

Report
of the
Committee on the Oath
to the
Synod of the
Reformed Presbyterian Church

Meeting at
Winona Lake, Indiana, May 29 - June 5, 1946
Adopted by the Synod.

Report covers the work of the Committee for the ten year period since its appointment in 1946. Signed by all the nine members of the Committee whose names appear at the close of the report. Report to be printed in the *Covenanter Witness*. Reprints to be published for use of Committee and for distribution. To obtain copy (or limited number of copies) address R. H. Martin, Chairman of Oath Committee, 209 Ninth Street, Pittsburgh 22, Pa.

REPORT OF COMMITTEE ON THE OATH TO THE SYNOD OF THE REFORMED PRESBYTERIAN CHURCH, MAY 30, 1946

Ten years ago this Committee was first appointed by Synod to "take under consideration the question of some process to get an interpretation by the Supreme Court of the United States as to what is involved by taking an oath to the Constitution, particularly as to whether such an oath places supreme allegiance to the Constitution as being above one's allegiance to God."

It seems appropriate at this time for your Committee to report on the work done and the results achieved in carrying forward the purpose of its appointment. However, before doing this your Committee deems it advisable and necessary to emphasize the basic principle back of the appointment of this committee.

For many years past Synod had appointed numerous committees in an effort to meet the oath of allegiance problem as it has confronted the Reformed Presbyterian Church. All of these committees proceeded on the basis of endeavoring to secure a *modification* of the constitutional oath by writing into it or adding to it some such statement as "subject to a supreme allegiance to Christ", or to "the moral laws of God." That is, to secure a modification or change in the language of the oath of allegiance as prescribed by the Congress or Legislature of the states.

For the sake of brevity throughout this report, this will be called the "modified oath" which Reformed Presbyterians might take. This Committee was appointed to approach this oath problem on another basis, namely, to find out whether the oath of allegiance unmodified, or unchanged in its language, might not be taken with the oath-taker's asserting a supreme allegiance to Jesus Christ.

THE REASON FOR THIS NEW APPROACH FOLLOWS:

Under our constitution there are three departments of government—the legislative, executive or administrative, and the judicial. It is the function of the legislative department to enact law; of the executive to administer it; and of the judicial to interpret it. For either the executive or judicial departments to modify or change in any way a law of the legislative department is to trespass upon the functions of the legislative department. This, it has no right to do, and we question the right of any citizen to ask either an executive or judicial officer to do so.

However, when an issue is raised with reference to the meaning of a law, where there is room for difference of opinion in its con-

struction, the officer administering the oath of allegiance, whether an executive or judicial officer, has the right, and we think as well the duty of interpreting the law. It is on this basis that the Committee has proceeded and, we think, with a considerable degree of success.

In securing test cases the issue has to be raised with the officer before whom the oath is taken. Usually this is an executive officer. If he decides he can administer the required oath in the light of a supreme allegiance to a higher power, well and good. If he decides he cannot do so, then the way is open for an appeal from his decision to the courts. If the lower court refuses, the issue ordinarily can be carried to a higher court, and even to the Supreme Court of the United States.

This new method of approach is logical. It fits in with the functions and restrictions of the three departments of our government. Beyond this there are many proofs that the distinction is based upon solid, legal grounds. In support of this, we submit the following:

A. This distinction is supported by the Supreme Court of the United States.

In the Bland naturalization case. This case, ruled upon immediately following the Supreme Court ruling in the Macintosh Case, confirms this distinction. Justice Sutherland giving the majority opinion in this case, said:

"She (Miss Bland) refused to take the oath of allegiance prescribed by the statute to defend the constitution and laws of the United States against all enemies, etc. except with the written interpolation of the words 'as far as my conscience as a Christian will allow'. . . . The only difference between the position she took and that taken by the respondent in the Macintosh Case is that in addition to refusing positively to bear arms in defense of the United States under any circumstances, she required an actual amendment to the oath as already stated. . . . The words of the statute do not admit of this qualification upon which the applicant insists and for the court to allow it to be made is to amend the Act and thereby usurp the power of legislation invested in another department of the government."

R. The distinction is further made clear and upheld by the action of the State Department with reference to the oath required of applicants for passports. The regular form as prescribed by the State Department follows:

"Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign

and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."

However, out of deference to those who on conscientious grounds are unwilling to take the form prescribed above, the Department permits anyone of the following modified forms to be taken:

"Further, I do solemnly affirm that I will support the Constitution of the United States and will, as far as my conscience as a Christian will allow, defend it against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion. So help me God."

"Further, I do solemnly affirm that I will (so far as my conscience as a Christian will allow) support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same, and that I take this obligation freely, without any mental reservation or purpose of evasion. So help me God."

"Further, I do solemnly swear that I will support and defend the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I owe allegiance to no other country; that I will obey the Constitution and laws of the United States; and that I take this obligation freely without any mental reservation or purpose of evasion.

So help me God."

It is said that this practice disproves our contention that the government, when accepting an interpretation of the prescribed oath, cannot permit a modification of it. However, when the situation is fully understood this very distinction is confirmed. The State Department operates in the giving of passports, etc., under an Act of Congress. This law of Congress lays down the basic principles under which the Department operates, but leaves to the Department the setting up of regulations with reference to passports. The law enacted by Congress does not even require the Department to have the applicant for a passport take any oath of allegiance, much less does it prescribe any particular form of oath. Therefore, the Department has discretionary power in respect to the form of the oath that it requires of applicants for citizenship. If the Act of Congress required an oath of allegiance to be taken and prescribed a particular form of oath, the State Department would be without authority to change or modify it.

The chairman of your Committee together with Dr. Findley M. Wilson, Secretary of the Board of Foreign Missions of our Church,

interviewed representatives of the State Department with reference to this matter. We were referred to the legal counsel of the Department who confirmed what is said above. He was asked specifically if Congress had required an oath of allegiance and prescribed a particular form of this oath, whether the State Department could modify or change it in any way. His reply was, "NO."

C. The experience of our committee in dealing with the oath problem confirms the distinction as set forth above

- (1) With respect to naturalization. In all naturalization cases in which we have had a part, we have proceeded on the basis of the applicant taking the oath of allegiance unmodified or unchanged in any way, but with the Explanatory Declaration. In every case the applicant has been naturalized. So far as your committee knows in all former years during which Synod's Committee proceeded on the basis of securing a modified oath, no Reformed Presbyterian was naturalized.
- (2) In a few cases public school teachers, have been sworn into office on the basis of the modified oath. However, it is our conviction that if this had been challenged and the cases taken into court, the court would have disallowed it for the reasons stated above.
- (3) In the First and Second World Wars in cases where the constitutional oath is required.

As is well known the constitutional oath is required of all commissioned officers in the armed services. In the Second World War it was required of many persons engaged in civilian defense work. In this war we were able to make use of the Explanatory Declaration in taking the constitutional oath. Many Reformed Presbyterians took the oath with this Declaration. No one who followed the directions of our Committee was refused. During the First World War we did not have the Explanatory Declaration. So far as is known to your committee no Reformed Presbyterian faced with the problem of taking the constitutional oath was permitted to do so with the modified oath. Had the situation been the same with Reformed Presbyterians in the Second World War as in the First, our situation would indeed have been serious.

Our experience in the Willard McMillan case further confirms this distinction. When he had completed his training for a commission on the navy, he presented the Explanatory Declaration to his commanding officer, requesting that he be permitted to take the oath of allegiance with this Declaration. The officer declined saying that he would refer the matter to Washington. Thus the

high officials of the navy were confronted with this proposition— Would they administer the prescribed oath to a prospective official on the condition that he would take it subject to a supreme allegiance to the Lord Jesus Christ. Evidently these officials did not wish to rule on this issue and had the New York official submit to Mr. McMillan for his signature, a statement that he would not take the prescribed oath "without change, modification, or qualification." Faced with this issue, Mr. McMillan signed a statement that he would not, and his commission was refused.

Informed of the above our Committee expressed to Mr. McMillan regret that he had signed the statement which relieved the naval officials of the necessity of ruling on this issue. Later, after Mr. McMillan was transferred to a naval base near Chicago, he was called in and questioned with reference to the above matter. Following this discussion with his commanding officer, Mr. McMillan withdrew the above statement he had signed. As a result, Washington was again faced with the original proposition. We are not informed of the details but in any case Mr. McMillan was permitted to take the prescribed oath with the Explanatory Declaration and received his commission.

1. FIRST THREE YEAR PERIOD

The first task of your Committee was to study this oath problem. Three years were devoted to this task. Days, weeks, even months were spent in studying it from every possible aspect. Much time was spent in the Law Libraries of Pittsburgh, Philadelphia, in the Congressional Library and even in the United States Supreme Court Library in Washington. The results of the first year's study were set forth in the Report of the Committee to the Synod of 1937. (See Minutes of Synod, pages 41 to 46.) This study was continued for the two years following. The results of this three years' study were set forth in a document of 8,500 words prepared by the Chairman of the Committee which in legal phraseology would be termed a lawyer's Brief. 150 copies were sent to quite a number of attorneys and others for their examination. Copies were also sent to some ministers and members of the Reformed Presbyterian Church. This Brief was presented to the Synod at its meeting in 1939. It covered the various aspects of this problem and outlined the procedure to be followed in our efforts to solve the problem. Synod was sufficiently impressed with this Brief that it "instructed the committee to send copies of the brief prepared to all ministers of the church."

The committee realized from the beginning that legal counsel would be necessary in carrying forward its task. Accordingly it contacted and had conferences with members of prominent legal firms. Among those were the following:

The John W. Davis law firm of New York; J. Renwick Withrow, son of Dr. James R. Withrow of Ohio University, member of a prominent law firm in this same city; former Senator George W. Pepper, one of the outstanding constitutional lawyers of this country. Early in 1939 through Dr. Rufus Jones, we came into contact with Richard W. Hale, head of a law firm of 27 members, in Boston. As is well known Mr. Hale was secured as our legal counsel and from that date until his death he rendered our committee highly satisfactory service.

Through Mr. Hale's good offices members of three prominent law firms, one in New York, another in Philadelphia, and a third in Pittsburgh, were secured to give legal counsel to your Committee. All the legal help given by these eminent attorneys was without financial charge. Not one dollar was paid them in attorney's fees. In addition the Committee in its own right did a very considerable amount of work, ordinarily performed by attorneys, which had it been paid for at the rate usually charged by members of the legal profession would have cost the church hundreds of dollars.

On June 7, 1939 Mr. Hale came on from Boston to Beaver Falls to meet and confer with your Committee immediately before the meeting of Synod at that place. After an extended discussion Mr. Hale prepared what has come to be known as the "Explanatory Declaration" which the Committee presented to the Synod. The Synod approved of this Declaration and authorized its use by members of the Reformed Presbyterian Church.

EXPLANATORY DECLARATION

The following Explanatory Declaration was adopted by the Synod of the Reformed Presbyterian Church of North America for its members taking the Constitutional Oath:

"In taking this oath I make no mental reservation. I am a member of the Reformed Presbyterian Church of North America, and I declare that I owe a supreme allegiance to the Lord Jesus Christ, and in making that declaration I take the same God as my witness, invoking His assistance to help me to render due obedience to my country in all temporal matters.

"And I do further declare that I do not now know any matter in which I intend actual disobedience to any command of my country now known to me."

This was the goal of the committee's three years' work in laying a foundation for the accomplishment of the purpose for which it was appointed. The adoption of the Explanatory Declaration provided a basis on which the Committee could now proceed to try to secure test cases to determine whether or not our public officials

would administer the prescribed oaths with the use of this Declaration.

II. THE SEVEN YEAR PERIOD FOLLOWING

1. On advice of Mr. Hale, Dr. E. J. Dickson, a member of our church, and a returned medical missionary, was sworn in as a notary public with the use of the Explanatory Declaration. Mr. Hale had conferred with the Secretary of State of Massachusetts with reference to this matter, who gave the legal opinion that the constitutional oath required of a notary public could be administered in the light of this Declaration. The oath was so administered in the office of the Secretary of State, with Mr. Hale and two Reformed Presbyterian ministers present. An article of two pages covering this case was published in *The Covenanter Witness*, and a reprint of this article was obtained and distributed widely throughout the Covenanter Church.

2. To date, at least 7 members of the Reformed Presbyterian Church have been naturalized with the use of the Explanatory Declaration—2 in Boston, 2 in New York, 2 in Pittsburgh, and 1 in the Middle West.

3. As for teachers in our public schools or other educational institutions in states requiring of them an oath of allegiance to the constitution, we have no information of any teacher using the Explanatory Declaration.

4. It is in connection with war service in the Second World War that the Explanatory Declaration has been most used in taking the constitutional oath. All commissioned officers in the armed service are required to take the oath. This same oath is required of many engaged in civilian defense work. With reference to the former, we have had many cases in which members of our church in the navy, army and the marines have taken the prescribed oath with the Explanatory Declaration, probably as many as 20 or more. A much larger number engaged in civilian defense work have taken it. Only in one or two cases known to us, in which our directions about explanation to the administrator before appearing for taking the oath were not followed, were any of our members refused.

There has been criticism of our committee because of its failure to reach the Supreme Court of the United States with a test case on this issue. We think the committee's inability to do this should be judged in the light of the following:

A. This issue can be tested only in specific cases. We cannot go into our courts to have them rule on an abstract proposition. Nor can the committee manufacture cases out of the air. Indi-

viduals must be secured for the tests. Although we have sought it, we have had very little cooperation. We find there is much hesitancy on the part of members of our church, who could provide test cases, in being used in this matter.

B. Usually the officer who administers the oath in the cases we have had has been an administrative officer rather than an officer of the court. We have to begin with this administrative officer and to date almost without exception these officers have been willing to administer the constitutional oath with the Explanatory Declaration. This precludes our appeal to our courts.

C. During the period our country was engaged in war, conditions were unfavorable for oath cases except as related to war service, for two reasons: The time and energy of the people were absorbed in war activities; the conditions were unfavorable psychologically. Now that the war is over your committee can resume its former activity along non-war lines.

III. PAST YEAR ACTIVITIES

Since the last meeting of Synod we have had no new cases. At that meeting Synod added three additional members to our original committee of six. During the year we have had considerable correspondence with these members over different aspects of the oath problem. On April 23-24, a meeting of the committee was held in Geneva College, Beaver Falls, Pa. A meeting of the committee had been called more than two months before this but had to be cancelled on account of the inability of some of the new members to attend. On account of the absence of the chairman of your committee for more than two months in the far west, this meeting was deferred to the above date. Six members of the committee were able to attend; four of the original committee and two of the members recently added. Three long sessions were held at which the various aspects of the oath problem were freely discussed with the result that all members came to an agreement on the points under discussion.

To summarize on the ten year period of the committee's work and what has been achieved. Considering the fact that we were exploring in a new field, that under normal conditions it was inevitable that many difficulties would be encountered, and that your committee has carried forward this work under unfavorable conditions due to the war, we believe that notable progress has been made toward the achieving of our goal. However, now that the war is over your committee is ready to go forward in securing additional

cases, some of which may provide a test, and making further investigation along numerous lines, such as the following:

1. To secure information with reference to unnaturalized Reformed Presbyterians and to encourage and assist them in becoming naturalized.
2. To secure complete information with reference to the states which require teachers in our public schools and other educational institutions to take the constitutional oath and secure the forms of oath required. Also to get information with reference to the teacher tenure laws of different states with a view to securing test cases.
3. To secure information with reference to the use of the Federal Declaratory Judgment Act of 1934 and the Declaratory Judgment Acts of numerous states with a view to making use of these acts, if possible, in test cases where oaths of allegiance are required of teachers.
4. To obtain further information with reference to the various forms of oaths of allegiance required of public school teachers, private service in the armed service, public officials, persons obtaining passports, etc.
5. To study the difference between an oath to the constitution of the United States and an oath to the government or the country.
6. To study the omission from the United States constitution of any recognition of a supreme authority in its relation to this oath problem, and whether even the adoption of a Christian Amendment to this Constitution would solve the whole oath problem.

The Greatest Forward Step—Decision of the United States Supreme Court, April 22, 1946

On April 22, 1946, the day before the meeting of our Oath Committee, an event occurred, wholly unknown to our Committee at that time, which marked the greatest forward step toward the achieving of our purpose with reference to taking the constitutional oath. It was a decision of the United States Supreme Court naturalizing a native-born Canadian who was a non-combatant and a member of the Seventh Day Adventist Church, who on purely religious grounds refused to take the prescribed oath on the basic principle that he could not give allegiance to the United States which would violate his conscience, or to put it into other words, his supreme allegiance to God. The Supreme Court voted on this issue, 5 for

naturalization and 3 against. The majority opinion of the court was given by Justice Douglas. In his opinion he states specifically and repeatedly that this is a reversal of the decision of the same court on refusing in 1931 to naturalize Macintosh on the ground that, while he would give "all the allegiance to the United States he ever gave or could ever give to any country, he could not put his allegiance to the state above his allegiance to God."

The chairman of your committee secured advance sheets of this decision and the majority and minority opinions of it which have been placed for study in the hands of the members of your committee (for their study) and also with a number of others. The opinion of Justice Douglas is entirely too long to embody in this report. However, we give you a few sentences from it which go to the heart of this matter. Justice Douglas said:

"The struggle for religious liberty has through the centuries been an effort to accomodate the demands of the State to the conscience of the individual. The victory for freedom of thought recorded on our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. Throughout the ages men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion guaranteed by the First Amendment is the product of that struggle."

This is a far-reaching decision in its effect upon the oath problem. It overrules the decision of this Court not only in the Macintosh case but also in the companion cases of Schwimmer and Bland. Few persons either in the Reformed Presbyterian Church or outside it ever realized how far-reaching and baneful the influence of these decisions might have been had they been allowed to stand. This recent decision removes that influence and throws the powerful weight of this high court's decision on the other side in support of our fundamental American doctrine of religious liberty. We should thank God for this assistance. Just how far it carries us toward a solution of our problem we are not able to say. It has been impossible to get together the members of our Oath Committee since we learned of this decision. The opinion should have careful consideration and study, and we would need to seek the opinion of legal authorities before we would be able to give an intelligent judgment with reference to its effect. Your committee desires to have more time to study it and its implications. We also believe that the information concerning the decision and the opinion supporting it should be given to the people of our church and to Christian people generally throughout our nation, and that only after this has been done

are we in position to apply the principles involved in this whole oath problem.

FINANCIAL EXPENSE

The expense of the committee in carrying forward its work since the last meeting of Synod totals \$140.50, as follows: Traveling expense of members of committee \$62; seven days secretarial and mimeographing service. Postage and supplies including 65 copies of pamphlet giving decision and opinions of the U. S. Supreme Court Judges in the naturalization case of James Louis Girouard, April 22, 1946, \$78.50. Paid by J. S. Tibby, Treasurer, from the Cooper Estate.

STATEMENTS ADOPTED TO BE INCORPORATED IN COMMITTEE'S REPORT TO SYNOD

"The Committee desires to adhere to the original purpose of the Explanatory Declaration to meet definite emergencies and to find 'some process to get an interpretation by the Supreme Court of the United States as to what is involved by taking an oath to the Constitution, particularly as to whether such an oath places supreme allegiance to the Constitution as being above one's allegiance to God.' (Minutes of Synod, 1936, page 78).

"We do not believe that the desired decision from the Supreme Court solves our difficulties as to proper acknowledgments of Christ in our government. We do not advocate its use in seeking political office unless in cooperation with the purpose of the committee to get a test case.

"It is not our view that the need for a Christian amendment will be nullified by a decision of the Supreme Court approving a declaration of supreme allegiance to the Lord Jesus Christ."

RECOMMENDATIONS

1. That the committee carry on its investigations as suggested above on this report.
2. That a provision to be inserted if possible in proposed teachers' oath bills be prepared in order to make our teachers safe in case such a bill should pass in states where our members are teachers.
3. That special attention be given to studying the recent decision of the Supreme Court on April 22 of the naturalization case with reference to its bearing on our oath problem.

4. That in view of the fact that this oath problem concerns the entire membership of our church and that they should have the information obtained by your committee through its study of this problem over the years, and of the further fact that to date little of this information has been made available to them, your committee be instructed to make this information available to them this coming year.

Respectfully submitted,

R. H. MARTIN, *Chairman*
C. T. CARSON
C. M. LEE
D. H. ELLIOTT
LESTER H. SMITH

J. C. MATHEWS
GEORGE S. COLEMAN
S. BRUCE WILLSON
R. W. CASKEY