMENT OF HON. DON BONKER, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WASHINGTON

H.R. 1528 is one of those rare bills which benefits both groups involved. It relieves a burden laid upon those who by reason of their religious convictions are unable to join a labor organization while at the same time it in no way threatens the security of the unions.

I am fully supportive of the Labor movement and of the 1947 National Labor Relations Act. However, I do not believe it was the intention of Congress when the Act was passed to deny a segment of our population their religious freedom. It is apparent from the recent history of certain religious groups such as the Seventh Day Adventists, Plymouth Brethren IV, and others that the Act has inadvertently led to the loss of certain members of these groups religious freedom. For by insuring that the unions might play their vital role in our system the Act effectively prohibited members of these groups from engaging in jobs represented by the unions.

In the Postal Reorganization Act of 1970 and the 1974 "Health Care" Amendments to the NLRC Congress acted to protect the religious freedom of those involved in the applicable job fields. I believe it is time for Congress to act again in this area and guarantee that religious freedom of those in all jobs be protected. While it is true that the number of people affected by this bill is relatively small, the principle of religious freedom is not. I therefore fully support H.R. 1528 and urge its passage.



