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School Prayer

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LEAD US NOT INTO TEMPTATION

A Christian Case Against School Prayer

JOE LOCONTE

If God truly answers prayers, then politicians, lawmakers, and religious activists may soon have Him working overtime: Speaker-elect of the U.S. House of Representatives Newt Gingrich promises a constitutional amendment allowing voluntary, student-led prayer in public school; President Clinton says "there is room" for such prayer in public education; over the last 18 months, school prayer initiatives have passed or appeared in at least 10 state legislatures.

Not everyone, of course, is ready to invoke a hearty Amen. Strict church-state separationists cite constitutional objections, while religious minorities and secularists worry about coercive prayers in class. But more surprisingly, a growing number of conservative, evangelical Christians are raising deep concerns about the difficulties that even student-led prayer creates in matters of faith, conscience and civility. And the doubts and criticisms are coming from some of the most influential quarters of this faith community—including academics, seminary leaders, and legal scholars and activists. "It's a diversion," says Steven McFarland, director of the Christian Legal Society's Center for Law and Religious Freedom. "It's a diversion of our legal energies, it's a diversion of our spiritual focus, and it anesthetizes the churches."

NEW WAVE OF SUPPORT

Ever since the Supreme Court declared prayer in the public schools unconstitutional, religious conservatives have been longing—and lobbying—for its return. In the 1970s, school prayer was one of the issues that helped propel conservative Christians into national politics. One evangelical Protestant leader called the Court's ban on prayer "the darkest hour in the history of the nation." By 1980, invigorated evangelicals helped elect Ronald Reagan on a platform endorsing a constitutional amendment to restore voluntary school prayer. Such bills were proposed, but never cleared Congress, and by the mid-1980s, states were limited to passing moment-of-silence laws.

Then came the 1992 U.S. Fifth Circuit Court of Appeals decision allowing "non-sectarian" student-led prayers at graduation ceremonies. The Supreme Court declined to review the ruling, and several lower federal courts have issued conflicting decisions in similar cases.

Since then, attempts to reintroduce either school prayers or a "moment of quiet reflection" have hit a new crescendo. At least six states—Maryland, Virginia, Georgia, Mississippi, Tennessee, and Alabama—now allow prayer or quiet reflection in class. Pennsylvania, South Carolina, Florida, and Oklahoma have considered similar laws. Gingrich has anointed Representative Ernest J. Istook Jr., (R-OK) to oversee hearings on school prayer in all 50 states, anticipating a floor vote by the fourth of July.

Student prayer has always been popular with the majority of Americans: At least 75 percent consistently favor returning prayer to the schools. What is new about the latest surge in interest is the growing support from liberal politicians and black urban leaders and clergy. Prayer legislation recently was supported by the majority of Democratic council members in the District of Columbia, including Mayor-elect Marion Barry. Democrats like Florida state Representative Beryl Burke and Georgia state Senator David Scott have pushed similar measures.

THE CASE FOR PRAYER

One of the primary arguments for school prayer is historical: American society always has been religious, and public prayer seems an appropriate reflection of the nation's emphasis on faith and religious freedom.

The modern exclusion of prayer from public schools, say proponents, reveals a deep-seated and historically inappropriate hostility to religious belief. "Right now there's almost a total absence of religion in the schools," says Robert Dugan, director of the public affairs office for the National Association of Evangelicals. Court rulings that remove the Ten Commandments from school walls, textbooks that delete the religious motivations of the American Founders, prohibitions against graduation prayers—all are seen as attempts to purge the public schools of America's religious roots. "We need an honest look again at the role of faith in our history," Dugan says.

A second argument by prayer advocates is theological: Schools and other public institutions have a responsibility to acknowledge the Deity, because the denial of God in civic life carries profound social consequences. Evangelicals draw from the New Testament letter of Romans,

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The Bettmann Archive

Demonstrators in front of the Supreme Court. Prayer advocates argue that American society has always been deeply religious, and public prayer is an appropriate reflection of our nation's emphasis on faith and religious freedom.

which describes the moral decay that accompanies rejection of God and his moral law. School prayer "reminds you that the state is not the final power, but that there is a God above the state, and that is a very useful thing for young people to be reminded of," says Harold O.J. Brown, director of the Rockford Institute's Center on Religion and Society.

A third rationale for school prayer amounts to plea for civil order: It could help slow the social chaos and spiritual decay that are infecting youth culture. "With all the student unrest and violence in school, we need a little calming influence," said Bill Kron, father of two students from Wingfield High School in Jackson, Mississippi, where prayers were recently read over the intercom. "If we can stop and pray a little, the situation might be better."

Ever-Present Dissent

The historical argument for school prayer is at once compelling and problematic. The religious accent that typified much of public education up until the 1960s grew out of a larger cultural consensus—a generalized, moralistic Protestantism. Expressed in everything from public nativity scenes to presidential benedictions, this Christian ethos formed the basis for the nation's public or civil religion. "A moderate form of civil religion emerged in America as a form of social compromise between two instinctively perceived extremes," writes cultural historian Os Guinness. "On the one hand, the dangers of a state church, and on the other the dangers of a public life without any ideals at all."

In the 19th century, Protestant evangelicals eagerly backed the establishment of state-run public schools—with teacher-led prayers and Bible readings—largely as a way to nurture Protestant values in public life. Religious historians like Sydney Mead even claim that public schools in America took over some of the basic responsibilities traditionally assumed by an established church.

Though non-denominational in content, many of the religious practices in public education were considered either inadequate or offensive to Catholic and Jewish audiences. Protestant hymns and use of the King James Bible were especially irksome to Catholics, who soon voted with their feet: By the 1880s, the Catholic parochial school was the single most important educational institution in the Catholic community. By 1900, there were more than 3,800 such schools. Though Jews mostly sent their children to public schools, they were deeply troubled by the Protestant overtones in classrooms—including prayers in the name of Christ and readings from the New Testament.

"I remember from my childhood the Jews and others whose consciences were bruised by the way we Christians presupposed a civil religion, with a pretty strong Christian tone to it," says Richard Mouw, president of Fuller Theological Seminary in Pasadena, California. Thus, even in a society permeated by a vague brand of Protestant values, public school prayers always had created problems for, and protests by, religious minorities.

Conscience and Coercion

The theological basis for school prayer, that disbelief in God carries with it social consequences, finds widespread agreement. "Christianity is quite crucial to the morality on which constitutional and democratic government depends," says Glenn Tinder, retired University of Massachusetts professor of political science. Conservative Catholics such as former Education Secretary William Bennett, along with political liberals such as Yale law professor Stephen Carter, echo evangelicals who link social stability with belief in God.

However, many of these same evangelicals doubt the ability, and the propriety, of school prayers enlisted in this way. Their concern is not with religious activities ruled constitutional, such as students meeting on school grounds for private prayer and Bible study, or student benedictions at graduation ceremonies. Their focus is on formal, ongoing, public prayers—even when voluntary and led by students.

Most of the state laws don't go as far as the intercom prayer in Mississippi; they tend to confine organized praying to "school events" and to hours outside the regular school day. Some, however, could allow for daily, school-wide prayers modeled on Wingfield's: "Almighty God, we ask that you bless our parents, teacher and country throughout the day. In your name, we pray. Amen." That prayer, even more tame than the New York Board of Regents prayer rejected by the Court in 1962, was thrown out by the school's superintendent. It is too early to tell if the constitutional amendment sought by congressional conservatives would permit similar, student-initiated prayers.

"When you pray, go into your room, close the door and pray to your Father, who is unseen."
— Matthew 6:6

Many religious conservatives, however, agree with the High Court's ruling banning state-sponsored school prayer, and argue that student-led prayers can have a coercive effect in the unique environment of public education.

Critics fear that if regular, organized public prayers are allowed in school, the trappings of an enforced public religion could return to the classroom: A student recites a prayer, approved by a school official; the prayer is delivered before the class, or over the public address system to the entire school; a school official designates who reads the prayer; attendance is required; the students, all minors, are asked to participate or remain respectfully silent. "Religious expression and dominance in culture must be from the bottom up, not the top down," says Richard Land, executive director the Christian Life Commission, the religious liberty agency of the Southern Baptist Convention. "And even then there must be extreme sensitivity on the part of the dominant majority that they don't trample the rights of religious minorities."

Some prayer opponents point to the acutely peer-conscious climate of the classroom. With organized prayer, students would be asked either to acknowledge or ignore what is essentially an act of worship among the faithful. It's one thing for members of Congress to begin a legislative session with prayer or for the Supreme Court to open with "God save the United States and this honorable court." But it's quite another thing for a minor, who has no choice but to be in school, who is there without her parents, who perhaps already is having trouble fitting in.

Michael McConnell, a University of Chicago law professor and an evangelical who has argued religious liberty cases before the Supreme Court, sees mostly trouble with classroom prayer. "School prayer is a very bad idea from an evangelical point of view," he says. "We should fight the notion that secularism is neutral, but that doesn't mean Christians have a right to dominate the message that's communicated in the public schools."

The Majoritarian Impulse

Many prayer advocates simply disagree. Defenders of school-wide public prayers, such as Mississippi activist Bobby Clanton, argue that the majority of their communities are conservative Christians, and they should have the right to decide whether and how to pray in the public schools. "We're tired of yielding to a tiny minority," Clanton told the *New York Times*. "What about our rights?"

This is known as the majoritarian argument: We've got the numbers and we can control the levers of power. In the case of Wingfield High, 490 students voted to have the prayer read over the intercom; 96 voted against it. In the South, where a Protestant ethos still dominates many communities, the majoritarian argument seems plausible. "People assume that Protestant consensus," says Nathan Hatch, vice president for graduate studies and research at the University of Notre Dame. "They assume a prayer that wouldn't offend *them*."

There is much to be said for communities helping to shape the curricula and moral climate of their public schools; however, when it comes to matters of faith, the majoritarian impulse ignores the lessons of church history. Martin Luther's proclamation before the Roman Church—"to go against conscience is neither right nor safe"—laid the groundwork for the Protestant insistence on religious liberty and freedom of conscience. Many of America's Protestant churches, of course, began as persecuted rebels challenging the culturally dominant Catholics or Anglicans. "The same parents who press for prayer in the South would be outraged by Buddhist meditation in Hawaii or readings from the Book of Mormon in Utah," says Os Guinness. "For them to argue like European Anglicans [with their established church] is an exercise in historical amnesia."

A majority-prayer rationale also fails to face the profound cultural and religious diversity that characterizes national life. There are at least 1,200 organized, distinct religious groups in America, many of them outside the Judeo-Christian tradition; self-proclaimed secularists make up perhaps 10 percent of the population, with



UPI/Bettmann

Many religious conservatives argue that even student-led school prayer can have a coercive effect in the unique environment of public education.

growing numbers of Muslims, Hindus, and New Age adherents. Public schools are increasingly becoming flashpoints for such diversity.

"Many evangelicals don't realize that we are deeply pluralistic and that you can't turn the clock back," says Hatch, a leading evangelical historian of American Christianity. "In South Bend, a block from where we go to church, they've just built a mosque. That would have been unheard of even 10 years ago." Princeton Sociologist Robert Wuthnow, in his book *Christianity in the 21st Century*, summarizes the religious scene this way: "If there is one feature of contemporary culture that we can be sure will become even more pronounced in the future, that feature is its diversity."

Finally, the majoritarian argument strikes at the very nature of religious commitment. After four decades of teaching and study on the relationship of Christianity to society, Tinder concludes: "What Christianity seeks above all else is faith, and faith has to be free." This is so because faith is the most intimate of matters, concerned not with personal preference but with the moral dictates of conscience. And the consciences of society's most vulnerable members—its children—require special protection, particularly in a setting as volatile and influential as public education.

William Penn, religious dissenter and political statesman, was one of the first Protestants in America to grasp the importance of safeguarding personal religious conviction. During his imprisonment in London's Newgate Prison for defying the Anglican Church, circa 1671, he wrote: "Imposition, restraint, and persecution for matters relating to conscience directly invade the divine prerogative," he said, "and divest the Almighty of a due, proper to none besides Himself."

Evangelicals wary of school prayer argue that majoritarian politics, when applied to matters of faith, are inherently manipulative. To coerce conscience—the home of religious experience—is to invade a realm reserved solely for an individual and his God. Perhaps this is one reason why Jesus, when instructing his followers about heartfelt prayer, told them: "When you pray, go into your room, close the door and pray to your Father, who is unseen." (Matthew 6:6)

Hollow Faith

There seem to be two ways that school prayer supporters can hope to avoid offending the consciences of various faith communities: construct a prayer devoid of controversial theology, or allow each and every faith group to offer its own prayer. Both, critics say, contain numbing contradictions.

The one-size-fits-all approach to prayer invites at least two errors. The first involves the hollowing out of faith. One of the most distinctive features of conservative Jews and Christians is their belief in a God who is both personal and purposeful, one who is both merciful and just—a God who can be described, known, and worshipped. A gray, soul-less, generally accepted prayer could not possibly admit most of the divine attributes considered basic to Jewish and Christian believers.

"I don't know how a generic, civil, utilitarian prayer is able to not offend anybody who's serious about his own faith. If you get something that would not offend, then it has to be offensive," says Mark Noll, evangelical professor of history at Wheaton College in Wheaton, Illinois. Os Guinness, in *The American Hour: A Time of Reckoning and the Once and Future Role of Faith*, argues that deepening pluralism makes nonsense of the notion of a universally inclusive faith. "For Christians who take their faith seriously, such a lowest-common-denominator deity is too vague to be useful, too broad to be anything but misleading." Prayers to such a deity, concludes Tinder, are "almost bound to be unitarian, not trinitarian."

Evangelical Christians—who historically have paid excruciating attention to the content of their faith—ought to be among the most wary of promoting generic prayers in public education. Theology matters, because hardly anything influences the depth of a Christian's commitment more than how he or she thinks about God. Michael Cromartie, director of the Evangelical Studies Project at the Ethics and Public Policy Center, describes the effect of such prayers in blunt terms: "Too much pabulum confuses the brain."

The Government Hand

The second error introduced by universalistic prayers is the eventual injection of the state in matters of faith. Richard Land of the Christian Life Commission and others argue that it's difficult to escape the ultimate logic of prayers regularly uttered in class or over a public address system: They carry an implicit state endorsement; it's as though the government were teaching students how to pray. Who, for example, will decide whether a prayer is publicly acceptable? It will not be the students;

"I THINK OUR SOCIETY WILL NOT SURVIVE UNLESS THERE IS A BROAD-BASED RELIGIOUS COMMITMENT, BUT IT IS NOT THE RESPONSIBILITY OF GOVERNMENT TO PROMOTE IT."— RICHARD LAND

it will be the state. Teachers or administrators will have to approve the prayers, perhaps even help write them, as did a team of lawyers for the prayer approved by the N.Y. State Board of Regents. "We better get out of the business of believing that government has some appropriate role in promoting 'God words' before that precedent is turned upon our consciences," says the Christian Legal Society's Steve McFarland. "When you ask the government to engage in symbolic speech in the form of prayer, it necessarily compromises the religious integrity of the message."

Even a school-prayer advocate like Harold Brown, who teaches theology and ethics at Trinity Evangelical Divinity School in Deerfield, Illinois, agrees that classroom prayers will inevitably entangle the state in religion. Brown expects a reasonable church-state compromise to result: "We'll have to lock heads on this and reach a *modus vivendi*."

However, if "student-led" prayers become a routine part of public education, they could revive a mutated version of civil religion in the schools. Many evangelicals view civil religion as a threat to religious freedom, because in its worst forms it allows the government to establish its own brand of "orthodox" religion, by which it judges other expressions of faith. If school prayer proposals move in that direction, large numbers of religious conservatives will revolt.

"I think our society will not survive unless there is a broad-based religious commitment, but it is not the responsibility of the government to promote it," says Richard Land, whose 14 million-member Southern Baptist Convention represents the largest Protestant church in America. "Anything that allows the state to sponsor prayer, we're going to oppose. This is not an issue that is compromisable for Baptists," he says. Robert Booth Fowler, political science professor at the University of Wisconsin and author of several books on religion and politics, is equally pessimistic. "There's no way that the other religious groups outside the Christian community are going to stand for this," he says. "And you can count on no active support from the Catholic Church."

Here Comes Mother Earth

The other strategy for allowing school prayer without offending religious minorities is to permit children from any and every faith group to recite their own sectarian prayers. Supporters say this ecumenical approach would promote understanding and tolerance of differing religious views. Critics say it is a prescription for theological vertigo.

Think of it: one day a prayer is offered to Mary, the mother of Jesus; another day to Gaia, mother of the earth. That's not as far-fetched as some argue—"not with the plurality of kids I'm dealing with," says Bill Muir, senior vice president of Youth for Christ, a Christian student outreach group in 225 cities. It is estimated that scores of new religious or quasi-religious sects appear, if only briefly, on the nation's social landscape each year. And Muir says he expects to see more and more signs of their influence in schools.

New-Age and feminist theologies, for example, already have crept into the churches themselves. At a recent religious conference in Minneapolis, participants from some of the country's largest Protestant churches prayed: "Our maker, Sophia, we are women in your image." A few years ago, the dean of the Cathedral of Saint John the Divine in New York City commissioned the composition of a choral mass entitled "Missa Gaia." Evangelicals fear that it's just a matter of time before similar prayers find their way into the classroom. Says McFarland: "In Southern California it could be a prayer to Shirley MacLaine for all I know."

It's one thing to teach a course on world religions in the public schools; the context is academic, factual and impersonal. It is quite another to ask children to join in the prayers of religious believers of other faiths; the

setting is emotive, subjective and intensely personal. "It sends the message to children that one prayer is as good as another," says the University of Chicago's McConnell. That's simply another way of reinforcing—on a grand public scale—cultural and religious relativism. It similarly could undermine the religious instruction children receive at home or in church.

Religious Hostility

None of the arguments against school prayer address the broad indifference and even hostility to religious belief in public education. "The main problem in the public schools and public universities is that what has been a central part of the human story—religion—is the one part that is missing," Fowler says. The conservative American Center for Law and Justice has collected at least 200 cases of anti-religious bias in public schools over the last year:

- A second-grade girl in a Minneapolis school chats with a friend about God on the playground, but is interrupted by her teacher and told she cannot continue;
- A seventh-grade teacher in West York, Pa. instructs students to deliver an oral essay about one of their heroes, living or dead. A girl is told that her hero, Jesus Christ, is not a suitable subject;
- Students at the University of Virginia are denied funds for a newspaper because of its religious content, while other student newspapers receive full funding.

The anxiety over religion displayed by school boards, administrators and teachers unquestionably has been fueled by numerous—and contradictory—court decisions on church-state cases since the 1960s. Many of the rulings, evangelicals argue, ignore the constitutional protection of religious expression and attempt to use earlier decisions to sanitize the public schools of any trace of faith. "Why are people nervous talking about their most basic beliefs?" asks Wheaton's Mark Noll, author or editor of numerous books on American Christianity. "The jurisprudence has moved properly in the direction of prohibiting coercion, but improperly in restricting conversation." Ironically, Justice Arthur Goldberg—who voted in the 1963 *Abington School District* v. *Schempp* decision to ban school Bible readings—warned that the decision must not lead to a "brooding and pervasive devotion to the secular," which he called unconstitutional. There is growing agreement among religious liberals and conservatives that this is precisely the situation that now exists in public education.

Civic Order

Religious conservatives are likewise supported by behavioral trends when they claim, in making a civil argument for classroom prayer, that secular education is doing little to arrest the pathologies afflicting young people. Since 1960, teen suicides rates have tripled, pregnancy rates among unmarried teens have nearly doubled, and juveniles are the fastest-growing segment of the criminal population. On any given day, one in five kids carry a weapon to school. Too many classrooms are indeed hothouses of delinquency and despair. All true.

However, many religious conservatives say their evangelical brethren are mistaken when they insist that the recovery of school prayer will help slow or reverse these trends. "If we are thinking that the tide of modernity can be rolled back by a prayer over the intercom, then we've taken leave of our senses," says David Wells, evangelical theologian at Gordon Conwell Theological Seminary in South Hamilton, Massachusetts. "If you're using it as a means to address social ills, it's not a solution," says Corwin Smidt, political science professor at Calvin College in Grand Rapids, Michigan. School prayer was not the glue that held together a moral or religious consensus in society; neither will its return lead to spiritual or cultural renewal. Fowler recalls his own experience in reciting classroom prayers: "I don't think it played much of a concrete, practical role in anybody's life."



Archive Photos

Student textbooks often omit references to significant religious figures, such as Samuel Hopkins, who chastised the Continental Congress in 1776 for not granting constitutional freedoms to blacks.

More importantly, religious conservatives ought to be the first to raise objections when spiritual disciplines like prayer are reduced to public exercises to help ward off social ills. As these observers warn, evangelicals must not allow their faith to be used as a social policeman; the result will be the corruption and counterfeiting of their religious convictions. "I've never seen kids involved in a ritual prayer, a legislated prayer where it became a deeply moving or growing experience," says Muir, who has been working in junior high and high schools for 25 years. Ironically, one of the historic traits of evangelicals is their insistence that prayer without heartfelt faith in faith's Author never rises above the ceiling.

The cultural, theological, and civil arguments for school prayer thus all encounter perilous difficulties—both practical and moral. On the one hand, America's growing cultural pluralism makes school prayer an anachronistic proposition; it assumes a religious consensus that almost all evangelicals admit no longer exists. In such an environment, children of minority faiths or of no faith will endure the subtle intimidation of a majority-written benediction.

On the other hand, religious conservatives may find their children's religious education undercut by the symbolic power of prayer that is either diluted or unorthodox. Even supporters admit that rote prayers run the risk of trivializing faith and religious commitment—a criticism long made by evangelicals against Catholics, Anglicans, and other strongly liturgical traditions. As Guinness puts it: "You're faced with a very simple dichotomy: we either secularize or we scandalize."

IF RELIGIOUS CONSERVATIVES WANT YOUNG PEOPLE TO APPRECIATE THE PROFOUND ROLE OF FAITH IN THE LIVES OF AMERICANS, THEY MUST HELP ENSURE THAT THEIR STORIES ARE FAIRLY TAUGHT THROUGHOUT THE CURRICULA.

The combination of America's supreme commitment to freedom of conscience and its increasingly diverse culture makes school prayer a hazardous object of political strategists. "Once you admit this pluralism, solutions become very complicated, and complicated solutions don't wash politically," Hatch says. "What washes in populist politics are simple, clear answers and this issue defies that." Wells, author of *No Place for Truth: Whatever Happened to Evangelical Theology*, says the evangelical attachment to school prayer is the result of "intellectual laziness" in applying biblical principles to public policy issues. "We have betrayed ourselves by looking for the silver bullet, the one thing that's going to fix the whole sorry scheme—and there just isn't one."

What the difficulties suggest is that school prayer is no longer an acceptable or effective dimension of public education—if it ever really was. This is not to say that isolated or spontaneous instances of prayer, such as at graduation ceremonies or following the news of an illness or accident, are inappropriate. But prayer, in any organized, public, and ongoing form is simply unworkable in what is becoming a post-Christian nation. Moreover, as McFarland and other evangelicals conclude, prayer proposals distract religious conservatives from more effective avenues of influence.

Religious believers, they say, ought to be using the legal tools already open to them to soften intolerance of public expressions of faith. One approach is to reintroduce the religious dimension of American life in school curricula. Several important studies have documented how school textbooks deliberately exclude religious references to some of the nation's most significant figures and political and social movements. The 1985 analysis by Paul Vitz for the National Institute of Education was echoed by studies from the liberal People for the American Way and Americans United for the Separation of Church and State.

Public school children never hear, for example, about evangelical ministers like Samuel Hopkins, who chastised all members of the Continental Congress in 1776 for "oppressing and tyrannizing over many thousands of poor blacks, who have as good a claim to liberty as themselves." They're told that Benjamin Franklin was a deist who scorned traditional religion, but they don't learn that this same Franklin proposed that the seal of the American republic be a picture of Moses with his rod held over the Red Sea. They don't learn that evangelical William Booth founded one of the most comprehensive and effective outreach programs to the nation's urban dwellers: the Salvation Army. "We need to teach good, accurate history," Tinder says, "and good, accurate history would bring out the fact that religion has been exceedingly important in America from the beginning."

No Supreme Court decisions in church-state cases prohibit the teaching of religion in the schools. In *Abington* v. *Schempp*, the Court insisted that "nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." The court's guidelines specifically allow public schools to sponsor the study of religion, but not the practice of religion. Even a spokesman for People for the American Way, a group deeply suspicious of public expressions of religion, admits: "You can't have an accurate portrayal of history and leave out religion."

If religious conservatives want young people to appreciate the profound role of faith in the lives of so many Americans, they need to help ensure that their stories are fairly taught throughout the curricula. For these neglected stories, these parables of faith-in-action, produce the stuff that world views are made of.

Equal Access

Secondly, religious conservatives must make full and effective use of the 1984 Equal Access Act (EAA), which requires that schools grant religious student groups the same privileges as nonreligious groups. True, there are more than 12,000 Bible clubs now meeting in the public schools, but thousands of school districts remain without them. Meanwhile, religious freedom attorneys are certain that countless students are unaware of their legal rights to school facilities and resources—and are quickly intimidated by overzealous teachers, administrators and ACLU lawyers.

PRAYER IN ANY ORGANIZED, PUBLIC, AND ONGOING FORM IS SIMPLY UNWORKABLE IN WHAT IS BECOMING A POST-CHRISTIAN NATION.

Moreover, the act is insufficient in its scope: It only applies to secondary schools and only allows student religious clubs to meet before or after school. In many districts, students cannot distribute religious literature on



original drawing by Sam Walker for *Policy Review*

"I thought this was supposed to be a moment of silence."

school grounds or discuss their faith over the lunch hour. However, even ACLU lawyers, who were closely involved in crafting the EAA, have occasionally sided with religious students' free speech rights. The access issue could become a crucial area of common ground for religious conservatives and strict separationists.

Until the EAA and curricula reform are applied more vigorously, prayer opponents argue, the larger concerns about public hostility to religion will not subside. "The prayer issue would virtually evaporate if the schools were doing a good job in these other areas," says Charles Haynes, visiting scholar at the First Amendment Center at Vanderbilt University. Haynes has developed school curricula that teaches U.S. religious history and explores ways to publicly accommodate the nation's religious diversity. After introducing the material in culturally diverse school districts in California, New York, Utah, and New Mexico, he says that prayer supporters and opponents reveal at least one thing in common: They want public schools to take conscience seriously—whether it relates to sex education, homosexual themes in literature, or religious expressions in the classroom. "What people really want is something much more important than any prayer amendment that I've seen."

Evangelicals who support school prayer acknowledge the crucial opportunities that both curricula reform and the EAA offer religious believers. Dugan says that effective use of the access law "could have far greater an impact on the country spiritually than student prayers." Tom Minnery, vice president of public policy of Focus on the Family, says "that's where we think the fight still is."

Blunting the Edges

If this is true, then the evangelical devotion to school prayer is indeed misplaced. Vacuous prayers can hardly undo prejudices against faith, nor strengthen the already faithful. Instead, such prayers likely would blunt the edges of some of Christianity's harder truth claims. "It could undercut a radical recognition of our own sinfulness and our need for redemption," Cromartie says. And that sort of recognition can only be stirred at the human level by lives marked by integrity and grace. It can never be imposed from without.

"Christian civility takes human freedom seriously," writes Mouw in *Uncommon Decency: Christian Civility in an Uncivil World.* "I may want people to believe as I do about some basic matters—but what I want is for them to choose to see things that way."

School prayer revisited: Does it have a leg to kneel on?

By Carol Zimmermann

Voluntary school prayer is back on the congressional agenda, right up there with the economy and government reform.

While it is touted by some as a means to reverse the nation's moral decline, not everyone sees it as the country's salvation.

The issue gained momentum just days after Republicans won control of Congress, and House Speaker-to-be Newt Gingrich, R-Ga., announced support for a constitutional amendment permitting prayer in public schools. He promised a House vote by July 4.

The U.S. Supreme Court banned prayer in public schools in 1962. And Jesuit Father Robert Drinan, former congressman and Georgetown University law professor, said he feels the same about it now as he did when he voted against it in Congress 20 years ago.

He believes the "difficulties (of school prayer) would outweigh the benefits." His view, he said, echoes the stance the U.S. Catholic bishops last took publicly on the issue in 1983.

That year, when a proposed constitutional amendment for school prayer went before Congress, Msgr. Daniel Hoye, then U.S. Catholic Conference general secretary, told members of the Senate Judiciary Committee that prayer without instruction in religious tradition was not sufficient.

"For many children, prayer alone will not necessarily lead to a deeper understanding of faith, or even to the significance and importance of prayer itself," Msgr. Hoye said at the time.

The proposed amendment had "symbolic value and only minimal pedagogical value," he said, and could not "justify the problems it might create in terms of the American diversity of religious beliefs and traditions and the right of religious minorities in our pluralistic society."

In lieu of prayer, Msgr. Hoye recommended public schools promote values consistent with the nation's religious heritage.

"There are alternatives," Father Drinan told Catholic News Service. "It's not prayer or nothing." For example, he said, schools should teach about religion so students could learn about faiths other than their own.

Jesuit Father F. Michael Perko, professor of English and history at Chicago's Loyola University, also emphasized a middle ground, such as the reinforcement of values.

But, he said, "I'm not persuaded historically" that the Constitution's founders intended "to ban any overt form of religion in schools. Yet the issue is what to do in a society that's increasingly pluralistic."

Father Perko sees the danger of "religion neutral" schools, but also is uneasy about "those pushing school prayer," saying they tend to view America as "a homogeneous society where everyone shares the same values."

According to the Anti-Defamation League of B'nai B'rith, supporters of the proposed amendment are not promoting religious freedom, but "are seeking to intrude their religious views into the school, and to do so in a way which would inevitably make children in the religious minority feel conflicted or outcast."

The ADL joined other religious groups at a recent press conference in Washington to oppose the prayer amendment.

"I don't think Catholics should forget," warns Bill Bassett, professor of law at Jesuit-run University of San Francisco, "that Catholic schools developed and became as large as they did precisely because Catholic students were subject to many proselytizing influences in public schools from reading the King James version of the Bible or saying Protestant prayers," he said.



Catholic Standard photo by Michael Alexander

But those who support a school-prayer amendment contend it is not to make others feel left out, but rather to guarantee students' freedom of speech.

"There is still an amount of hostility on behalf of courts and schools treating students of faith," said Gene Kapp, spokesman for the American Center for Law and Justice, a public-interest law firm in Virginia Beach, Va., founded by religious broadcaster Rev. Pat Robertson.

Kapp said his firm has been "actively involved in working out the language of the proposed amendment" with Rep. Ernest Istook Jr., R-Okla., who initiated it in October.

"We are opposed to anything requiring people to pray, but at a graduation or in another setting, they should be able to," he said, adding that the "marketplace of ideas should include religious speech."

According to a release from Istook's office, 78 percent of Americans support school prayer.

Istook, in a column he wrote for *USA Today*, said: "We hear 'diversity,' 'tolerance' and 'inclusion' as buzzwords. Then we're told not to tolerate somebody else's prayer, that somehow it is a danger to us."

Helen Hull Hitchcock, director of Women for Faith and Family, said that "banishment of religious expression seems unfair discrimination against religious believers." She supports a movement to restore school prayer.

Russell Shaw, public affairs director for the Knights of Columbus, said the Knights have historically supported restoring prayer "whether by constitutional amendment or legislation."

"While restoration of bona fide prayer on a voluntary basis is ideal," he said, "the Knights would also support at least a neutral moment of silence."

But even the moment of silence, already mandated in Alabama, Arkansas, Georgia, South Carolina and Tennessee, is contentious.

According to Bassett, nothing is wrong with a moment of silence, unless it is a "backdoor attempt" to reintroduce specific religious values.

Others say such quiet moments are always available to students and are often used, particularly before an exam, for a quick prayer.

"If you think the debate is complex so far," Father Petro noted, "look at the demographics ... as America becomes more pluralistic, it will make the confusion so far child's play in comparison."

LETTERS TO THE EDITOR

Regarding immigrants, those once oppressed 'have become the oppressors'

After reading Ms. Ferranti's letter (Nov. 24 *Catholic Standard*), it is clear to me why so many Hispanics have left the Catholic Church and become evangelicals.

We Catholics, now complacently sitting in the middle class, have forgotten what our parents and grandparents endured. Signs once read, "Irish need not apply." We were "Wops" and "Mics," portrayed as shiftless, ignorant, shady and the object of ridicule. Apparently, we did not learn our lesson. The oppressed have become the oppressors. We do this to our fellow Catholics.

She also advocates that only the worthy and deserving" should be "arded. When did our Lord sug- separate the wheat from the

As in other periods of history and in other developed countries, the menial jobs are performed by immigrants. As in Rome, the citizens hire the "barbarians" to do what they do not wish to do. The United States Army is full of Latinos. Whoever is willing to fight gets his papers. Who builds our roads, kills himself in the fields, works in the restaurant kitchens, or does the most menial construction work, out in the freezing and scorching temperatures?

On the other hand, I learned only last week from someone working in a soup kitchen in Gaithersburg, that most of their clients are neither Hispanic nor African-Americans. Most of them are white, middle-aged men and women and their children, for they have not found work in "their profession." Therefore, please stop blaming the alien for what you pay in taxes. See who gets the "hand-outs?"

You chide the foreigner for emigrating, saying that he should have stayed home "to correct what is wrong." Tell me, is this what our ancestors did? How many of them came as indentured servants for this was preferable to starvation? How many risked their lives crossing the Atlantic in third class vessels in order to find a better life?

Measures such as (California) Proposition 187 will raise generations full of resentments, prejudices, divisiveness and hates. This country will be destroyed, not by the foreigner, but by people whose fears and anxieties have been fanned by the media and pragmatists.

I am not concerned with the immigrant, for he comes with an energy and a vitality that transcends no matter what.

Because of the prejudice against Catholics and how we were treated, our children could not benefit from the public school system. Yet "this ignorant and derided people" created a school system which is unparalleled; it does not exist in any other country. This was done with pennies earned with blood and sweat, and is one of the glories of the American Catholic Church.

We should keep in mind the following quote from Leviticus 19:34: "The stranger who sojourns with you shall be to you as the native among you, and you shall love him as yourself, for you were strangers in the land of Egypt."

Maria Teresa Meyer
Potomac

[Catholic Standard, December 8, 1994]

PHOTOCOPY
PRESERVATION



THE AMENDMENT RAP

Leave the Constitution alone

by James M. Wall

IF ALL THE WORLD'S a stage, then the U.S. Congress these days is like a street corner where musicians are performing the Constitutional Amendment Rap. Four amendments are being touted in Congress, all of which address issues that belong not to the ages but to current cultural and political wars. In their Contract with America the Republicans promised action in the first 100 days on a balanced-budget amendment and an amendment to limit congressional terms of office. Both issues are ones that are best addressed by conventional means—through normal budget procedures and through voters' action at the polls. They don't call for constitutional amendments.

An amendment requiring the federal government to match its spending to its income was passed by the House of Representatives in late January and is now being considered by the Senate. Two other proposals involve permitting prayer in public schools and restricting abortion. These are morally and legislatively complex matters, demanding careful examination. But they too are being formulated as constitutional amendments. It is entirely possible that all four amendments will pass through Congress and go to the states for ratification.

In focusing on constitutional changes, the Republicans are fighting their war on the wrong battlefield. One value of the legislative process is that it is rather easily reversed when it becomes apparent that a law has not been effective or workable. Democracy works by testing the public will against emerging realities. Amendments to the Constitution can be changed too, but not as easily; changing this fundamental document of national life is laborious and costly—as it should be. Which is exactly why we should hesitate to amend it unless the issues are momentous.

Republican opposition to Franklin Roosevelt's four terms in office led to a constitutional amendment limiting a president to two terms in office. This amendment weakens a president in his second term—a situation that many Republicans came to regret when they realized that they could not nominate Ronald Reagan for a third term.

Consider the amendment permitting prayer in public schools. Supporters of the amendment feel that the increasing secularity of American life has led to a decline in the nation's moral standards. Among the groups opposed to such an amendment are those eager to block any public expression of religion and those religious pluralists who are so concerned not to offend nonbelievers that they prefer secularism to even the mildest expression of a public faith. Both groups tend to minimize the genuine hunger for religious expression in the nation. They seem not to notice the way public schools have become so intimidated by civil libertarians and pluralists that they have adopted a neutral voice in all matters pertaining to basic moral standards.

School-sponsored prayer would trivialize faith and divert students from voluntary expressions.

Nevertheless, an amendment allowing school prayer will not reverse the secularity of the culture. In important ways it would enhance that secularity. A proliferation of school-sponsored prayer would trivialize religious faith and divert students from finding individual ways to express their faith. To mandate prayer in school is largely a symbolic act, as supporters of the idea often acknowledge. What they don't seem to realize is that in this case a symbolic victory would be an empty victory—it would serve to make prayer an empty symbol.

We should keep in mind the example of countries that have an official state church: in such cases participation in religious bodies is usually low. State endorsement of religion has a way of undermining voluntary religious activity. Do we really want to move in that direction? (In some ways religious life has survived more vibrantly under government oppression than under official government endorsement.)

If given an official stamp of approval, the Sabbath would begin to resemble George Washington's birthday—a day on the calendar whose true meaning can be ignored. But if religion is part of the voluntary sphere, then an individual's and a community's faith comes into sharper focus. If prayer becomes a sanctioned daily occurrence in public schools, it would accomplish the opposite of what the proponents want.

The courts have affirmed the right of student religious groups to meet for prayer and Bible study in public schools outside of classroom time. Religious students have just as much right to meet and pray on school grounds as the chess club does to hold its meetings. It is in such voluntary settings, which are already open to students, as well as in countless congregations and youth groups that faith can best be shared, enriched and developed. Rather than focus on the empty symbol of school prayer, we ought to do more with the freedom that students already have to express religious concerns.

So let Congress sing the Amendment Rap through the long night of the first 100 days. When the dawn of reality arrives, the legislative musicians should then fight their cultural wars without laying their heavy hands on the U.S. Constitution. ■

Is fascism next?

by Paul Mojzes

WHEN COMMUNISM crumbled it appeared that the people of Eastern Europe and the former Soviet lands were clamoring for democracy, multiparty elections, an open society, a state of law, and the end of the one-party monopoly over the economy, media and civic activities. The two words most frequently heard were "democracy" and "capitalism." It was assumed widely both in the East and the West that communism and socialism had indeed collapsed and that the transition to democracy and capitalism was under way.

But neither the political nor economic transition has gone as well as the populations expected, though results vary. The Czech Republic exhibits far greater democratic advances than, say, Romania, where the very same people who ruled prior to the revolution are still in power and show little evidence of having altered their style of governing.

In Lithuania, Bulgaria, Ukraine and Hungary recent elections brought victory to the reconstituted (and renamed) communists, as the electorate showed massive dissatisfaction with the scant economic progress made by the anticommunist leaders. While it's unlikely this represents a return to communism, it is a cause for concern about democratization. What is yet to be determined is just how deep a mark communist rule has made upon the average person. The notion that all vestiges of communist mentality will vanish may be quite mistaken.

The greater concern is economic. And economics has enormous political consequences. As is well known, the economies of the socialist countries were stagnant and obsolete and the centrally planned enterprises were not able to produce the consumer goods capitalism did. But it did provide job security for nearly everyone, a minimal but universal social security and negligible inflation.

The popular thinking goes like this: communism failed and capitalism isn't working. What do we do now?

A visit to most former communist countries yields evidence of a greater variety of consumer goods, particularly from abroad; the sprucing up of some shabby cities to more glittering appearance (Prague, Budapest and St. Petersburg, to mention a few), and the presence of a youngish group of entrepreneurs aggressively courting international investors. But the economic well-being of the average person has gone from bad to worse. Particularly hard hit are the elderly and the workers in the former giant state enterprises that are unable to keep up with the changes. A few countries have vigorously pursued privatization (Poland, Slovenia and the Czech Republic); others (such as Slovakia, Ukraine and Bulgaria) are loath to declare the mammoth enterprises defunct because they are concerned that the entire job base will collapse.

In these uncertain economic conditions the most aggressive figures are the mafiosos. It is estimated that in Moscow alone about 300 gangs operate with a brutality not seen since Al Capone's heyday. Many former socialist economies—large ones like Russia's or tiny ones like Montenegro's—have fallen into the hands of brazen and totally merciless gangs. In the minds of the people, the way these gangs operate *is* capitalism. People have been nurtured, after all, on the notion that capitalism means the exploitation of the working people by ruthless capitalists, and this is what they now see every day. Large segments of the population have become destitute, unable to afford even minimal medical care or food, and some are driven to suicide. Meanwhile a tiny minority wallow in quickly gained wealth, which they display ostentatiously.

The enrichment of these gangs is not likely to help their own countries as might be the case should the newly rich put their capital into legitimate businesses. This is because most of them do not reinvest it domestically but stash it away abroad. Banks in Cyprus and Switzerland have become repositories of this ill-gained wealth. Russian entrepreneurs have become cherished customers in Finland because they buy Finnish real estate (in case they need a safe haven) and purchase the most expensive Mercedes cars for the highest asking price—and pay cash. Russian and Polish gangs operate in Germany and other affluent countries, engaging in car theft and other criminal activities (such as importing uranium or prostitutes), and they are using violence not just as a tactic of intimidation but simply as an exercise of power and brashness.

In view of all this, popular thinking goes as follows: We tried communism and it did not work. We are now trying capitalism and it does not work. Which way now?

Paul Mojzes recently wrote Yugoslavian Inferno: Ethnoreligious Warfare in the Balkans *(Continuum).*

Compline

For Stuart Henry

Night after night
since I was small
good old God has listened

to my lies;
has heard beneath the blessings
the burning desire

for the billboard tits
of fame and fortune,
and in his scribbled notes

unfolding in the fire
rocks and serpents
have turned to bread.

Charles Cooper

file School prayer

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

DATE : June 6, 1995

TO : The Secretary

FROM : Judith A. Winston

SUBJECT : Aguilar v. Felton

This memorandum responds to your request for a brief summary of the Supreme Court's 1985 decision in Aguilar v. Felton, 473 U.S. 402 (1985), the effects that decision has had on services for private school children under Title I of the Elementary and Secondary Education Act and possible efforts to have that decision overruled.

BACKGROUND

In Felton, the Supreme Court ruled that it was unconstitutional under the Establishment Clause of the First Amendment for Title I personnel to provide instruction in religiously-affiliated private schools. The Court concluded by a 5-4 vote that a Title I instructional program in these private schools created excessive entanglement between government and religion. In the Court's view, the provision of Title I aid "in a pervasively sectarian environment" in the form of teachers would require "ongoing inspection . . . to ensure the absence of a religious message." 473 U.S. at 412. Therefore, the "program would require a permanent and pervasive state presence in sectarian schools" which, in turn, would cause excessive entanglement between public and private school officials. Id. at 413.

In the years following the Felton decision, the Department issued guidance on alternative delivery systems for providing Title I services for children attending private schools. In accordance with that guidance, Title I personnel have provided instruction for these children in other locations including public school sites, other public buildings and mobile vans parked on public property and, in some instances, on private school property. Also in accordance with guidance issued by this Department, computer-assisted instruction has been provided in private school buildings.

DISCUSSION

The Felton decision has had a significant negative impact on Title I services for private school children. In the years immediately following the decision, there was a dramatic decrease in the number of private school children participating in the

Title I program. Although the number has increased in subsequent years, the underlying problems caused by the Felton decision continue. Instead of having Title I services in their own school buildings, as public school children generally have, private school children must go to another location to receive instruction from a teacher. This creates not only logistical problems, but significantly increases costs (for such things as transportation or the purchase or rental of mobile vans). With respect to computer-assisted instruction which is provided in private schools, there is often criticism that this is not the most educationally effective method for providing Title I services. The Felton decision also at times has caused tension between public and private school officials concerning how and where Title I services should be provided for private school children.

In addition, strong arguments can be made that the Supreme Court reached the wrong legal conclusion in Felton. Title I is a broad-based program for public and private school children, and is required by statute to provide supplemental services. Title I services are provided by public employees under public supervision and no funds flow to any private school. Also, as noted by Justice O'Connor in her dissenting opinion in Felton, the Court's analysis "strongly exaggerates the degree of supervision necessary to prevent public school teachers from inculcating religion. . . ." 473 U.S. at 421. In fact, the evidentiary record in the Felton case revealed no such problem of any Title I teacher ever attempting to inculcate religion in the nineteen years that Title I services had been provided in private schools in New York City. See 473 U.S. 424-25. Therefore, the program does not need the degree of on-site monitoring contemplated by the Court, and excessive entanglement should not result.

OPTIONS

The Supreme Court's decision last year in Board of Education of Kiryas Joel Village School District v. Grumet, 114 S. Ct. 2481 (1994) indicates that a majority of the Court may no longer support the Felton decision. In fact, five Supreme Court justices indicated in Kiryas Joel that Felton should be reconsidered, with four of the justices expressly stating that Felton should be overruled in an appropriate case. See 114 S. Ct. at 2498, 2505, 2515. (In Kiryas Joel, the Court decided that the creation of a special school district in New York state for serving students with disabilities of a specific religious community was unconstitutional. The school district was created in response to the Supreme Court's decision in Felton.)

In light of the statements made by the five justices in Kiryas Joel, there has been strong interest in having Felton overturned

in an appropriate case, and this office has had discussions with Department of Justice officials on how this might be accomplished. One problem is that since Title I services are being provided in accordance with Felton there is no pending case that squarely presents the issue. Nevertheless, there are at least three possible options for raising the issue.

One possibility is filing a motion in the original Felton case at the district court level to dissolve the injunction against providing Title I services in private schools. The basis for this motion essentially would be that there has been a change in the controlling law because Felton no longer commands a majority of the Supreme Court. This approach is not likely to succeed, however, because the lower courts would be bound to follow the Supreme Court's decision in Felton, and it would not appear likely that the Supreme Court would grant review of a motion in the original case. The advantage of this approach is that it could be done quickly, and there would appear to be little to lose even if the effort was unsuccessful.

A second option is to raise the Felton issue in a pending case that presents similar issues. Although there is no pending case involving Title I services in private schools, there are cases involving closely related issues, such as the constitutionality of providing Title I services in mobile vans parked near private schools or on private school property. There are only a few pending lower court cases involving these issues, however, and there may not be an opportunity for Supreme Court review in these cases for a significant period of time. In the one recent court of appeals decision in this area, the Ninth Circuit ruled in the Department's favor on the issue of parking mobile vans on private school property. Walker v. San Francisco Unified School District, 46 F.3d 1449 (9th Cir. 1995). Although the Ninth Circuit is considering whether to rehear this case, it is not likely that plaintiffs would appeal the van issue to the Supreme Court. The issue of parking mobile vans on public streets to provide Title I services is pending in a lawsuit involving the Title I program in New York City. Committee for Public Education and Religious Liberty (PEARL) v. Secretary, United States Department of Education, No. 88 Civ. 96 (E.D.N.Y.). Although the Felton issue could be raised at an appropriate point in this case, the court could easily, and likely would, uphold the parking of mobile vans on public property without ever reaching the issue of whether Felton should be overruled.

A third option is to try to raise the Felton issue in some other case, not involving the Title I program. Although the issue might arise with respect to another Federal or state program, we have not found a good vehicle for raising the issue in this context.

CONCLUSION

The Felton decision has adversely affected the quantity and quality of Title I services for private school children. Although the Supreme Court has indicated its willingness to reconsider and possibly overrule the Felton decision, an appropriate case to raise this issue needs to be found. We recommend that the Department, in consultation with Department of Justice officials, continue to review pending cases and seek reversal of the Felton decision as soon as possible in an appropriate case.

UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

TO : George Stephanopoulos
Senior Advisor to the President

Stephen Neuwirth
Associate Counsel to the President

FROM : Richard W. Riley

SUBJECT: Possible Legal Initiative to Strengthen Federally-funded Educational Services for Private School Children

I am writing to call to your and the President's attention an issue that I intend to pursue relating to educational services for private school children.

Title I of the Elementary and Secondary Education Act is the largest program of Federal aid to elementary and secondary education, with annual grants of over $6 billion. The grants are made to local public school agencies to provide supplementary educational services for children in schools with high concentrations of poor children. Under the statute, the public agency grantees must provide equitable services with Title I funds to eligible children in private schools. Grants of funds are not made to private schools. In a 1985 case, Aguilar v. Felton, the Supreme Court ruled that it was unconstitutional under the Establishment of Religion Clause for Title I personnel to provide instruction in religiously-affiliated schools.

The effect of that decision has been to impair the quality and quantity of educational services to private school children and to make it difficult to assure that services to these children are equitable. Although this Department has supported a variety of back-up arrangements to serve private school children (for example, in mobile vans parked on or near the private schools), and has successfully defended them against legal challenge, the arrangements have not been satisfactory -- in our view and that of the U.S. Catholic Conference and other advocates for private school children -- in assuring high quality educational services that meet the needs of these children.

For this reason, and because a majority of Supreme Court Justices have expressed their willingness to reexamine the Aguilar decision, it is my intent to explore with the Department of Justice an appropriate litigation vehicle for bringing this issue back before the Court. Some possibilities are discussed in the attached memo from Judith Winston, my General Counsel. I would be pleased to discuss this issue at your convenience.

Attachments

- Jt. Statement re Religion in Public Schools -

5/28/98

file: School Prayer

SUMMARY OF AGREEMENT ON RELIGION IN PUBLIC SCHOOLS

1. Students, individually or in groups, can engage in private, non-disruptive prayer and discussion of religion.

2. Teachers and school administrators may not encourage or solicit student religious or anti-religious activity.

3. While public schools can teach about religion -- e.g., comparative religion, the history of religion, etc. -- they may not teach religion itself.

4. While "creationism" can be discussed in comparative religion or social studies classes, schools must not teach as scientific fact any religious doctrine of a supernatural creator, including "creationism." At the same time, teachers may not ridicule any religious doctrine of origins.

5. Student religious speech in the form of reports, homework and artwork is constitutionally protected.

6. Some other forms of public religious expression in the classroom are also protected.

7. Students may distribute religious literature to their school-mates, subject to reasonable time, place and manner restrictions.

8. Outsiders may not distribute religious literature in the classroom. Courts have not yet addressed whether outside groups can distribute religious literature in common areas of public schools if other community groups are permitted to distribute secular publications.

9. Students may participate in religious events -- e.g., at a flagpole -- before or after school.

10. Students may attempt, in non-harassing ways, to persuade their peers about religious topics.

11. The Equal Access Act should be enforced.

12. While public schools may not observe holidays as religious events, those schools may teach about religious holidays and celebrate the secular aspects of those holidays.

13. Schools have substantial discretion to excuse individual students from lessons that are objectionable to the students on the basis of religion.

14. Schools may teach civic virtues -- such as honesty, civility, tolerance and hard work -- so long as these virtues are not taught as religious tenets. At the same time, the fact that religions also teach these values does not make it unlawful to teach them in school.

15. Students may wear religious attire, and religious messages on shirts or other clothing items may not be singled out for suppression.

16. Schools have the discretion to permit students to participate in off-premises religious instruction during the school day, so long as the schools do not encourage or discourage participation.

104TH CONGRESS
1ST SESSION

H. J. RES. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. ISTOOK introduced the following joint resolution; which was referred to the Committee on _____

JOINT RESOLUTION

Proposing a religious liberties amendment to the Constitution of the United States to secure the people's right to acknowledge God according to the dictates of conscience.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"To secure the people's right to acknowledge God according to the dictates of conscience: Nothing in this Constitution shall prohibit acknowledgments of the religious heritage, beliefs, or traditions of the people, or prohibit student-sponsored prayer in public schools. Neither the United States nor any State shall compose any official prayer or compel joining in prayer, or discriminate against religious expression or belief.".

but not selecting official prayers or designating

Other ways

why Congress per fed'l govt from issuing mandatory edicts — is 1st A.

"Coercion" Court right

Pol - common ground vs. sectarian bitter debate

Congress might not be compelled

felt Red further Adm position

Diversity/ moral nat'n — pain

104TH CONGRESS
1ST SESSION

H. J. RES. 121

Proposing an amendment to the Constitution of the United States in order to secure the unalienable right of the people to acknowledge, worship, and serve their Creator, according to the dictates of conscience.

IN THE HOUSE OF REPRESENTATIVES

November 15, 1995

Mr. HYDE (for himself, Mr. CANADY of Florida, and Mr. GOODLATTE) introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States in order to secure the unalienable right of the people to acknowledge, worship, and serve their Creator, according to the dictates of conscience.

//Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), \\ That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE --

"Neither the United States nor any State shall deny benefits to or otherwise discriminate against any private person or group on account of religious expression, belief, or identity; nor shall the prohibition on laws respecting an establishment of religion be construed to require such discrimination.".

Proposed Prayer Amendment Splits the Right

By KATHARINE Q. SEELYE

WASHINGTON, Nov. 21 — Opening a rift within the religious right, a House Republican today introduced a constitutional amendment that would provide for prayer in public schools, a proposal that some other conservatives and religious groups say goes in the wrong direction.

As a result, Representative Ernest Jim Istook Jr., a fiery second-term Republican from Oklahoma who introduced the amendment, is now in a standoff with one of the most respected conservatives in Congress, Representative Henry J. Hyde of Illinois, chairman of the House Judiciary Committee.

Mr. Istook's goal is to have prayer in the schools. The goal of Mr. Hyde, who introduced his own amendment last week, is to prevent discrimination against the expression of religious views, whether in public school commencements or on public radio stations; he is silent on school prayer, which is a priority for some conservatives.

The standoff is forcing House conservatives and the religious right to choose sides, leaving some to fear that this internal squabble may doom the entire yearlong effort to amend the Constitution as a way of protecting and furthering religious expression in American life. Central to the debate is the role of government in religion.

"Right now, this is shaping up as a fight between those on the religious right," said Forest Montgomery, counsel to the National Association of Evangelicals, one of about a dozen groups that have been helping to draft religious-protection language. "These are our brothers and sisters, and there's a disagreement here."

Mr. Montgomery's group, like many others, supports the Hyde approach but acknowledges that Mr. Istook has more co-sponsors and that a major struggle lies ahead.

On the sidelines for now are those who oppose any change in the Constitution as it applies to religion. "This conflict just proves what we've been saying all along," said Joseph Conn, a spokesman for Americans United for Separation of Church and State. "It's not that easy to improve on Madison and Jefferson."

Mr. Conn described both proposals as "atrocious." He said the Istook amendment would essentially repeal the First Amendment's Establishment Clause, which says that "Congress shall make no law respecting an establishment of religion." And he said the Hyde approach would allow the Government to promote religion through a "benefits provision" requiring that when it finances secular institutions, it finance religious institutions as well.

Mr. Hyde's supporters say his amendment would prohibit discrimination against people who want to express their religious views. They deem the measure necessary despite the First Amendment's guarantee of religious freedom because of so many differing legal interpretations of what is permissible.

Mr. Istook's amendment would allow student-sponsored prayer in public schools and would permit communities to decide themselves on whether to have religious displays during the holidays. His critics, which include numerous religious groups, object to organized school prayer and say the proposal smacks of a "majority rule" that would exclude members of religious minorities.

Mr. Istook took the lead on the religious amendment nearly a year ago, when Speaker Newt Gingrich said the House would deal with the social agenda of its conservative members after it finished work on the Contract With America.

But among many religious conservatives, the major concern as defined by one of them, Michael McConnell, a professor of constitutional law at the University of Chicago, is not school prayer. It is instead, Professor McConnell says, that expression of religion has become subordinate to secularism.

"The authentic vision of the First Amendment, and of the Founders, and of the United States until about 40 years ago, was one of pluralistic public space in which all citizens, religious and nonreligious, have equal rights," Mr. McConnell said in an interview today. The real problem today, he said, is "the enforced secularization of public life, not school prayer."

Mr. McConnell and others pointed to several cases to bolster their point. One involved Brittney Settle, a ninth grader in Tennessee who was assigned to write a research paper on any topic using four sources. When the girl wrote on the life of Jesus, her teacher gave her a failing grade, saying all "documentation" on Jesus would "derive from one source, the Bible."

In another case, the Commerce Department rejected a grant application from Fordham University to raise its radio antenna because the Jesuit school's radio station broadcast Sunday morning Mass. This violated department policy against financing noncommercial stations that broadcast religious programming.

As discussions about a religious equality amendment proceeded on Capitol Hill this year, it became evident that Mr. Istook was most interested in reviving school prayer. But others, including Mr. Hyde, agreed with Mr. McConnell that the lack of organized school prayer was not the problem; the problem was discrimination against religious expression.

Mr. Montgomery, of the evangelical group, said Mr. Istook's amendment treated discrimination "as an afterthought, whereas for us that is the central issue, the raison d'être of the whole exercise."

"Istook doesn't prevent the courts from construing the Establishment Clause as requiring discrimination against people because of their religious expression," Mr. Montgomery said. "That's the crux of the problem."

NYT 11-22-95

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American Association of School Administrators
American Association of University Women
American Baptist Churches USA
American Civil Liberties Union
American Federation of Teachers
American Humanist Association
American Jewish Committee
American Jewish Congress
Americans for Democratic Action
Americans for Religious Liberty
Americans United for Separation of Church and State
Anti-Defamation League
Baptist Joint Committee on Public Affairs
B'nai B'rith
B'nai B'rith Women
Central Conference of American Rabbis
Church of the Brethren
  Washington Office
The Episcopal Church
Federation of Reconstructionist Congregations and Havurot
Friends Committee on National Legislation
General Board of Church & Society,
  United Methodist Church
General Conference of Seventh-day Adventists
Hadassah
The Interfaith Alliance
Interfaith Impact for Justice and Peace
Jewish Labor Committee
Lutheran Office for Governmental Affairs
  Evangelical Lutheran Church in America
Mennonite Central Committee,
  Washington Office
National Association of Elementary School Principals
National Committee for Public Education
  and Religious Liberty
National Council of Churches of Christ in the USA
National Council of Jewish Women
National Council on Islamic Affairs
National Education Association
National Jewish Community Relations Advisory Council
National Jewish Democratic Council
People for the American Way Action Fund
Presbyterian Church (USA),
  Washington Office
Rabbinical Assembly
Rabbinical Council of America
Reconstructionist Rabbinical Association
Soka Gakkai International-USA
Southern Christian Leadership Conference
Union of American Hebrew Congregations
Union of Orthodox Jewish Congregations of America
  Institute for Public Affairs
United Church of Christ
  Office for Church in Society
The United Synagogue of Conservative Judaism
Unitarian Universalist Association
Washington Ethical Action Office
  American Ethical Union
Women of Reform Judaism
  The Federation of Temple Sisterhoods
Women's American ORT
Women's International League for Peace and Freedom
Women's League for Conservative Judaism
The Workmen's Circle

November 16, 1995

Dear Representative:

The Coalition to Preserve Religious Liberty supports America's historic commitment to protect our God-given religious liberty through the two religion clauses in the First Amendment. We oppose the "religious equality" constitutional amendment introduced by Representative Hyde yesterday (House Joint Resolution 121). The amendment would perform radical surgery on the First Amendment which has never been amended in over 200 years.

The amendment is unnecessary. The First Amendment, the Religious Freedom Restoration Act, and the Equal Access Act already protect religious exercise. Prayer has not been kicked out of the public schools and religion has not been banished from the public square. Current law allows students to pray anytime they like -- even orally and collectively as long as they are not disruptive. Student religious clubs abound in secondary schools. Citizens can speak of their religious convictions in town hall meetings and religious leaders can hold rallies in public parks. Indeed, recent Supreme Court decisions reaffirm the robust protection for religious expression in public places.

What current law does not allow -- but the new amendment would permit and sometimes require -- is government endorsement of religious messages and promotion of religious activities. For example, the amendment would require the government to fund religious activities in the same way it funds secular activities. Thus, if the government funds the educational and charitable activities of secular organizations, it must also fund the sacred missions of churches and synagogues and other pervasively sectarian groups.

This will ultimately allow the government to coerce, control and compromise religion. When the state advances religion in this way, it violates the consciences of taxpayers who rightfully expect the government to remain neutral toward religion. And, because the government must monitor and sometimes restrict its grants, it also will create entangling alliances between church and state.

Moreover, as is all too clear this week, government funds are limited. Government simply cannot fund all 2000 religious groups in the United States. The amendment will trigger unhealthful competition among faith groups and force government to make divisive and agonizing decisions about which groups get public money. All too often, only the majority religions will "reap the spoils." The founders wisely took this role away from the government; we should not attempt to restore it.

Not only would the amendment permit government-funded religious activities, it would also permit government-sponsored religious expression. It would appear to allow, for example, a public school student to lead their captive classroom audience in prayer, a teacher to sponsor a religious student club during a free period, and a school to invite a rabbi or minister to lead a prayer at a public school graduation ceremony. As the Supreme Court and Congress have recognized, these situations create the very real impression that the government is endorsing religion even though the speaker is a "private person." We should not trade the delicate balance inherent in the First Amendment for the blunt cut of "religious equality." If there is one touchstone of church-state relations in the United States, it is that no American should be made to feel a religious outsider by their government.

We believe in the value of prayer and affirm the role of religion in our lives and the lives of our children. We oppose government meddling in these sacred precincts. Religious expression and the advancement of spiritual beliefs should be left to houses of worship, families and individual citizens.

For these reasons, we urge you to oppose the Hyde amendment.

Coalition to Preserve Religious Liberty

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(202) 544-4226
fax (202) 544-2094

American Association of School Administrators
American Association of University Women
American Baptist Churches USA
American Civil Liberties Union
American Federation of Teachers
American Humanist Association
American Jewish Committee
American Jewish Congress
Americans for Democratic Action
Americans for Religious Liberty
Americans United for Separation of Church and State
Anti-Defamation League
Baptist Joint Committee on Public Affairs
B'nai B'rith
B'nai B'rith Women
Central Conference of American Rabbis
Church of the Brethren Washington Office
The Episcopal Church
Federation of Reconstructionist Congregations and Havurot
Friends Committee on National Legislation
General Board of Church & Society, United Methodist Church
General Conference of Seventh-day Adventists
Hadassah
The Interfaith Alliance
Interfaith Impact for Justice and Peace
Jewish Labor Committee
Lutheran Office for Governmental Affairs
Evangelical Lutheran Church in America
Mennonite Central Committee, Washington Office
National Association of Elementary School Principals
National Committee for Public Education and Religious Liberty
National Council of Churches of Christ in the USA
National Council of Jewish Women
National Council on Islamic Affairs
National Education Association
National Jewish Community Relations Advisory Council
National Jewish Democratic Council
People for the American Way Action Fund
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Women's League for Conservative Judaism
The Workmen's Circle

Coalition Defends Religious Liberty by Opposing Istook Amendment

The Istook amendment is the second assault within one week on the religion clauses of the First Amendment. Despite its disclaimers, the Istook amendment would authorize state-sponsored religious practices, ranging from state-endorsed prayer in our public school classrooms to a legislative proclamation that the United States is a Christian nation. This amendment would allow the government to coerce, control and compromise religion.

Both the Istook amendment and the amendment introduced by Rep. Hyde on November 15 (H.J.Res. 121) are unneeded. Students can pray any time they like -- even orally and collectively as long as it is not disruptive. Student Bible clubs abound in secondary schools. Nor has religious expression been removed from the public forum. Citizens can speak of their religious convictions in town hall meetings, and religious leaders can hold rallies in public parks. Indeed, recent United States Supreme Court decisions reaffirm the robust protection for religious expression in public places.

These measures are also unwise. The amendments would perform radical surgery on the First Amendment which has never been amended in over 200 years. They would inevitably weaken our rich tradition of religious liberty. The protections afforded by the separation of church and state have resulted in unprecedented religious liberty in this country and have helped to create a vibrant religious landscape envied by the rest of the world.

Finally, these measures would harm religion. Religious expression must be voluntary and uncoerced if it is to be meaningful. Organized school prayer in the classroom or at school functions would coerce the consciences of a captive audience of students. Government-sponsored religious expression in public places impermissibly endorses religion and disparages the rights of religious minorities.

The Coalition to Preserve Religious Liberty is an alliance of over 50 national religious, educational and civil liberties organizations. The Coalition pledges to defend religious liberty by opposing both the Istook and Hyde amendments.

Contact: Rabbi Saperstein (202) 387-2800 or Rev. Walker (202) 544-4226 November 21, 1995

Coalition opposes religion amendment

Tells Congress it threatens freedom

By Larry Witham
THE WASHINGTON TIMES

Alarmed by Congress' first step toward protecting religious liberty by amending the Constitution, a coalition of Christians, Jews and civil libertarians has launched a countermove.

The Coalition to Preserve Religious Liberty, formed earlier this year to oppose Republican efforts to add a Religious Equality Amendment, last week circulated to Congress its opposition to an amendment by Rep. Henry Hyde, Illinois Republican.

"The amendment is unnecessary," the coalition statement said. "What current law does not allow — but the new amendment would permit and sometimes require — is government endorsement of religious messages and promotion of religious activities."

Mr. Hyde's amendment, submitted Wednesday night, says government cannot deny benefits to or discriminate against people or groups based on their "religious expression, belief, or identity."

Such language, the coalition said, "will ultimately allow the government to coerce, control and compromise religion."

Supporters of an amendment have said it's necessary because the courts don't always uphold citizens' rights to express religion in public places, including schools.

"Fifty years of fiddling with the First Amendment by lawyers and judges has ... distorted the doctrine of church and state," said Michael Whitehead, counsel for the Christian Life Commission of the Southern Baptist Convention (SBC), which supports the amendment.

Roman Catholic organizations, which support voluntary school prayer, have not commented yet. Mr. Hyde is Roman Catholic.

The legislative action has revealed the differences between the two sides in the debate.

Some groups urged Mr. Hyde to submit his bill to circumvent a proposed amendment by Rep. Ernest Istook Jr., Oklahoma Republican, that seeks to place "school prayer" and "religious heritage" under constitutional protection.

Other pro-Hyde groups, such as the Christian Legal Society and the National Association of Evangelicals, believe that constitutional protection of "religious tradition" may allow majorities to install a preferred religion under law.

The coalition has 54 member groups — nearly half of them Jewish — including public school unions and church state separationist groups.

All members of the coalition oppose a constitutional amendment, but some, such as Oliver Thomas, church state counsel for the National Council of Churches, advocate more free expression of religion for students.

What Mr. Thomas opposes is government funding of religious-based organizations, which the Hyde amendment would allow on equal terms with nonreligious groups that gain funding.

The debate comes six months after Congress began to hold religious liberty hearings, which tended to focus on the amendment issue.

Lawmakers at the hearings "came into opposition to the amendment that was very vocal, very heartfelt and very religious," said Melissa Rogers, associate counsel for the Baptist Joint Committee on Public Affairs, which is coordinating the coalition.

She said this raised a question — even among conservative lawmakers — that amending the Constitution might be too drastic. The opposition believes the debate will be drawn out for a long time.

A majority vote of two-thirds by each chamber is needed to propose a constitutional amendment to the states. Approval by three-fourths of the state legislatures is required for ratification.

DAILY POINTS

PRESIDENT CLINTON CHAMPIONS RELIGIOUS LIBERTY

July 12, 1995

"The First Amendment protects religious expression -- it does not convert our public schools into religion-free zones. Wherever and whenever the religious rights of our children are threatened or suppressed, we must move quickly and decisively to correct it. We want to make it easier and more acceptable for people to express and celebrate their faith."

President Clinton
Wednesday, July 12, 1995

Today, President Clinton speaks at James Madison High School, in Virginia about religious liberty and the need for America to find common ground. He will direct the Secretary of Education and the Attorney General to provide every school district in America, before school starts in the fall, with a detailed explanation of the religious expression permitted in America's schools.

Deep Commitment to Protecting Religious Freedom. In 1993, the President signed the Religious Freedom Restoration Act to reaffirm the protections the Constitution and First Amendment give to religious expression. Secretary Riley and the President have worked to make sure that America's children have an opportunity to learn the responsibilities and basic values of good citizenship in school.

America Has a Noble Tradition of Protecting Religious Freedom. Religious freedom is our "first freedom." It opens the First Amendment. Today, we have the freedom to enjoy and express our own beliefs. We have the protection that government cannot be used to coerce people's conscience or suppress people's faith.

America Has Built the Most Vibrant and Diverse Religious Culture in the World. There are more than 250,000 houses of worship in America. More people go to church than in any other Western nation. America is home to more different religions than any other nation. Religion thrives in America, because it is unfettered by government.

Government Must Not Inhibit Religious Expression. Some Americans have been denied the freedom to express religion. The President believes that must stop. Government must not prevent the expression of specific religious views in the name of the First Amendment.

No Need for a Constitutional Amendment. President Clinton believes we do not need a constitutional amendment to protect religious expression. We already have one -- the First Amendment. The First Amendment works and has granted America unrivalled religious liberty.

The First Amendment Does Not Bar Religious Expression from Our Schools. The First Amendment does not require students to leave their religion behind at the schoolhouse door. Students should bring the values they learn from religion to school. Reinforcing those values is an essential part of a school's mission.

Broad Protection for Religious Expression under the First Amendment. The First Amendment protects and permits a broad array of religious expression and worship.

⇒ Students can pray privately and individually, whenever they want. They can say grace to themselves before lunch. Students can pray to themselves before tests.

⇒ Student religious clubs in high school can and should be treated just like any other extracurricular club. They can advertise their meetings, meet on school grounds, and use school facilities just like those clubs.

⇒ When students can choose to read a book to themselves, they have every right to read the Bible to themselves.

-MORE-

⇒ Teachers can and should teach about religion and the contributions it has made to history, to values and knowledge, to music and art, in America and around the world.

⇒ Students should feel free to express their religion and beliefs in homework, through artwork, and during class presentations, as long as it's relevant to the assignment.

⇒ If students can distribute flyers or pamphlets that have nothing to do with school, they can distribute religious flyers and pamphlets under the same rules.

⇒ If students can wear t-shirts advertising sports teams, rock groups and politicians, they can wear t-shirts about religion.

⇒ If certain subjects or activities are objectionable to students or their parents because of religious beliefs, then schools may, and sometimes must, excuse those students.

⇒ Schools cannot advocate religious beliefs, but they should teach mainstream values and virtue.

Must Deepen Our Understanding of the First Amendment. The President believes we must work together to help all Americans understand exactly what the First Amendment does:

- Protects freedom of religion by allowing students to pray,
- Protects freedom of religion by preventing schools from telling them how to pray.

Executive Action to Explain Religious Liberty. The President is directing the Secretary of Education and the Attorney General to provide every school district in America, before school starts in the fall, with a detailed explanation of the religious expression permitted in our schools. Parents, students, educators, and religious leaders can use this directive to work together, to understand their differences, protect students' religious rights, and find common ground.

National Council of the Churches of Christ in the USA

Office of the
General Secretary

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We write to you out of our concern over the recent controversy about the discussion of a possible "school prayer" amendment. The religious communities that we represent have consistently taken clear positions against such an amendment.

Mr. President, in order to clarify our position and avoid any misunderstanding or ambiguity about the stance of much of the religious community, we would like the opportunity to bring together heads of major religious organizations to meet with you to discuss the issue as soon as is convenient for you. If you wish, our discussion will be off the record.

A list of leaders of major religious organizations whose views on this issue are consistent with our own and who would like to be included in such a meeting if their schedules permit will follow this letter.

Dvora Tager in the Religious Action Center office can be reached at (202) 387-2800 to help arrange the meeting.

Thank you for your time and consideration of our position. We look forward to meeting with you soon.

Sincerely,

David Saperstein

Rabbi David Saperstein
Director,
Religious Action Center of
Reform Judaism

Joan B. Campbell

Reverend Joan Brown Campbell
General Secretary
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The Right Reverend Edmond L. Browning
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Bishop Melvin G. Talbert
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The Reverend Dr. Daniel Weiss
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Give Us This Day Our Daily Pabulum

By David Klinghoffer

The possibility of reviving prayer in public schools has all the earmarks of a bona fide conservative cause. It's got religion. It's got morality. It's a thumb in the eye to the cultural elite. It's got most everything — until you look at it closely. For what kind of prayer do Newt Gingrich and other enthusiasts think might, in a realistic best-case scenario, actually end up being said?

It's difficult to believe that in choosing prayers, school administrators or parents would be given absolute liberty. A constitutional amendment permitting school prayer would surely include language to insure that it is neither sectarian nor coercive. But even if Jewish and Christian parents could agree on, say, the beloved Psalm 23, where would that leave Muslims? Or atheists? Or feminists who object to referring to God as He?

Outside the most homogeneous districts, school bureaucrats could be forced to do endless battle with enraged parents. But bureaucrats do not relish controversy. Either they would end up writing prayers specifically designed to avoid the wrath of parents or the proposed amendment to the Constitution would dictate the national prayer.

Noting that 75 percent of Americans favor allowing school prayer, a Wall Street Journal editorial recommended that an amendment specify the text of the prayer that was the centerpiece of Engel v. Vitale, the Supreme Court decision in 1962 that banned prayer in the first place.

> A school prayer would be a hollow prayer.

This little number, composed by the New York State Board of Regents, was calculated to offend no one: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers and our country."

This is the kind of prayer that schools will use if Newt Gingrich, the next Speaker of the House, gets his way. Bland, undemanding, essentially meaningless, it says: You've been nice to us in the past, God. Be nice to us in the future.

If Mr. Gingrich and his allies want to inspire children to a more religious life, they should consider what happened to those who, like me, grew up on prayers similar to the one that inspired Engel.

The past few decades have been a time of liturgical overhaul for many major denominations, from Roman Catholics to Episcopalians to Reform Jews. It has also been a time of profound decline, especially for the liberal mainline religious groups. This is not a coincidence.

Catholics, who after 1963 started replacing the Latin Mass with bland vernacular translations, have seen interest in their priesthood — the ultimate index of Catholic passion — drop precipitously. In 1965, 10.6 of every 10,000 American Catholics were enrolled in a seminary; by 1990, the figure was 1.1.

The Episcopalians replaced their beautiful 1928 Book of Common Prayer with the anodyne 1979 version. Since the early 1960's, the number of Episcopalians has declined, though losses have leveled off since 1990. Fallen-away Episcopalians tell me that the book perfectly symbolized the thinning of their ranks. Among Christians generally, the sects in whose veins red blood flows — the booming Mormons and Southern Baptists — are the ones who, when they pray, do it for keeps.

A book by Roger Finke and Rodney Stark, "The Churching of America, 1776-1990," argues convincingly that American churches fail to inspire congregants, and so lose them, in direct proportion to the degree that the church compromises with the "modern" world and makes few real demands of the congregants in order to avoid offending them.

I know best the woes of the Reform movement, the liberal wing of Judaism, for which compromise with the world is a principle of faith. Reform dispensed with the ancient Jewish prayer book, the Siddur, more than a century ago. Since 1975, Reform Jews have prayed from a book with the portentous title "Gates of Prayer," from which the Engel prayer might easily have been extracted.

None of my classmates at Reform Hebrew school took this colorless document seriously, full as it was of soft words that asked little of us and seemed to request of God only that He be nice. We stopped attending Reform services when we got to college. Today, the only Jewish denomination able to hold on to its young people is Orthodoxy.



After all, authentic religions have distinct ideas about about what God is and what He demands. Authentic prayer reflects this, which is why it often seems, to outside eyes, so strange, even dangerous. Kids know false prayer when they see it. And false prayer, like the one in Engel, has in mind not the supernatural, transcendent relation of God to man but the mundane, political relation of man to man. It seeks to convey only as much truth as it feels confident won't offend anybody.

Maybe I've misjudged Newt Gingrich. Maybe he wants a constitutional amendment merely to symbolize the sovereignty of public opinion polls. The Republicans I voted for, however, have pledged themselves to a program that would have real effects: tax relief, welfare reform. Every hour they spend fighting for a symbol is an hour they don't spend fighting for the things that matter.

Which will it be, Mr. Gingrich? I'm praying you make the right choice.□

David Klinghoffer is literary editor of National Review.

THE NEW YORK TIMES, TUESDAY, DECEMBER 27, 1994

Back to Class Warfare

By Richard Sennett

According to the wisdom of the new right, you and I are out of touch. People who peruse newspaper editorials rather than listen to bluster radio form part of a cultural elite that doesn't understand the hopes and hates of ordinary Americans. It isn't just those crocodile tears we shed for the undeserving poor or our prissy insistence on separating church and state that puts us out of touch: our very existence is offensive and threatening.

Popular resentment against elites is an old story in America, perhaps as old as the nation itself. But the story twists and turns as the elite changes. In Andrew Jackson's time, the hated elite were landowners; in John D. Rockefeller's time, they were industrialists.

Today, no one would think Sam Walton was an elitist; instead of great wealth, the new elite possesses rarefied skills. It has addresses on the Internet rather than on Fifth Avenue; it knows how to do global as well as local business.

Most Americans are shut out of this new world. Seventy percent of the adult population does not know how to use a computer; most high school graduates cannot read a train schedule; a large minority cannot reckon simple interest on a bill.

The elite thrives on change, the mass fears it. In a dynamic society, the mass of people are constantly threatened by becoming redundant, being passed by; all they have is their willingness to work. The new economy needs the mass of these Americans less as producers or workers than as consumers.

A new study by the Demos Institute, an opinion-research organization in London, brings this divide into focus. It shows a new attitude toward work among the young in Europe as well as America, a desire to work flexibly and individually, a loss of loyalty to corporations and a willingness to demand that employers make work more personally satisfying.

But only a fifth of young Americans have the training or skills to act on such desires; the other four-fifths, who have no personal bargaining power, can only worry about getting some job, any job, even though they share the sentiments of the elite. Under such conditions, feelings of inferiority become intensely personal. A snob doesn't appear to be someone who flings money about; instead, unlike the ordinary person, he is confident that the future belongs to him.

It's not surprising that young men form the most conservative and anti-elitist segment of the population; they are in that crucible time of life when realities — from McJobs and the necessity of living with one's parents in one's 20's to the prospect of three-job marriages — all dim hopes for self-determination.

As always, politics does symbolic duty for fundamental changes. The fear of government grown out of control is like the photographic print of a social and economic negative — a print of the fear that economic growth portends threat rather than opportunity, that the average person is likely to be left out of the spoils.

And this is a problem for us as well as them — enlightened and well-intentioned bourgeois that we are.

When accused of being an elite, we fudge. Those crocodile tears for the sufferings of others prove that we are in touch; in the certain-to-be-immortal words of our President, "I feel your pain." (Others detect a certain condescension lurking in this sympathy.) Or we promise to use our skills to design solutions to make things better — public policy solutions graced almost with the complexity of modern art. In promising to solve for the masses what they have not solved for themselves, we show we believe we are what they fear we are: more competent.

Class has been the dirty secret of American history, denied by promises of individual freedom, by dreams of upward mobility and by memories of solid communities and coherent families — memories that prove on inspection only to be recovered-memory fantasies.

The plain fact is that in a new stage of capitalism, class divides Americans as ruthlessly as it did in the age of the Robber Barons: politically, America has plunged into a new round of class warfare.

As I age my crystal ball dims, but perhaps the only way to confront Newt Gingrich & Company is to be honest rather than secretive about this warfare, for the right knows how to make mincemeat of privileged people who are evasive or paternalistic. Yes, America is a divided society, and a secure, confident future belongs only to the educated few. Now what? □

Life on the Internet vs. McJobs.

Richard Sennett, professor of history and sociology at New York University, is author of "Flesh and Stone: The Body and the City in Western Civilization."

THE NEW YORK TIMES, TUESDAY, DECEMBER 27, 1994

WASHINGTON IN BRIEF

GOP sweep claims 30-year veterans

By Ernie Freda
STAFF WRITER

AJC

The landslide that swept in a Republican House for the first time since 1952 claimed four Democratic old-timers who have been in Congress for at least 30 years: **Jack Brooks** (Texas, 21 terms), **Thomas Foley** (Washington, 15 terms), **Dan Rostenkowski** (Illinois, 18 terms) and **Neal Smith** (Iowa, 18 terms).


Jack Brooks

It is unusual for House incumbents with such seniority to be ousted in a general election. In the past dozen elections prior to this one, only 16 House members serving more than 10 terms were defeated.

- ▶16 Terms: **Robert Kastenmeier** (D-Wis.), 1990.
- ▶15 Terms: **Alvin O'Konski** (R-Wis.), 1972.
- ▶14 Terms: **Fernand St Germain** (D-R.I.), 1988.
- ▶13 Terms: **Lud Ashley** (D-Ohio), 1980; **Frank Thompson** (D-N.J.), 1980; **Elford Cederberg** (R-Mich.), 1978; **Bill Widnall** (R-N.J.), 1974.
- ▶12 Terms: **William Bray** (R-Ind.), 1974; **Al Ullman** (D-Ore.), 1980.
- ▶11 Terms: **John Brademas** (D-Ind.), 1980; **Clarence Long** (D-Md.), 1984; **Joel Broyhill** (R-Va.), 1974; **John McFall** (D-Calif.), 1978; **Sam Devine** (R-Ohio), 1980; **Joseph Minish** (D-N.J.), 1984; **Harold Johnson** (D-Calif.), 1980.

JUST A LITTLE BIT BLUER: The White House Blue Room is slated for a facelift. First lady **Hillary Rodham Clinton** told **Larry King** on CNN that "it's a little bit tired; it's a little bit in need of a little bit of upgrading." The Blue Room, one of the state receiving rooms — there also are the Green Room and Red Room — has not been extensively redecorated in about 25 years, and some of the furnishings, including the ancient blue-tinged rug, are wearing out. Even though it's called the blue room, the walls are mostly cream colored, with antique blue accents. "It will be more blue when we finish," Clinton said. "This will be a blue room."

ELSEWHERE

The Immigration and Naturalization Service will centralize the issuance of work cards for aliens nest year, and for the first time issue them through the mail (to reduce the temptation for employees to take bribes, according to The New York Times). . . . A Postal Service survey showed stamp collectors saved nearly 48 million stamps of the moon landing this year, more than any other design — but nowhere near the record 124 million **Elvis Presley** stamps saved in 1993. . . . **Susie Rodriguez**, press secretary to Rep. **Cynthia McKinney** (D-Ga.), is leaving her post to become national field director for Catholics for a Free Choice, an abortion rights advocacy group. . . . Republican plans to trim the size of committees may mean that Sen. **Ben Nighthorse Campbell** of Colorado, the only Native American in Congress, may be removed from the Indian Affairs Committee because he is the newest Democrat on the panel. . . . Sen. **Robert Byrd** (D-W.Va.), whom Roll Call newspaper calls the Senate's "most erudite orator," managed to include quotations from every one of Shakespeare's plays in his congressional addresses this year. . . . **Peggy Noonan**, star speechwriter — "read my lips," "kinder, gentler nation," "thousand points of light" — for Presidents **Ronald Reagan** and **George Bush**, has signed with Random House to do a book on the first 100 days of the new Republican Congress.


Ben Nighthorse Campbell

IT'S A FACT

Rep. **Sidney Yates** (D-Ill.), 85, will be the only House member in the upcoming 104th Congress who was there the last time the Republicans took control of the House — in the 83rd Congress. That was when Democrat **Sam Rayburn** of Texas surrendered the speaker's gavel to **Joseph Martin** of Massachusetts on Jan. 3, 1953. Sen. **Robert Byrd** (D-W.Va.), 77, was a freshman House member then.

SAY IT AGAIN

"**Fred Thompson** is really a Gucci-wearing, Lincoln-driving, Perrier-drinking, Grey Poupon-spreading Washington special interest lobbyist." — Rep. **Jim Cooper** (D-Tenn.), who evidently does not believe that the man who beat him for a seat in the Senate was the good ol' boy portrayed in Thompson's TV ads.

MR. SPEAKER

House Speaker-to-be **Newt Gingrich** is taking some quiet time with his family in Georgia, and has nothing scheduled until Thursday.

■ **MARCHING BEHIND THE LEADER:** Rep. **Sherwood Boehlert** (R-N.Y.) is on what one might call the left fringe of the Republican Party, siding with Democrats on many social issues. But Boehlert says he and other middle-of-the-road Republicans will be marching to the conservative tune of the new speaker. "I'll be very surprised if you find any dissenting voices among those who wear the label of moderate," he told The New York Times. "We may have a difference with the leadership on some of the social agenda, like choice or school prayer. But in many respects, they're peripheral to the general theme: less government, reduced intrusion into our private lives, less regulation."

■ **COULD IT GET THAT UGLY?** The new issue of GQ magazine has an article on those many Americans "who revel in villainy and even get paid for it," titled "The Triumph of Evil." The piece includes a separate item on the new speaker, and what would happen "if Newt wanted to impeach Bill." But first Gingrich would have to show **President Clinton** had violated his oath of office by committing a crime or failing in some egregious manner to carry out his duties. GQ called it "the ugliest partisan scenario of them all."

■ **SHOW A VILLAIN? USE SEX:** The co-author of Gingrich's novel in progress, "1945," has been thrust into a swirl of controversy since revelations of an explicit extramarital love scene in the opening chapter. That's because **Bill Forstchen** is a history professor at Montreat-Anderson College, a religious school in Asheville, N.C. Forstchen has had 18 novels published, most of them science fiction. He said the sex was used in the Gingrich book simply to portray the immorality of one of the book's villains. "There is about as much steam in this book as you can find in a teakettle sitting on a glacier in Antarctica."

■ **THE INK KEEPS FLOWING:** Gingrich is continuing his starring role as a media darling. Knight-Ridder Newspapers began today a five-part series on the man, his philosophy and career. The newspaper group's news service has about 350 clients. Just the weekend before last, The Washington Post began a similar series, in four huge parts.

— From staff, news services and published reports; contributing: Kathey Alexander, Jeanne Cummings

No hostage games in Korea

In dispatching Deputy Assistant Secretary Thomas Hubbard to Pyongyang, President Clinton has assigned the State Department's most experienced hand on North Korea to the challenging mission of extricating Chief Warrant Officer Bobby Hall from an undeserved captivity there.

As much as any American visiting the hermit regime's capital, Hubbard knows how to phrase the Clinton administration's message for maximum effect. Let us hope the substance of that message is sufficiently firm.

The North Koreans should not underestimate the seriousness of holding on to the captured helicopter pilot. Strange though it may seem to that collectivized lot, America cherishes its own as individuals.

The Pyongyang regime must also be made to understand, however, there are lengths to which Washington will not be dragged: It cannot and will not be yanked about by thugs dangling a hostage before us.

Unfortunately for Hall, that appears to be the role at least some North Koreans have scripted for him. The initial official silence about repatriating him, the protracted military investigation of the overflight and, most recently, the charges that he and his copilot, David Hilemon, were on a spy mission all suggest a guarded near-term outlook for Hall.

Up to now, Washington's communications with Pyongyang have been low-key and civil, as they should be. The Clinton administration, correctly, hasn't wanted to give North Korea's more bellicose elements, presumably from the military high command, an excuse to undo the patient nuclear diplomacy of the past year. And, no doubt, U.S. circumspection played a part in speeding the release of the body of Hilemon, presumably killed when the copter was downed.

Washington's only concession up to this point is a justifiable one. It admits that Hall and Hilemon made an accidental incursion that Washington regrets — but no more. Their innocent mistake on a routine training flight is not cause for an apology.

That's right, innocent. Considering the area was covered by a heavy and fresh snowfall, it is highly plausible that the two of them, both fairly new to the demilitarized zone, became disoriented and thus flew into forbidden airspace. The espionage premise — that Hall and Hilmon might be trying to spot North Korea's underground military assets under an additional three-foot layer of snow — seems ludicrous.

Washington shouldn't budge an inch on the spying accusation. But it also has to make clear to the North Koreans it has three other imperatives:

- It won't be whipsawed in a policy struggle between Pyongyang's civilian and military factions.
- It won't allow North Korea to try to draw it into more direct communication with Pyongyang to the detriment of its relationship with Seoul.
- Finally, it won't stand for an attempt to use Hall to extract add-ons to the nuclear agreement signed and sealed two months ago. A deal is a deal.

When prayer offends believers

The best arguments against public school prayer often come not from agnostics or atheists but rather from believers who take their religion seriously. A case in point is the yearlong effort of a mother in the tiny town of Ecru, Miss., to make the local school system quit subjecting her children to the Southern Baptist version of prayers and Bible study.

Lisa Herdahl is a Lutheran in an area dominated by Southern Baptists. Her five children were baptized Lutherans. They learn their prayers at home, she says. She tried to persuade the local school to stop the student-read prayers over the intercom and the lessons from visiting Bible teachers, since she knew both practices to be illegal.

But the school system dug in its heels. Over time, her children were ostracized for not participating. One was called "football head" after a teacher put earphones on the child to drown out the prayers.

Last week, Herdahl filed suit in federal court.

She has a good case. A federal court has already struck down a Mississippi law that permitted student-initiated prayers that were ostensibly nonproselytizing and nonsectarian. Public schools have no authority to carve out a time for religious devotion or to determine what "nonproselytizing" or "nonsectarian" mean.

Many who take their faith seriously understand this from a religious perspective as well as civil libertarians do from a constitutional perspective. According to the Rev. Jesse Jackson, politicians now calling for school prayer are like those hypocrites mentioned in the Bible who make a public display of their prayers.

Many proponents of school prayer argue that piety should be taught as a part of citizenship, as it was historically. They are wrong, given what
Americans now know about the importance and difficulties of sectarian distinctions

What schools ought to teach, instead, is religion as a subject, presented fairly and historically. This is the goal of a guidebook recently issued by The Freedom Forum First Amendment Center at Vanderbilt University.

If the schools had done a better job of teaching *about* religion — for example, the differences between civil and sectarian religion and the roles each has played in American history — there would be more caution about a recent Republican proposal to amend the Constitution to permit school prayer. More people would know better.

Without such constitutional safeguards, places such as Ecru, Miss. — where a single religion dominates — will tend to mix civil and sectarian religion in ways that damage both.

A10 Wednesday, December 28, 1994 ★★★★★★
THE ATLANTA CONSTITUTION
For 125 Years the South's Standard Newspaper

THE WHITE HOUSE

WASHINGTON

July 10, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: STEPHEN NEUWIRTH
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: PRESIDENTIAL DIRECTIVE ON
RELIGION IN SCHOOLS

Attached is a draft of the directive that you will announce during your speech this Wednesday on religious liberty.

The directive sets forth the extent to which the First Amendment permits and protects religious expression in schools, and directs Secretary Riley to disseminate these principles to all public school districts by the start of the coming school year. The memorandum also directs Secretary Riley to provide guidance to school districts concerning the Administration's interpretation of the Equal Access Act.

You agreed to issue such a directive at a recent Oval Office meeting that included, among others, the Vice President, Secretary Riley and Linda Lader.

The Justice Department has approved the form and content of the attached directive. DOJ has advised us that the principles set forth in the directive reflect settled matters of Constitutional law. Judge Mikva has similarly approved the directive.

The directive also reflects the agreement reached earlier this year by a broad coalition of religious groups, ranging from People for the American Way, the ACLU and the American Jewish Congress on the "left," to the Christian Legal Society and the National Association of Evangelicals -- both of which favor a constitutional amendment on religion -- on the "right."

DRAFT -- FOR DISCUSSION ONLY

July ___, 1995

MEMORANDUM FOR THE SECRETARY OF EDUCATION
THE ATTORNEY GENERAL

SUBJECT: THE FIRST AMENDMENT AND
RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

Religious freedom is perhaps the most precious of all American liberties -- called by many our "first freedom." Many of the first European settlers in North America sought refuge from religious persecution in their native countries. Since that time, people of faith and religious institutions have played a central role in the history of this nation. In the First Amendment, our Bill of Rights recognizes the twin pillars of religious liberty: the Constitutional protection for the free exercise of religion, and the Constitutional prohibition on the establishment of religion by the state. Our nation's founders knew that religion helps to give our people the character without which a democracy cannot survive. Our founders also recognized the need for a space of freedom between government and the people -- that the government must not be permitted to coerce the conscience of any individual or group.

In the over 200 years since the First Amendment was included in our Constitution, religion and religious institutions have thrived throughout the United States. In 1993, I was proud to reaffirm the historic place of religion when I signed the Religious Freedom Restoration Act, which restores a high legal standard to protect the exercise of religion from being inappropriately burdened by government action. In the greatest traditions of American citizenship, a broad coalition of individuals and organizations came together to support the fullest protection for religious practice and expression.

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

I share the concern and frustration that many Americans feel about situations where the protections accorded by the First Amendment are not recognized or understood. This problem has manifested itself in our nation's public schools. It appears that many school officials, teachers and parents have assumed that religious expression of any type is either inappropriate, or forbidden altogether, in public schools.

As our courts have reaffirmed, however, nothing in the First Amendment converts our public schools into religion-free zones, or requires all religious expression to be left behind at the schoolhouse door. While the government may not use schools to coerce the consciences of our students, or to convey official endorsement of religion, the government's schools also may not discriminate against private religious expression during the school day.

I have been advised by the Department of Justice and the Department of Education that the First Amendment permits -- and protects -- a greater degree of religious expression in public schools than many Americans may now understand. The Departments of Justice and Education have advised me that, while application may depend upon specific factual contexts and will require careful consideration in particular cases, the following principles are among those that apply to religious expression in our schools:

Student prayer and religious discussion: The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable disruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

Students may also participate in before or after school events with religious content, such as "see you at the flag pole" gatherings, on the same terms as they may participate in other non-curriculum activities on school premises. School officials, acting in an official capacity, may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen, or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

Graduation prayer and baccalaureates: School officials may not mandate or organize prayer at graduation, nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services.

A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.

Official neutrality regarding religious activity: Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the Establishment Clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging anti-religious activity.

Teaching about religion: Public schools may not provide religious instruction, but they may teach about religion. The history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature and social studies.

Public schools may teach about religious holidays, including their religious aspects. Schools may celebrate the secular aspects of holidays but may not observe holidays as religious events or promote such observance by students.

Student assignments: Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance, and against other legitimate pedagogical concerns identified by the school.

Religious literature: Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on non-school literature generally, but they may not single out religious literature for special regulation.

Religious excusals: Subject to applicable state laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. School officials may neither encourage nor discourage students from availing themselves of an excusal option.

Released time: Subject to applicable state laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not

allow religious instruction by outsiders on school premises during the school day.

Teaching values: Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue, and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

Student garb: Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages. When wearing particular attire, such as yarmulkes and head scarves, during the school day is part of students' religious practice, schools generally may not prohibit the wearing of such items.

I hereby direct the Secretary of Education, in consultation with the Attorney General, to use appropriate means to ensure that public school districts and school officials in the United States are informed, by the start of the coming school year, of the principles set forth above.

THE EQUAL ACCESS ACT

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the federal courts, as well as its past interpretations of the Act and the positions it has advocated in pending litigation, the Department of Justice has advised me of its position that the Act should be interpreted as providing, among other things, that:

General provisions: Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving federal funds that allows one or more student non-curriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.

Prayer services and worship exercises covered: A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.

Equal access to means of publicizing meetings: A school receiving federal funds must allow student groups meeting under the Act to use the school media -- including the public address system, the school newspaper, and the school bulletin board -- to announce their meetings on the same terms as other noncurriculum-related student

groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school sponsored.

Lunch-time and recess covered: A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

I hereby direct the Secretary of Education, in consultation with the Attorney General, to use appropriate means to ensure that public school districts and school officials in the United States are informed, by the start of the coming school year, of these interpretations of the Equal Access Act.

RELIGIOUS ACTION CENTER
OF REFORM JUDAISM

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: BWB DATE: 08/01/14

Personal and ~~Confidential~~

November 18, 1994
The Honorable William J. Clinton
The White House
Washington, DC 20500

Dear Mr. President,

I am speaking ironically, on church-state relations, at the Council of Jewish Federations General Assembly conference at which 3000 Jewish leaders across America are gathered. I cannot describe to you the intensity of the waves of concern that swept the conference two days ago when reports first circulated of your comments on school prayer -- heard by many to indicate you might be open to a constitutional amendment on school prayer. Nor can I adequately describe the community wide sigh of relief that swept the conference as news of yesterday's clarification spread.

The intensity of the emotions and concerns was rooted in two factors. First, the Jewish community has enormous faith in you and your leadership. Precisely because religion plays such an important role in your personal life and because you have been so passionately eloquent about the paramount importance of religious liberty to America, there is a special trust in you. I hope you know the depth and warmth of my community's feelings for you and can therefore understand that our concern about the initial statement was keener than it might otherwise have been.

Second, for me personally, for the entire Jewish community, issues on separation of church and state and religious liberty are survival issues. They go to the core of what has made America great and what has made America uniquely welcoming to the Jew. In every other land, we Jews have known preferred and established religions. Here, because of separation of church and state, relatively none. In other lands, we have known attended persecution and discrimination; in America, relatively none. Even in nations where state endorsement is benign and non-coersive, those who do not share the endorsed faith are made to feel like outsiders. In America, the Jew and the Catholic, the Baptist and the Buddhist, have all been uniquely welcome.

Above all, it is the wall of separation that has kept government out of regulating and organizing religion, allowing religion and religious

The Religious Action Center pursues social justice and religious liberty by mobilizing the American Jewish Community and serving as its advocate in the nation's capital

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The Religious Action Center is under the auspices of the Commission on Social Action of Reform Judaism, a joint instrumentality of the Central Conference of American Rabbis and the Union of American Hebrew Congregations with its affiliates; American Conference of Cantors, Association of Reform Zionists of America, National Federation of Temple Brotherhoods, National Federation of Temple Sisterhoods, North American Federation of Temple Youth.

freedom to flourish with a diversity and strength in America, unmatched anywhere in the world.

And above all, calls for organized school prayer (as opposed to truly voluntary prayer that is already protected by the Constitution) -- prayer that will not be and should not be Jewish or any other particular kind of prayer -- are perceived as a threat to our most precious freedoms.

When we begin to chip at the wall, we weaken it against the pressure of those who would dismantle it altogether. When Mr. Gingrich threatens to tamper, for the first time in our 205 year history, with the Bill of Rights, it sends shivers of fear to all who cherish those rights.

Therefore, thank you for the clarification and the strong stand you are taking. We now need to rally the vast number of religious leaders and people who recognize the importance of separation of church and state. With your leadership in preserving the Constitution, I know that we will prevail.

B'shalom,

David

David Saperstein

Republicans have dominated the public debate. Gingrich, in particular, has given a series of high-profile speeches outlining his vision of a GOP-led transformation of American politics, beginning with a dramatic restructuring of the House.

But during the first full week after the mid-term elections that swept the Republicans to power, not a single leading Democrat called a news conference to rebut the Republican onslaught.

On Thursday, a few congressional Democrats made the first tentative effort to break the silence, promising cooperation with the new GOP majority but warning that some conservative Republicans appear to have misread the mandate they received at the polls.

Some congressional Democrats acknowledged they have been too shell-shocked by the electoral drubbing they suffered and too preoccupied with their own minority leadership battles to plot a unified new course for the party.

The Hill's most powerful surviving Democrat, House Majority Leader Gephardt, is giving no interviews. ``It's not appropriate right now," said Gephardt spokeswoman Laura Nichols. ``It is not an accident that we are not answering everything."

Conservative Battle Brewing Over Next Budget Office Chief (Washn)

By James Risen=(c) 1994, Los Angeles Times=

WASHINGTON A critical internal battle is shaping up between the cadre of militant Republicans who will control the House of Representatives next year and their more moderate counterparts in the Senate over the appointment of a new director for the influential Congressional Budget Office.

And the outcome of that struggle, one of the first to emerge since the Republican electoral avalanche on Nov. 8, could set the tone for the broader fight looming within the party for control of the Republican economic agenda in the new Congress.

``This is just a minor example of what we are going to see from now on, which is that there are going to be very serious policy tensions between the Senate and House Republicans," said one source close to the CBO selection process.

The selection of a new CBO director to succeed outgoing director Robert Reischauer, whose term expires in January, has become a hot political issue on Capitol Hill this week because House Speaker-in-waiting Newt Gingrich and his allies in the House want to install in the powerful post an ideological Republican who subscribes to Gingrich's own supply-side philosophy.

Gingrich and incoming House Majority Leader Dick Armey, R-Texas, believe that Reischauer was overly partisan in favor of the Democratic congressional leadership, and so now feel they deserve to have one of their own in the job.

A conservative supply-sider at the helm of CBO could be expected to use the powers of the supposedly nonpartisan agency to declare that Republican tax cuts actually raise federal revenues and thus would not worsen the deficit.

House Republican leaders, for example, want a CBO director who shares their belief that a capital gains tax cut for corporate America would actually raise tax revenues, and thus lower the deficit, because it would give businesses an incentive to invest more in plant and equipment and hire more workers and so create new economic growth.

Congress has given the CBO the authority to make the official decisions on such budgetary matters for purposes of complying with the constraints of the current deficit reduction agreement. So a supply-side ruling from CBO would give Republicans the ability to cut taxes without forcing them to make offsetting spending cuts to meet the existing budget caps.

But the more moderate Senate Republican leadership is quietly horrified by the budgetary math behind the more conservative House Republican economic agenda, and is fearful of Gingrich's efforts to politicize the CBO in order to achieve his goals. Senate Majority Leader-in-waiting Bob Dole, R-Kan., and incoming Senate Budget Committee Chairman Pete Dominici, R-N.M., are apparently looking for a more traditional CBO director who will not scare the nation's financial markets into believing that Republicans are once again poised to increase the deficit.

So far, Gingrich has approached at least one very conservative economist former Reagan administration budget director Jim Miller. But sources say Miller, who ran unsuccessfully against Oliver North this year for the Republican senatorial nomination in Virginia, is leaning toward rebuffing the job feelers.

But Republican politics in both chambers is already complicating the selection process. Normally, the CBO director is chosen jointly by the two chairmen of the House and Senate budget committees. But in the House, Rep. John Kasich, R-Ohio, the likely budget committee chairman, is under fire from conservative Republicans for his decision earlier this year to vote for President Clinton's crime bill. Kasich, who has been the ranking Republican on the budget panel, needs support from conservatives to continue to serve in a leadership position on the budget panel, and so needs to show his willingness to cooperate with Gingrich and Armey on budget matters. Thus, while he is not a supply-side ideologue, he is expected to allow Gingrich and Armey to determine the selection from the House side.

But Dominici is a traditional Republican who believes that tax cuts need to be offset with spending cuts, and will certainly fight Gingrich on the issue. He is said to be urging the selection of Bill Hoaglund, his chief budget aide and a moderate on fiscal issues.

Class-Day Opener: GOP Proposal to Restore Prayer in School (Washn)

By David G. Savage=

(c) 1994, Los Angeles Times=

WASHINGTON The leading Republican proposal to restore ``voluntary prayer" in public schools would let local school authorities require the saying of a prayer at the beginning of each class day. Students who do not wish to participate could sit silently or leave the room, its prime House sponsor says.

The amendment would not make prayer mandatory, nor would state or federal governments be entitled to compose an official school prayer. However, its sponsors said local school officials would have wide latitude to encourage and institute school prayers.

``We want to let local school boards make the decision," said Rep. Ernest Istook Jr., R-Okla., who introduced the constitutional amendment on school prayer. ``It does not require that prayers be held. But why should an ACLU (American Civil Liberties Union) attorney from New York City tell the people in Chandler, Oklahoma, that they cannot have prayer in the public schools? That's the essence of it."

Istook and other sponsors declined to spell out exactly how the system they envision would work in practice.

For instance, it is not clear whether school boards might be permitted to adopt a prayer or several prayers The Lord's Prayer or a Psalm to be used throughout a school system. Another possibility would allow individual teachers or even students to choose the prayer for their

classroom or school, perhaps rotating among a group.

If nothing else, the new Republican proposal has prompted sharp dispute over how to define voluntary prayer.

``Clearly when (President) Clinton speaks about voluntary prayer, he means something quite different from (House Speaker-to-be Newt) Gingrich and Istook," said Elliot Mincberg, legal director for People for the American Way, a liberal group that opposes school-sponsored prayers.

Monday, Gingrich, the Georgia Republican, turned a new spotlight on the school prayer issue when he said he would seek a vote ``before the July 4 break" on the proposed amendment introduced by Istook.

Asked about the proposal in Jakarta Tuesday, Clinton said: ``I'll be glad to discuss it with them. I want to see what the details are. ... It depends on what it says."

Clinton's remarks were interpreted by some, especially those opposed to school prayer, as moving farther toward the Republican position than his words explicitly said. Thursday, the White House emphasized the president's position is essentially the same it has been for years. He supports a moment of silence but not a spoken prayer and not a constitutional amendment.

He would, however, favor a new law that ensures students have a right to observe ``a moment of silence" at their desks. ``The president has long supported a moment of silence but that can be done statutorily," said Deputy White House Counsel Joel Klein. ``He doesn't see the need for a constitutional amendment."

Opposition to the proposed amendment is by no means limited to the administration and liberal groups.

Two leaders of Christian organizations said Thursday they oppose the Republican amendment as it is now drawn because it would give local governments too much power over prayer.

``When the government sponsors prayer, that's not good news for religion," said Steven McFarland, director of the Christian Legal Society's Center for Law and Religious Freedom. ``What do you do if you're in Utah and 98 percent of the class is Mormon and you are a Jew or a Catholic or a fundamentalist Christian? It's dangerous for religious freedom because there is an element of coercion involved."

Ralph Reed, executive director of the Christian Coalition, said he too is concerned about government sponsorship of prayer.

``We are completely opposed to any prayer that would be composed by, directed by or supervised by the government," Reed said. ``We support nonsectarian, student-initiated prayer that is voluntary. That is a free speech issue, not a religion issue."

The amendment, introduced by Istook with 44 cosponsors, says: ``Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or by any state to participate in prayer. Neither the United States nor any state shall compose the words of any prayer to be said in public schools."

If approved by two-thirds of the House and Senate, and three-fourths of the state legislatures, the amendment would reverse a series of Supreme Court rulings that since 1962 have barred officially sponsored school prayers. Presumably, because of the phrase, ``other public institutions," it would also allow official prayers in government offices, prisons and courtrooms.

``The only restriction that I see (in the Republican proposal) is that the school board or the teacher can't write the prayer. But it would allow them to select a prayer," said Mincberg.

Ten years ago, at the height of his popularity, then President Ronald Reagan pressed the Senate to approve an identically worded amendment, but it fells 11 votes short of the needed two-thirds majority. At the time, many senators said they decided to oppose the amendment when 50 prominent church organizations, representing Protestants, Catholics and Jews, announced their opposition.

Among the ``no" votes then were seven Republicans who will return to Capitol Hill in January. They are Sens. John H. Chafee of Rhode Island, William S. Cohen of Maine, Slade Gorton of Washington, Mark Hatfield of Oregon, Nancy Landon Kassebaum of Kansas, Bob Packwood of Oregon and Arlen Specter of Pennsylvania.

Feinstein Expected to Claim Victory in Senate Race (Sacramento)
By Paul Jacobs and Ted Johnson=
(c) 1994, Los Angeles Times=

SACRAMENTO, Calif. After watching her lead grow daily as election officials work their way through 700,000 late absentee ballots, U.S. Sen. Dianne Feinstein, D-Calif., is expected to declare victory over her Republican challenger, Rep. Michael Huffington, at a news conference Friday.

With 220,000 ballots to be counted as of late Thursday, the Democratic incumbent's lead had grown to 162,000 votes from just more than 123,000 a week ago. That means that Huffington would need more than 85 percent of the remaining votes in order to win.

Publicly, Feinstein campaign officials won't comment on whether she plans to proclaim victory at her San Francisco news conference.

``She'll make comments about the latest vote tally and talk a bit about her vote," was all that Feinstein campaign spokesman Bill Chandler would say.

Huffington, who was en route to Washington late Thursday, could not be reached for comment. But his campaign communications director, Jennifer Grossman, said the congressman from Santa Barbara had no plans to concede until all the votes were counted.

At the close of the business day Thursday, the secretary of state's office had Feinstein leading with 3,835,405 votes to Huffington's 3,674,220 with about 220,000 absentee ballots still to be counted.

New Assassination Attempt Charge Lodged Against Duran (Washn)
By Robert L. Jackson=
(c) 1994, Los Angeles Times=

WASHINGTON Federal prosecutors escalated their case Thursday against the man accused of peppering the White House with gunfire last month, charging Francisco Martin Duran with attempting to assassinate President Clinton.

U.S. Attorney Eric H. Holder Jr. told reporters that ``we have sufficient information now" to support the more serious charge, even though officials repeatedly have said Duran fired randomly at the White House on the afternoon of Oct. 29 and that Clinton was never in danger.

The indictment, brought by a grand jury, carries a maximum possible punishment of life imprisonment, a much-harsher sentence than Duran faced under the 10 previous charges lodged against him, which include weapons violations, destruction of federal property and assaulting law enforcement officers.

Duran, 26, pleaded innocent to the attempted assassination charge Thursday afternoon in an appearance before U.S. District Judge Charles R. Richey. The judge

Fed Boosts Key Rates 0.75 Point

Unexpectedly Large Hike Intended to Slow Inflation, Economy

By John M. Berry
Washington Post Staff Writer

The Federal Reserve raised two key short-term interest rates by three-quarters of a percentage point yesterday in an effort to slow stubbornly strong economic growth and keep inflation from getting worse.

The unexpectedly large rate increase—the biggest single hike since the early 1980s—indicated that Fed officials have been surprised by the strength of economic growth since they last raised rates by a half-point in mid-August, analysts said. Many analysts and traders had anticipated a half-point increase yesterday.

And the size of the increase also suggested the Fed probably intends to leave rates unchanged for some time—perhaps until a policy-making session set for Jan. 31—rather than raising them again before Christmas.

Major banks quickly raised their prime rates to 8.5 percent from 7.75 percent, meaning that many consumer and business borrowers soon will be paying more on loans. Rates on many home equity loans and credit card balances are tied to the prime, as are many business loans, especially those to small- and medium-sized firms.

Financial markets gyrated in response to the Fed's rate increase, the sixth this year, but the Dow Jones industrial average finished down slightly for the day while bond prices were generally little changed. [Details, Page C2.]

Following the pattern set this year of announcing the results of its policy-making sessions, the Fed said that it raised its target for the federal funds rate, the rate financial institutions charge each other for overnight loans, to 5.5 percent from 4.75 percent. It also increased the discount rate, the rate Fed banks charge on loans to financial institutions, from 4 percent to 4.75 percent.

The increase in the federal funds rate was the largest since January 1982, and the hike in the less important discount rate was the biggest since early 1980.

See FED, A18, Col. 4

■ *Banks unlikely to increase rates paid on savings accounts. Page C1*

FED, From A1

The large Fed move was generally praised by Wall Street analysts who fear the destabilizing effect of rising inflation on financial markets.

"This is a good move by the Fed," said Scott Pardee, chairman at Yamaichi International (America) Inc. in New York. "It has raised interest rates to levels that will have a constraining effect on the economy. It helps rein in the possibility of inflation."

Ray Stone of Stone & McCarthy, a financial markets research firm in Princeton, N.J., said the size and timing of the action should have a quick impact on the economy.

"I think we will probably start to see the economic consequences of this quickly," Stone said. "This is a cumulative increase of 2.5 percentage points in the federal funds rate

The size of the increase suggested the Fed probably intends to leave rates unchanged for some time.

this year . . . The odds are that it will have more influence on consumer thinking than the earlier moves, and it comes at a time when consumer spending is particularly significant."

Treasury Secretary Lloyd Bentsen neither praised nor condemned the Fed move but said the Clinton administration and the Fed "share a common goal of steady growth with low inflation."

While inflation has remained modest, Fed policy makers are concerned that it will get worse if economic growth, which has been running about 3.5 percent this year, is not slowed to around 2.5 percent, a pace regarded as consistent with a stable unemployment rate rather than one that is falling.

Many forecasters predict that growth will slow in 1995 as a result of this year's rate increases and natural forces in the economy. However, many analysts also say the economy has enough momentum at the moment that the Fed will eventually have to raise rates further to achieve the desired slowing.

Just before Fed policy makers began their session yesterday, the Commerce Department reported that retail sales rose an unexpectedly hefty 1.1 percent last month, to $191.2 billion, following a 0.5 percent increase in September and 1.4 percent jump in August. Auto sales were up 2.9 percent last month, building materials 1.7 percent and furniture 1.5 percent.

Meeting that consumer demand, as well as that for business products, has U.S. factories humming. The Fed itself said yesterday that the output of U.S. factories, mines and utilities rose 0.7 percent last month. Industrial production had dipped 0.1 percent in September but was up 0.8 percent in August.

The Fed also said that the share of total production capacity in use last month reached 84.9 percent, the highest percentage in more than 14 years, up from 84.5 percent in September.

Meanwhile, the nation's unemployment rate fell in October to 5.8 percent. Many economists and Fed officials say that a further drop in joblessness could cause wages to begin to rise more rapidly and push inflation up a notch.

It was reports such as those that the Fed had in mind when it announced its action on rates yesterday afternoon following the meeting of its policy-making group, the Federal Open Market Committee.

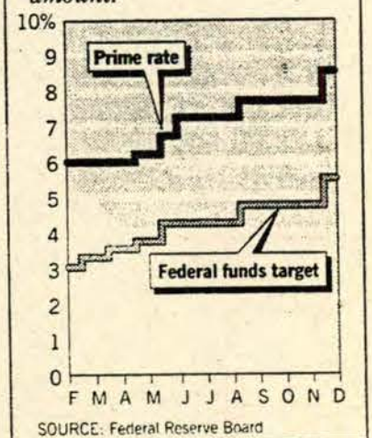
"These measures were taken against the background of evidence of persistent strength in economic activity and high and rising levels of resource utilization," the Fed said. "In these circumstances, the Federal Reserve views these actions as necessary to keep inflation contained, and thereby foster sustainable economic growth."

Pardee of Yamaichi International said the three-quarter point increase "obviously was a compromise move" between the Fed officials who wanted a half point increase and those who wanted rates up a full percentage point.

But the size means "that the Fed can take a look at Christmas sales and the rest of the fourth quarter before deciding what to do next," Pardee said. "If it had gone only half a point, it would have left open the question of whether they would raise rates again next month."

ON THE RISE

The Federal Reserve's increase of the federal funds rate by three-quarters of a percentage point led to major banks increasing the prime rate by the same amount.



SOURCE: Federal Reserve Board

THE WASHINGTON POST

Clinton: 'There Is Room' To Pray in Public School

White House Conciliatory Toward GOP

By Ann Devroy
Washington Post Staff Writer A1

President Clinton yesterday opened the door to supporting a constitutional amendment to allow prayer in school as the White House sent out a stream of conciliatory signals to conservative Republicans who will run Congress.

Clinton's statements on prayer in school, an emotional issue to both the right and left, came in a news conference in Jakarta, during a foreign trip that will keep him out of Washington until Sunday. In the meantime, White House Chief of Staff Leon E. Panetta met on Capitol Hill with future Senate majority leader Robert J. Dole (R-Kan.) and House speaker-to-be Newt Gingrich (R-Ga.) and said they had "opened good lines of communication."

Panetta listed a series of areas in which congressional Republicans and the White House might find common ground, including the General Agreement on Tariffs and Trade, which is up for a vote later this month in a lame-duck session of Congress, campaign finance reform, political reform, the line-

See PRESIDENT, A4, Col. 1

■ *Quick House vote on balanced-budget amendment planned. Page A4*

BY RAY LUSTIG—THE WASHINGTON POST

White House Chief of Staff Leon E. Panetta, right, meets on Capitol Hill with Republican leaders Sen. Robert J. Dole, center, and Rep. Newt Gingrich.

President Says He Could Back School Prayer

PRESIDENT, From A1

item budget veto and welfare reform.

But he said the administration planned no retreat on its basic economic program and repeated that it would cost "about a trillion dollars" to balance the federal budget while cutting taxes and increasing defense spending. "I am not saying we should not make the effort to balance the budget," he said, but advocates of the amendment "have to be straight with the American people" about the costs.

Clinton's answer to a school prayer question provoked a cry of outrage from liberal and civil liberties groups, although White House officials called comments from both sides of the aisle only early political skirmishing. Asked his reaction to Gingrich's call for passage of a constitutional amendment allowing prayer in school, Clinton said he had always favored voluntary prayer in school and believes "there is room" to construct a way of promoting voluntary prayer in school without it being coercive.

On the wording of an amendment, he said, "Obviously, I want to reserve judgment. I want to see the specifics, but I think this whole values debate will go forward and intensify . . ." And he concluded, "I'll be glad to discuss it with them. I want to see what the details are. I certainly wouldn't rule it out, it depends on what it says."

White House officials could not cite a previous definitive statement from Clinton about school prayer. During the 1992 campaign, Clinton expressed concern that such prayers would become coercive, which is the crux of why liberal and civil liberties groups oppose such an amendment. Their argument is that having prayer as an official or sanctioned part of school activities would only cause pressure or humiliation for students who decline to participate. They also argue school authorities would end up constructing prayers and that students now can pray in school on their own.

Civil liberties groups accused Clinton of folding in his first confrontation with Gingrich on social issues. "I am really disturbed,' said Arthur Cropp, president of People for the American Way. "I think you can read the statement and insinuate he is making gestures to the right wing. I think it is a bad idea to cave into speaker Gingrich's desires so quickly."

And Richard Foltin, legislative director of the American Jewish Committee, said he is "greatly disturbed that the president is willing to consider an amendment . . . It is unnecessary and, more than that, it is gravely dangerous." He said such an amendment would violate the separation of church and state.

In his news conference, the president, noting Panetta's session yesterday, again said the message of the election to him was to make more progress in working with the new Congress on national problems. But First Lady Hillary Rodham Clinton, in a separate session with reporters, seemed far more perplexed and sometimes defiant about the election results.

Hillary Clinton repeatedly said that she did not know what the elections would mean to the administration's policies. What they did not mean, she said, was that Americans want large cuts in Medicare, or inadequate childhood immunizations, or a reversal of federal deficit cuts or cutbacks in college loans.

Then, when pressed again for what the elections did mean, she said, "I don't know what they mean. . . . I don't know that anyone can say exactly what they mean and I think that's what we'll find out when we go forward." Her husband, she said, has "to stand for what he stood for and stick to his principles" as the Democrats figure out how to proceed.

In listening to the Republicans, she said, "I don't know what is talk and what is action." Asked if interests in which she has been heavily involved, such as health care and children's issues, would be harmed by Democratic losses last week, she said, "Who knows? I have no idea. That is why I don't know how to have these conversations." She said much of the White House staff is at the same stage—trying to figure out what the elections mean to the agenda and how the Republicans will proceed.

Clinton engaged in no such public uncertainty, choosing instead to stress areas of possible agreement, including producing a bipartisan welfare reform package, a line-item veto and reducing the size of government. He also indicated again his hope for a middle-class tax cut without "exploding" the deficit and listed GATT as the first test of cooperation between the new Republican leadership and the White House.

But the Republican leaders themselves were colliding over the trade pact yesterday in an early sign that the talk of coordination and cooperation comes before any legislative test.

Senior administration officials yesterday said that U.S. Trade Representative Mickey Kantor had been working with Dole on legislation separate from GATT that would create a commission to monitor the World Trade Organization created in the agreement and allow some sort of vote to nullify the pact within five years if significant problems arise. Many conservatives have said they fear the World Trade Organization will usurp American prerogatives, and Dole, facing pressure from the right, has asked the White House to help him meet those concerns.

But even as Dole, Panetta and Gingrich talked yesterday about gaining the votes necessary for approval of GATT, incoming Senate Foreign Relations Committee chairman Jesse Helms (R-N.C.) was calling on Clinton to put off the vote until next year in return for a kinder treatment by Helms on his other foreign policy efforts.

Helms, in a letter to Clinton, asked for "meaningful public hearings" on the trade pact whose outlines were negotiated by two Republican administrations and concluded by the current Democratic one. "If you agree," the letter notes, "I can assure that it will have an exceedingly positive effect on my making certain that the administration's positions on all foreign policy matters during the 104th Congress will be considered fairly and fully."

Staff writers Helen Dewar and John M. Goshko in Washington, and Thomas W. Lippman in Jakarta, contributed to this report.

Police Reach Out to the Homeless, But Often Find Efforts Rejected

A1

By N. R. KLEINFIELD

The night was windy and brittle. On Central Park West near 68th Street, the police officers spotted a grizzled man with tufted eyebrows hunched alongside a bench under a street lamp. In the stiff breeze, his windbreaker made an empty rustle. The two officers slid out of the van and headed in his direction.

"You want to go to a drop-in center tonight?" Officer James Sutton said after some opening pleasantries.

"No, I'm going to stay here."

"It's going to be cold."

"Listen," the man said, "I'm going to tell you the truth. See that cut there on my hand. See that cut here on my chest. I got them in the shelter."

After a few more minutes of fruitless persuasion, the officers said they would check with him the next day, and then they piled back into the van. And so, in the dark spaces of the night, the Police Department's new Homeless Outreach Unit continued its circlings, offering help to the needy and dispossessed — though few accept.

In its first six weeks, the unit said it approached roughly 1,200 people. About 200 accepted some service.

The squad of 20 officers and six supervisors began its tours last month amid trepidation from advocates for the homeless that the unit would harass rather than help the homeless. Lieut. Delia Mannix, the squad's commanding officer, said the intention is to behave like other groups that assist the needy and patiently try to persuade people to go to a shelter or social agency. But whether shields and guns mix favorably with social service remains an unanswered question.

Members of the unit, modeled after the transit police's 12-year-old homeless unit, said they were unaware of police programs in other cities of similar scope. The Police Executive Research Forum, an organization of police executives that seeks to improve policing practices, said several other police departments, including those in Seattle, Reno and Santa Monica, Calif., have tried some sort of homeless program. Miami's police force has asked for information from the New York unit and is contemplating beginning a program.

In its first weeks, the new squad has largely confined itself to one zone — 57th to 72d Streets, from Lexington to Amsterdam Avenues — which it said it chose for its mix of residential and commercial areas and Central Park. Homeless groups suspect the choice was affected by the number of residents and businesses in the area who disdain the homeless. The unit plans to wait until it concludes it has had a discernable impact there before moving elsewhere.

One of the certain impediments will be ample doses of rejection. "Cops are very results-oriented," Lieutenant Mannix said. "They want to fix things and get on. We have to be patient. People told us one thing we had to guard against was frustration. They told us you'll get a lot of refusals. And we have."

Early feedback from homeless groups has been wary. Some said that the police officers have been much too macho and intrusive, catechizing guarded and fragile people rather than courting them.

"I do not think that armed, uniformed police officers should be doing outreach, and I do not believe they will be effective doing it," said Josh Taylor, director of community relations for the Partnership for the Homeless.

Among other things, the groups worry that the unit will run the names of homeless people through the police computer to see if they are wanted for crimes. The squad said it is not doing that because it would run counter to its mission. If they learn of a crime, though, the officers will make arrests. In one highly publicized case, they arrested a homeless man accused of raping a jogger in Central Park after another homeless person gave the unit information about the suspect.

"Some of what they do is useful," said Diane Sonde, director of Project Reachout, which deals largely with the mentally ill homeless on the Upper West Side. "But in terms of the questions they ask, it's kind of in-your-face. I think at times they ask questions that are much too personal in a much too assertive way. We've had complaints from homeless saying they ask things like name, birth date, Social Security number, where their parents live and why they don't live with them. One man said he was asked why he didn't shave."

She said that police officers frighten many of the homeless, especially the mentally frail.

"One man told us he went with them because he felt if he didn't he'd be arrested," she said, adding that she knows of homeless people who have fled to other boroughs to evade the officers. "The majority of homeless people have been to hell and back. They are very complicated problems that need sensitivity and respond over time. I don't know about you, but I would have a real rough time getting into a van with the police."

During a recent evening tour, Officer Sutton, 31, and Officer Adam Pernice, 30, allowed a reporter to ride with them. They traveled in a blue-and-white van marked "N.Y.P.D. Homeless Outreach Unit," and wore modified uniforms: N.Y.P.D. T-shirts, jeans and an N.Y.P.D. windbreaker. They carried their guns. The unit wants them to be readily identifiable as officers but also to appear less imposing than someone in full uniform.

Like others in the unit, Officers Sutton and Pernice volunteered for the assignment. "It was something interesting," Officer Sutton said. "And I liked the aspect of helping people."

Officer Pernice, who had also been an Emergency Medical Services technician, said, "I used to see the homeless a lot with E.M.S. and I used to see them a lot on patrol, and I realized it could be me out there."

The officers received about a week of classroom training, and they spent another week visiting shelters and agencies. They keep a thick manual in the van listing resources and shelters. They hope to carry sandwiches, but have not yet. Some of the officers carry fruit donated by merchants or that they bring themselves.

This night, the two officers appeared considerate enough. Most of the homeless people they approached did not seem annoyed or cowed. At the same time, virtually none of them would budge and go anywhere. The unit cannot forcibly remove anyone who is not breaking the law or posing a danger to anyone. If someone is deemed in need of mental care, officers call on Project Help, a city program that has authority to forcibly take people to a hospital. So far, one woman and one man have been taken to Bellevue Hospital in this fashion.

The officers talked to four men on a bench just inside Central Park near 72d Street, and the four said they were set for the night. One man said he was working with another officer from the squad to try to find permanent housing. One of the other men said:

"The trouble is, you're a new unit offering the same old system. You've got nothing new to offer. There's nothing that you guys got to offer that the Coalition for the Homeless, the Partnership for the Homeless don't have. The old-timers out here — Pops, Santa Claus — we don't want to go through that again."

The officers left.

They woke up a man sleeping on a grate at 59th Street and Amsterdam Avenue, but he murmured that he wanted to stay put. He said, "I'm just sitting here and trying to get warm."

They drove to the Chemical Bank branch at 72d Street and Columbus Avenue. The previous night, they met a 17-year-old boy named Eddie who said he had been on the streets

A new unit tests how shields and social work mix.

since he was 14 because he had a personal problem that he wasn't ready to discuss. He said if he needed anything he would meet them outside the bank at 9 P.M. He wasn't there.

They got a call that two homeless men had stolen a jacket and were running through the park. They said they would keep watch for them but they did not see them.

They addressed two men with shopping carts sitting on a bench, and the men looked scared and one said, "We're just sitting here reminiscing." The officers told them to have a good night.

Coasting through the park near 90th Street, they spied a wicker chair on fire below an overpass, throwing an arc of dappling light. Officer Sutton clambered down to the spot. A mattress was furled up next to the burning chair. He unrolled it and found a man curled up inside. The officer shook him awake and told him to get out of there.

"There's a little kid who plays with matches," the man said, his voice blurred by sleep. "I told him not to. He did it. I'm not lying. I'm from Pennsylvania."

"Get up out of there," Officer Sutton said.

The officers called the Fire Department, and they extinguished the burning chair. Then the officers told the man that they would take him to a shelter. He said he hated shelters but would go. The officer mentioned one place, but the man said, "No, they make you sleep on three chairs and someone stole my wallet there."

Then he said: "I want to go to something close to the Metropolitan. I love the Metropolitan Museum."

Under questioning, he told the officers his name was Scott Lehman and gave his birth date and Social Security number. Checking a computerized system, they determined he had last been in a shelter in Crown Heights, Brooklyn, in 1992. According to city regulations, they would have to take him there.

He got in the van, and said he was hungry. Officer Sutton gave him a lollipop because that was all he had.

While waiting at a light, a cab driver told them that a passenger around the corner wouldn't pay his fare. The officers drove to the spot. As soon as the reticent man saw them he paid the $5.75 fare.

That bit of justice completed, the van headed toward Brooklyn. Mr. Lehman asked if he could have another lollipop. The officers didn't hear him.

THE NEW YORK TIMES, WEDNESDAY, NOVEMBER 16, 1994

Reuters

Tearing Down Trade Barriers, After a Fashion

Wearing batik shirts, Presidents Kim Young Sam of South Korea, Mahathir Mohamad of Malaysia, and Suharto of Indonesia posed with President Clinton at an economic conference in Indonesia. Page A10.

Clinton Reaches Out to G.O.P. On School Prayer Amendment

A1

By DOUGLAS JEHL
Special to The New York Times

JAKARTA, Indonesia, Nov. 15 — President Clinton said today that he would consider working with Congressional Republicans toward a constitutional amendment guaranteeing a right to prayer in public schools.

The statement by Mr. Clinton at a news conference here tonight was the strongest evidence yet of his determination to accommodate overtures by Republicans, who will control both houses of the new Congress. Although Mr. Clinton has long supported voluntary school prayer, he had not seriously discussed a constitutional amendment until today.

The President was immediately denounced by civil liberties groups, including People for the American Way, which called his remarks an "instant cave-in."

The President also pronounced himself ready to meet with the new Republican leadership of Congress soon after he returns home next week. And he said he intended to pursue "careful and open and honest consultations" with the Republicans in search of a bipartisan foreign policy.

"It is my job to do what is best for the American people in the future," Mr. Clinton said tonight as he stood before a faux tropical backdrop in a hotel ballroom. "I'll do my best to get credit for it, but the most important thing is that I do the right thing."

Mr. Clinton and his advisers were clearly determined not to be outflanked in what the President described tonight as "this whole values debate," which he predicted "will intensify in the next year."

The Supreme Court first ruled in 1962 that organized prayer in public schools violated the First Amendment prohibition against the establishment of religion by Government, even if participation was voluntary in the sense that students who did not wish to pray were allowed to remain silent or to leave the classroom.

Justice Hugo Black wrote in the majority opinion that "the indirect coercive pressure upon religious minorities to conform to the prevailing, officially approved religion is plain." Subsequently, the Court found that Bible readings in public school classrooms were unconstitutional, as were prescribed "moments of silence" and the inclusion of prayer at public school graduation ceremonies.

Constitutional amendments to overturn the Court's rulings on school prayer have been introduced in Congress since 1962.

In answer to a reporter's question, Mr. Clinton expressed concern today that voluntary prayer might "become coercive to people who have different religious views from those that are in the majority in any particular classroom."

But the President went on to say that he believed a prayer at an outdoor football game or graduation ceremony would not pose such a problem, and he said he did not want issues like prayer in schools to become the subject of partisan wrangling.

"I want to see what the details are," Mr. Clinton said of a possible Republican-backed constitutional amendment. "I certainly wouldn't rule it out."

Some advisers to the President sought to minimize the significance of his statement, saying that he simply did not want to close the door on any Republican proposal so soon after an Election Day that dealt the Democrats an enormous political setback.

But Mr. Clinton, who has long supported voluntary prayer in schools, had never before expressed willingness to back a constitutional amendment to guarantee that right, an idea elevated to new prominence in recent days by Representative Newt Gingrich, the Georgia Republican who is expected to become the Speaker of the House.

A constitutional amendment needs the approval of two-thirds majorities in both houses of Congress and then of the legislatures of three-quarters of the states.

As President, Mr. Clinton, a Southern Baptist, has always been outspoken about his faith — far more so than most current Democratic leaders, in part because of his upbringing and perhaps in part because of a desire to break the grip of conservative Christians on religious discourse in politics.

Mr. Clinton's political advisers see that aspect of the President's personality as a "bridge" to a variety of constituencies, and he has never hesitated to reveal his religious side to appropriate audiences. His speeches are often sprinkled with biblical allusions, and Mr. Clinton talked to Baptist journalists last month about his frequent reading of the Bible.

Mr. Gingrich's office greeted the President's remarks with only slightly bridled enthusiasm. "It's a totally positive statement on the part of the President," said Tony Blankley, Mr. Gingrich's spokesman. "I can't think of a better way to begin a cooperative relationship."

Mr. Blankley said that Mr. Clinton's statement lent a "tone of bipartisanship" to what had been a dividing social issue. And he said White House support would probably make an amendment on school prayer easier to move through state legislatures, most of which are still dominated by Democrats.

But Arthur J. Kropp, president of People for the American Way Action Fund, told a news conference that Mr. Clinton was making a big mistake. "Amending the Bill of Rights is a grave step that has never before been taken in our nation's history," Mr. Kropp said.

He added: "Instead of taking his cue from Newt Gingrich, President Clinton should be standing firm on the constitutional rights of all schoolchildren. He knows that prayer is being turned into a political football, a bad outcome for Government and religion."

The remarks by Mr. Clinton seemed a rehearsal of a new way of presenting himself and his agenda to American voters, who had so emphatically turned the Democrats aside on Nov. 8. At the same time, however, Hillary Rodham Clinton, his wife and close adviser, made clear in a combative interivew today that what happened on Election Day remained a sensitive subject.

"I really don't want to talk about the elections," Mrs. Clinton declared today in an interview with reporters who accompanied her on a daylong trip to an eighth-century Buddhist temple near the city of Yogyakarta. She later relented somewhat, acknowledging that she had joined the discussions among Mr. Clinton's confidants about how the President should plot his comeback now that Congress will be under Republican control.

Through today's 46-minute news conference, Mr. Clinton offered no clear hint about the legislative strategy the White House intended to pursue in contending with a Republican Congress. The advisers who accompanied him here and spent their late nights and early mornings on the telephone to Washington said it was far too early to make such decisions.

But even as Mr. Clinton was concluding a meeting with leaders from Asia and the Pacific at an ornate Indonesian palace, his advisers were working to help him send a fresh message home.

"I think we can work together, and I am certainly willing to," he said, mentioning a line-item veto, overhaul of the welfare system, further spending cuts and perhaps a middle-class tax cut as issues on which he hoped to cooperate with the Republicans. "And that's the spirit in which I will go home."

The Clintons, who will begin their return journey late Wednesday after spending a final day in Jakarta, plan to stop in Hawaii for three days of rest and relaxation. But nearly all their top aides will continue on to Washington to join internal deliberations there. George Stephanopoulos, a key political adviser, hoped tonight to begin a three-stop hop back to the capital tonight that would get him to his office by midafternoon on Wednesday.

THE NEW YORK TIMES, WEDNESDAY, NOVEMBER 16, 1994

November 16, 1994

MEMORANDUM FOR DISTRIBUTION

FROM: **MELANNE VERVEER**

RE: **SCHOOL PRAYER**

Yesterday's statement by the President signalling that he "wouldn't rule out" a school prayer amendment triggered a barrage of protest calls to me from friends of the Administration, particularly those in the religious community representing many different faith traditions. Jewish supporters, specifically, noted candidate Clinton's opposition to "a constitutional amendment to impose prayer in the schools," and were dismayed by the appearance of a shift in position (regrettably reinforcing a view that he equivocates on matters of principle). At a luncheon for Rabin in California today, I am told that the major topic of conversation was "disbelief and dismay" over the President's statement. I also talked with the Clintons' pastor in preparation for his appearance on Crossfire where he was to argue against a school prayer amendment.

The following are points that were underscored in the calls I received. Jim Castelli, who is serving as an unofficial advisor to us on religions outreach, said the following: "The President's comments on school prayer created confusion; they won't help him with his critics; they unnerved his friends and they won't help with Perot voters." The President could have said any of the following to underscore his support in these matters:

- Today, public schools may hold truly neutral moments of silence and groups can form prayer and Bible clubs that meet in public middle and high schools (as extracurricular activities). The President could have mentioned these as activities he supports and he could add that he is asking his Secretary of Education to ensure that such practices are not being interfered with.

- The President strongly supported the Religious Freedom Restoration Act to protect the free exercise of religion from government interference. (How does this square with a government mandate on school prayer?)

- The President could say he supports the teaching of right and wrong, civic values, character education, etc., as well as teaching honestly and opening in classes of history, literature, etc. about the role religion plays.

- He should not support government's violating the conscience of students by forcing them to pray against their will or in ways that conflict with their own faith traditions.

Religious leaders in particular made the following points:

- Organized school prayer politicizes, cheapens and harms religion. A "nonsectarian" or "watered down" prayer secularizes religion and makes it unacceptable to those take their faith seriously. A particular prayer approved for the classroom sends a message of disapproval and exclusion to those with different religious beliefs. Over 600 Baptist, Presbyterian and Jewish religious leaders recently signed a letter to school officials making precisely this point. (See attached)

- The vitality of religious practice in this country is due, in large measure, to the separation of church and state.

- The problem of offending religious minorities (particularly as our society becomes increasingly diverse) and the problem of coercion are real. There are probably Administration officials who have their own recollections of feelings of exclusion as pupils in situations where certain religious practices were enforced in the public schools. Assistant Attorney General Walter Dellinger's op-ed in the Washington Post some months ago about his painful experience as a Catholic pupil in a North Carolina public school confronted with a mandated religious exercise in the classroom vividly made this point. He and a fellow Jewish student left the classroom each time the religious exercise was conducted, because their parents didn't want them engaging in a religious practice that wasn't consistent with their faith traditions. He explained what it felt like for a child to be an "outsider" in this context.

- While polls show strong support for voluntary school prayer (about 70%), the support dips when the consequences are weighed. In a recent Peter Hart poll, support fell to less than 35% if the prayers would offend religious beliefs of "students who had different religious faiths." Support dropped to 25% of school officials would be involved in "selecting or approving the prayers to be used."

Everyone who called pleaded that the White House issue no further statements in support of a constitutional amendment of any kind. Friends of the President could not imagine that he really wants to offer his approval to a constitutional amendment and a ratification process throughout the country that would only serve to heighten religious tensions and pit one faith group against another in what has the prospect of becoming a holy war.

The President's supporters want to believe that what he meant to say is that he supports a moment of silence or reflection in which a student could voluntarily pray. This, of course, does not require a constitutional amendment.

If he had only repeated what JFK said after the Supreme Court decision outlawing organized prayer in the schools: "What we need is more prayer in our homes."

DISTRIBUTION:

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James M. Dunn
Executive Director

Nov. 17, 1994

Dear Mr. President:

You have the better part, as tough as it is, being on the other side of the world. We must wake up in this city to read Ann Devroy.

Bless your heart! We are praying for you, and we'll double our prayers. No one should have to answer questions about school prayer at a meeting of Asian moguls.

Devroy takes what may have been a general remark and turns it into a constitutional crisis.

We know you would never tinker with the First Amendment. We sure as heck don't need anything to allow "voluntary" prayer. Kids can freely pray anytime right now, and in groups, at school, every day if they want to.

Your instincts are right. I, too, reviewed Stephen Carter positively. We'll use all this for a teachable moment. In your upcoming values speeches, that Ann Walley and I are working on, you can reveal your Christian commitment, as well as your dedication to the constitution.

Lots of us are with you and will be.

Sincerely,

James M. Dunn

Alliance of Baptists
American Baptist Churches in the U.S.A.
Baptist General Conference
Cooperative Baptist Fellowship

National Baptist Convention of America
National Baptist Convention U.S.A. Inc.
National Missionary Baptist Convention
North American Baptist Conference

Progressive National Baptist Convention, Inc.
Religious Liberty Council
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ADL
Anti-Defamation League®

November 16, 1994

The President
The White House
Washington, DC 20500

Dear Mr. President:

We write to convey our concern at your comments yesterday expressing conditional support for a constitutional amendment on school prayer.

On numerous occasions in the past, you have spoken eloquently and passionately about your commitment to what you have described as "perhaps the most precious of all American liberties, religious freedom." You have also articulated an appreciation for the wisdom of our founders, "who well understood what could happen to this country, how both religion and government could be perverted if there were not some space created and some protection provided."

Exactly one year ago today, when you signed the Religious Freedom Restoration Act into law, you conveyed a vision of the religion clauses of the First Amendment which we share. On that occasion, you stated: "We are a people of faith [and] we have been so secure in that faith that we have enshrined in our Constitution protections for people who profess no faith; and good for us for doing so. That is what the First Amendment is all about."

As people of faith rooted in a faith community in the religious minority in this country, we believe the First Amendment has served us and all Americans well. We would be deeply troubled by any governmental effort to modify it in order to intrude religious views or practices into public schools, where they do not belong. Moral values should be taught in American public schools, but this can be accomplished without any form of organized prayer or religious activity which will inevitably make some children feel outcast.

We know that the American people will understand that opposition to a school prayer amendment does not reflect hostility to religion, but rather a deep and abiding conviction that religion is too important and too precious to permit any form of state intervention. However, we are concerned that a proposed

constitutional prayer amendment will have appeal to many Americans who do not understand all of its ramifications, and who may not be aware that children already have the right to engage in voluntary, individual prayer whenever they choose.

We urge you to oppose this effort to amend the Bill of Rights, which has served us so well for over two centuries.

Sincerely,

David H. Strassler
National Chairman

Abraham H. Foxman
National Director

AN OPEN LETTER TO SCHOOL BOARD PRESIDENTS AND SCHOOL SUPERINTENDENTS ON FREEDOM OF RELIGION AND PRAYER IN PUBLIC SCHOOLS

April 1994

As efforts to reinstate organized prayer in the public schools proliferate, we write as religious leaders serving millions of Americans of faith to express our opposition to such activities, and we do so on the basis of our faith and our belief in the sanctity of prayer. In many communities, officials have passed resolutions urging that "prayer be returned to the public school systems of this nation." Elsewhere, "legal SWAT teams" have been dispatched to public school districts to advocate so-called student-led, organized prayer at public school graduations, and many school districts have already endorsed, encouraged and allowed such prayer.

While such actions may have been undertaken in an attempt to strengthen religion, they will have precisely the opposite effect. These activities not only weaken the principle of the separation of church and state that has ensured religious liberty in our country for over 200 years, they also engender conflict in our public schools and seriously erode religious freedom in America.

Both religious leaders and government officials have long recognized that the separation of church and state is essential to preserving religious freedom for all. History teaches that religious freedom and practice have flourished when government remains neutral toward religion, as in America today. By contrast, when government seeks to promote religion, as in the state-sponsored churches of Europe, pews have emptied and the free exercise of religion has suffered.

Even when the purpose is benign, government involvement in, or promotion of, religious practice inevitably politicizes religion and harms religious freedom. If the government were to sponsor or endorse a particular denomination's religious practices or prayer, for example, it would place the weight of the state behind a "preferred" religion, thereby excluding those with different religious beliefs. And if the government were to try to make state-sponsored observance "nonsectarian," the result would be to trivialize and secularize religion, insulting those who take their faith seriously. As the Supreme Court has observed, "a union of government and religion tends to destroy

As we approach public school graduations this year, we urge all people of faith to declare a permanent cease fire on this issue, and work to promote the true cause of religious liberty, including the separation of church and state. It is critical to our society and to the fundamental well-being and liberty of our children that these precepts of religious freedom be preserved, and that you, as educators, respect these principles. All of us must make every effort to prevent our public schools from becoming a battleground over religion and to promote true religious liberty.

Sincerely,

(Signatories are listed by state. Please note, congregations are listed for identification purposes only.)

Rabbi Dr. Steven Jacobs, Temple B'nai Shalom, (Jewish), Huntsville, AL
Rabbi Jonathan Miller, Temple Emanu-El, (Jewish), Birmingham, AL
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The Rt. Rev. Bishop John H. Burt, (Episcopalian), Marquette, MI

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Rev. James H. Bell, (Presbyterian U.S.A.), St. Paul, MN
Rev. J. Samuel Shelby, (United Church of Christ), Appleton, MN
Rev. Shirley Harper Cox, First Congregational Church, (UCC), Glencoe, MN
Rev. Margaret Stroditz, (Presbyterian), Arden Hills, MN
Rabbi Martin S. Scharf, (Jewish), Duluth, MN
Rabbi Martin Zinkow, (Jewish), St. Paul, MN
Rev. Glen Herrington-Hall, (United Church of Christ), St. Paul, MN
Rev. David McMahill, (United Church of Christ), Northfield, MN
Rabbi Max A. Shapiro, Temple Israel, (Jewish), Minneapolis, MN
Rev. Howard B. Johnson, United Methodist Church, (Methodist), Minneapolis, MN
Rev. David Southcomb, (Presbyterian), Canton, MS
Rabbi Steven W. Engel, Beth Israel Congregation, (Jewish), Jackson, MS
Rabbi Susan Talve, Central Reform Congregation, (Jewish), St. Louis, MS
Rabbi Judith Bluestein, B'nai Israel Congregation, (Jewish), Hattiesburg, MS
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Rev. Dr. Lee Berg, First Baptist Church, (Baptist), Meridan, MS
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Rabbi Charles Rabinowitz, Congregation B'nai Abraham, (Jewish), Hagerstown, MO
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Rev. Anton K. Jacobs, (United Church of Christ), Liberty, MO
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Rev. Donald E. Griffith, ELCA, (Lutheran), Lincoln, NE
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Rev. Lauren D. Ekdahl, Trinity United Methodist Church, (Methodist), Lincoln, NE
Rabbi Myer Kripke, (Jewish), Omaha, NE
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Rabbi Philip Berkowitz, (Jewish), Wash Tap, NJ
Rabbi Carla Freedman, Temple Beth Israel, (Jewish), Plattsbourgh, NJ
Rabbi Daniel M. Cohen, Temple Sharey Tefilo-Israel, (Jewish), South Orange, NJ
Rabbi Howard L. Jaffe, (Jewish), Warren, NJ
Rabbi Eric S. Gurvis, Temple Emeth, (Jewish), Teaneck, NJ
Rabbi Laurence Groffman, (Jewish), Short Mills, NJ
Rabbi Charles Kroloff, Temple Emanu-El, (Jewish), Westfield, NJ

Rabbi Sally Priesand, Monmouth Reform Temple, (Jewish), Tinton Falls, NJ
Rabbi Stanley Yedwab, Temple Beth Am, (Jewish), Lakewood, NJ
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Rabbi Peter J. Rubinstein, (Jewish), New York, NY
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Rabbi Sue Ann Wasserman, Brooklyn Heights Synagogue, (Jewish), Brooklyn, NY
Rabbi David E. Fass, Temple Beth Sholom, (Jewish), New York, NY
Rev. George W. Webber, (United Church of Christ), New York, NY
Rabbi Daryl P. Crystal, North Shore Synagogue, (Jewish), Syosset, NY
Rabbi Aaron Panken, Congregation Rodeph Sholom, (Jewish), New York, NY
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Rabbi Joshua Aaronson, Temple Beth Zion, (Jewish), Buffalo, NY
Rabbi George Stern, Temple Beth Torah, (Jewish), Upper Nyack, NY
Rabbi David Katz, Temple Israel, (Jewish), New York, NY
Rev. Dr. G. Eric Pace, Universal Science of Mind, New York, NY
Rabbi Martin Rozenberg, (Jewish), Port Washington, NY
Rabbi Nathan Landman, (Jewish), Larchmont, NY
Rabbi Steven Rosman, Jewish Family Congregation, (Jewish), South Salem, NY
Rabbi Henry Bamberger, (Jewish), Utica, NY
Rabbi Jeffrey Hoffman, Congregation Sons of Israel, (Jewish), Upper Nyack, NY
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Rev. Dr. Wesley Nielson, (United Church of Christ), Calverton, NY
Rev. Thomas Dannoy, (Reformed Church in America), Nyack, NY
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Rev. Brian Krause, (United Church of Christ), Honeoye, NY
Rev. Russell Newbeat, (Episcopalian), Buffalo, NY
Rev. Lee Sullivan, (Presbyterian), Hartsdale, NY
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Rev. Donald C. Armstrong, (United Church of Christ), Buffalo, NY
Mr. Karl Berolzheimer, The National Conference of Christians & Jews, (Jewish), New York, NY
Mr. Herman Harmelink III, (Reformed Church in America), Poughkeepsie, NY
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Rabbi A. James Rudin, The American Jewish Committee, (Jewish), New York, NY
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Rev. Allen Laymon, (Baptist), Charlotte, NC
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Rabbi John Friedman, (Jewish), Durham, NC
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Rev. Lamar Clements, (United Church of Christ), Morehead City, NC
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Rev. Lloyd Pendergraft, (United Church of Christ), Mt. Pleasant, NC
Rev. Dr. J. William Angell, (Baptist), Winston-Salem, NC
Rev. Dr. Jack J. Seville, Jr., United Church of Christ of ND, (UCC), Bismarck, ND
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Rabbi P. Irving Bloom, Temple Israel, (Jewish), Dayton, OH
Rabbi Howard Apothakey, (Jewish), Columbus, OH
Rev. Betty L. Pingel, (Unitarian Universalist), Akron, OH
Rabbi Rosette Haim, The Temple - Tifereth Israel, (Jewish), Beachwood, OH
Rabbi David J. Gelfand, Anshe Chesed Fairmount Temple, (Jewish), Beachwood, OH
Dr. Bill Johnson Ed.D, (United Church of Christ), Cleveland, OH
Rabbi Susan Stone, (Jewish), So. Euclid, OH
Rabbi Daniel Roberts, Temple Emanu El, (Jewish), Cleveland, OH
Rev. Verlyn L. Barker, (United Church of Christ), Cleveland, OH
Pastor Daniel W. Bochers, (Evan. Lutheran Church in Amer.), Sandusky, OH
Rabbi Mark Goldman, Rockdale Temple/K.K. Bene Israel, (Jewish), Cincinnati, OH
Rabbi David Horowitz, Temple Israel, (Jewish), Akron, OH
Rabbi Gerry Walter, Temple Shalom, (Jewish), Cincinnati, OH
Rev. John Bertsch, (United Church of Christ), Hartville, OH
Rev. Bernice Buehler, (United Church of Christ), Dover, OH
Rev. Daniel Geslin, (Liberation United Church of Christ), Cleveland, OH
Rev. James S. Yost, Euclid Avenue Christian Church, Cleveland Heights, OH
Rev. Fr. Kenneth R. Irvin, Free Catholic Church International, (Catholic), Steubenville, OH
Rev. Rick Nutt, Muskingum College, (Presbyterian), New Concord, OH
Rev. Maria Porras, (United Church of Christ), Cleveland, OH
Rev. Terry Provance, (United Church of Christ), Cleveland, OH
Rev. Craig Schaub, Pilgrim Congregational, (UCC), Cleveland, OH
Rev. Mary Sue Gast, (United Church of Christ), Cleveland, OH
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Rabbi Robert Leib, Temple Beth Am, (Jewish), Abington, PA
Rabbi Marjorie S. Yudkin, Temple Covenant of Peace, (Jewish), Easton, PA
Rabbi Simeon Maslin, Congregation Keneseth Israel, (Jewish), Elkins Park, PA
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Rabbi Martin P. Jr. Beifield, (Jewish), Allentown, PA
Rabbi Jeffrey J. Weisblatt, (Jewish), Harrisburg, PA
Rabbi Michael Joseph, Temple B'nai B'rith, (Jewish), Kingston, PA
Rev. Thomas L. Harwell, Oak Hills Christian Church, Butler, PA
Rabbi Michael Feshbach, Temple Anshe Hesed, (Jewish), Erie, PA
Rabbi Richard Klein, Main Line Reform Temple, (Jewish), Wynnewood, PA
Rabbi Mayer William Solekman, (Jewish), Broomall, PA
Rabbi James Gibson, Temple Sinai, (Jewish), Pittsburgh, PA
Rev. Lyle Weible, Penn Central Conference Minister, (UCC), Harrisburg, PA
Rev. Kenneth Trauger, (United Church of Christ), Lancaster, PA
Chaplain Kenneth Burnette, (Baptist), Lancaster, PA
Rev. Aidsand Wright-Riggins, American Baptist Churches, (Baptist), Valley Forge, PA
Rev. Douglas Hodges, (United Church of Christ), Greencastle, PA
Rev. Dr. Robert Jobe, (United Church of Christ), Jeannette, PA
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Rev. T. Chipman Day, (United Church of Christ), Waynesburg, PA
Rev. Charlotte Hull Whiting, (United Church of Christ), Lancaster, PA
Rev. Joseph N. Carr, Jr., (United Church of Christ), Allentown, PA
Rev. Charles W. Appel, Jr., (Episcopalian), Pittsburg, PA
Rev. John A. Golden, Jr., (Episcopalian), Pittsburgh, PA
Rev. John E. Strausz Clement, (Presbyterian), Pittsburg, PA
Rev. Michael Morrill, American Baptist Churches, (Baptist), Philadelphia, PA
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Rabbi George J. Astrachan, Temple Sinai, (Jewish), Cranston, RI

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Rev. James Gunn, Richland Memorial Hospital, (Methodist), Columbia, SC
Rev. Joseph Alley, (Methodist), Columbia, SC
Rev. James Fields, Plymouth Congregational, (UCC), Charleston, SC
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Rev. Nancy Hastings Schested, Prescott Memorial Baptist Church, (Baptist), Memphis, TN
Rev. David More Maynard, (Unitarian Universalist), Nashville, TN
Rev. Oswald Schrag, (United Church of Christ), Nashville, TN
Rev. John Lackey, (United Church of Christ), Knoxville, TN
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Rabbi Kenneth Roseman, Temple Shalom, (Jewish), Dallas, TX
Rev. John L. Stanley, (Baptist), Austin, TX
Rabbi Samuel Stahl, Temple Beth-El, (Jewish), San Antonio, TX
Rev. Bill Hornbuckle, Highland Park Baptist Church, (Baptist), Austin, TX
Rabbi Ralph D. Mecklenburger, Beth-El Congregation, (Jewish), Fort Worth, TX
Rabbi Stephen D. Gold, Congregation Beth-El, (Jewish), Tyler, TX
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Rev. William D. Hall, (Disciples of Christ), Fort Worth, TX
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Rabbi Mark Goldfarb, Temple Mount Sinai, (Jewish), El Paso, TX
Rev. Jim Collie, (Presbyterian), Bedford, TX
Rabbi Barry Block, Temple Beth-El, (Jewish), San Antonio, TX
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Rev. Dr. George A. Mason, Wilshire Baptist Church-TX, (Baptist), Dallas, TX
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Rev. Hubert Beckwith, (United Church of Christ), Annandale, VA

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Rev. Marlene Walker, (Unitarian Universalist), Harrisonburg, VA
Rabbi Jonathan Biatch, (Jewish), Staunton, VA
Rabbi Rosalind Gold, (Jewish), Reston, VA
Rabbi Paul F. Cohen, Sholom Temple, (Jewish), Norfolk, VA
Rev. Bruce Edward Wilson, (Southern Baptist), Danville, VA
Rabbi Jonathan E. Kraus, (Jewish), Alexandria, VA
Rabbi Amy Schwartzman, Temple Rodef Shalom, (Jewish), Falls Church, VA
Rev. Hubert G. Locke, (Disciples of Christ), Seattle, WA
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Rev. Daniel Schnabel, (United Church of Christ), Yakima, WA
Rev. John Manter, (United Church of Christ), Tacoma, WA
Rev. Dee Eisenhauer, United Church of Christ in University Place, (UCC), Tacoma, WA
Sr. Barbara A. Ferraro, (Roman Catholic), Charleston, WV
Sr. Patricia Hussey, (Roman Catholic), Charleston, WV
Rev. Peter E. Erikson, (Evan. Lutheran Church in Amer.), Webster, WI
Rev. Samuel D. Robbins, (United Church of Christ), Madison, WI
The Rev. Carl R. Simon, (Presbyterian), Milwaukee, WI
Rev. William E. Rishel, First Congregational United Church of Christ, (UCC), Plymouth, WI

Trade group and the European Union. In Mahathir's view, the group should not include the United States, Australia or New Zealand, as does APEC.

Diplomats said Indonesian President Suharto provided the momentum necessary to convince doubters like Malaysia and China to agree to the communique even though they had reservations about certain aspects of the deal.

``We have set the course and the direction of future economic cooperation in the Asia-Pacific region in particular and the world in general," Suharto said.

Clinton Signals Willingness to Agree on School Prayer (Washn)
By Thomas B. Rosenstiel and Melissa Healy=
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WASHINGTON President Clinton signaled Tuesday he might be able to reach agreement with the new Republican congressional majority on school prayer.

``I'll be glad to discuss it with them," the president said at a news conference at an economic conference in Jakarta, Indonesia. ``I want to see what the details (of a school prayer proposal) are. I certainly wouldn't rule it out. It depends on what it says."

In Washington, White House Chief of Staff Leon E. Panetta indicated further agreement with GOP leaders, saying that trade and congressional reform are two issues that the two sides can agree on.

Emerging from the first post-election meeting between an Administration official and the new Republican leadership, Panetta rejected proposed Republican tax cuts, however, saying that they would swell the federal deficit and weaken what has been a strengthening economy.

``I have always supported voluntary prayer in the schools," Clinton said in Jakarta. ``I have always thought that the question was when does voluntary prayer really become coercive to people who have different religious views from those who are in the majority in any particular classroom. ...

``Obviously, I want to reserve judgment, I want to see the specifics. ... And again, I would say this ought to be something that unites the American people, not something that divides us. ... The American people do not want us to be partisan, but they do want us to proceed in a way that is consistent with their values and that communicates those values to our children."

Panetta made an hourlong ``courtesy call" on Newt Gingrich, R-Ga., who is expected to be speaker of the House in the next Congress, and Sen. Bob Dole, R-Kan., who is expected to be Senate majority leader, at Dole's Capitol Hill offices.

After the session, Panetta said if the Republicans are serious about balancing the federal budget in five years, their proposed tax cuts and increased defense spending would require cutting a trillion dollars from the federal government at the same time.

``Whatever the outcome of the election, we all have a responsibility of helping to move this country forward," Panetta said. ``We have to be very straight with the American people."

Neither Dole nor Gingrich commented after the meeting.

Earlier, Alice Rivlin, director of the White House Office of Management and Budget, told reporters at a breakfast meeting that the proposed Republican tax cuts, if enacted, would swell inflation, ignite interest rates and ``probably throw the economy into recession."

The likely new chairman of the House Budget Committee, Rep. John R. Kasich, R-Ohio, accused her of ``alarmist and inflammatory" rhetoric.

Panetta called the congressional vote scheduled for later this month on a new world trade agreement ``the first test of the relationship" between the Democratic administration and the new Republican majority in Congress although that majority will not be seated until January.

Gingrich and other GOP leaders have generally indicated that they will support the trade agreement in the lame-duck session. But Sen. Jesse Helms, R-N.C., the likely new chairman of the Senate Foreign Relations Committee, signaled his intention to delay consideration of the pact.

In a letter to the president, Helms threatened to make trouble later on foreign policy matters unless Clinton agrees to put off the trade vote until next year.

Helms' letter said: ``I can assure that it will have an exceedingly positive effect on my making certain that the administration positions on all foreign policy matters during the 104th Congress will be considered fully and fairly."

Panetta said there are other reforms that the Clinton administration and the Republican leadership agree on, including lobbying reform, campaign finance reform, welfare reform, health care reform and the line-item veto. Referring obliquely to the Helms threat, he added that foreign affairs is an area where it is ``extremely important" that Congress and the White House work together.

He also said that he praised Gingrich for his promise to cut House committee staffs by one-third and noted that the Clinton administration had cut the White House staff by 25 percent and the executive branch by some 270,000 jobs.

But on economic policy, Panetta declared: ``As the president has made clear ... the important thing is that (tax cuts) are paid for, and that they not increase the deficit. ...

``That is a very fundamental discipline that we have put in place in the budget process here on Capitol Hill and throughout the government," he said, and if tax cuts are not matched with spending cuts, ``you are simply increasing taxes on our kids for the future."

In their ``Contract with America," House Republicans have promised what they call a middle-class tax cut, including a repeal of the so-called ``marriage tax," a tax credit to families making up to $200,000 per year for each child they have, and broader eligibility for individual retirement accounts.

Other Republicans, including the probable new chairman of the House Ways and Means Committee, Bill Archer, R-Texas, have proposed cutting capital gains taxes.

``Whatever we do is going to be paid for by spending cuts," Archer said in an interview on ``The McNeil/Lehrer NewsHour." He suggested that $50 billion could be saved over five years in welfare reform alone.

``We're going to do a lot in regard to legitimacy and payments to mothers who have illegitimate children ... perhaps not all welfare benefits, but a bulk of the welfare benefits," he said. ``This is tough, but the American people are prepared for us to be tough."

Most Newcomers to Congress Are Political Insiders (Washn)
By Alan C. Miller and Dwight Morris=
(c) 1994, Los Angeles Times=

WASHINGTON Disenchanted voters might have sent congressional titans packing last week, but that hardly means they are sending an army of Mr. Smiths to Washington to replace them.

To be sure, the 104th Congress that convenes in January will feature the least experienced crop of national lawmakers in nearly 40 years: At least 86 first-term legislators will report for duty to the House, joining most of the 110 newcomers a post-World War II record elected two years ago.

But the overwhelming majority of the new arrivals, many of whom are Republicans, are not the kind of novice citizen-

legislators portrayed by James Stewart in the Frank Capra classic, ``Mr. Smith Goes to Washington." An analysis by the Los Angeles Times shows that more than three-quarters of the freshman class of '95 either have held public office recently or were political operatives that is held political party posts or previously ran for office before being elected. The trend continues a pattern begun in 1992.

And unlike the little-known GOP challengers who ousted House Speaker Tom Foley in Washington state and former House Ways and Means Committee Chairman Dan Rostenkowski in Chicago, few newly elected legislators are giant-killers. A majority won election in open seats created by incumbents' decisions to retire or seek higher office, also repeating the 1992 pattern.

``Outsiders don't make it," said Gary Jacobson, a political science professor at the University of California at San Diego who specializes in Congress. ``The candidates who were able to take advantage of the anti-Washington and anti-Democratic sentiments were people who themselves were politically active and savvy and seized this as an opportunity to move into Congress."

One example was Republican Robert W. Ney, 40, a four-term state senator and teacher who won a race to succeed retiring Democratic Rep. Douglas Applegate in Ohio. Another was Republican Thomas M. Davis III, a lawyer who ousted one-term Democrat Leslie L. Byrne in a highly competitive northern Virginia seat. Davis, 45, chairs the Fairfax County Board of Supervisors.

Only 14 candidates who had not held or sought political or party offices were elected to the House in 1992 and 20 in 1994, even though more than 250 such aspirants ran each year. Experienced candidates remain better able to build formidable political and financial support.

The cadre of incoming lawmakers faces an institutional challenge. Will the Republican-dominated newcomers be in the vanguard of sweeping internal change as promised by the new House GOP leadership comparable to that achieved by the 1974 post-Watergate influx? Or will they largely be co-opted by a system that offers myriad benefits to incumbents, an experience that some say befell the heavily Democratic freshman class of '92?

Even though voters elected mostly politically experienced newcomers, the past two cataclysmic campaigns have dramatically changed the face of Congress. In addition to shifting from Democratic to Republican majorities, both the House and Senate have significantly increased both the number of women and the number of minority lawmakers in the '90s.

The female contingent in the House jumped from 28 before the 1992 election to 47 and is expected to be 49 next year. The tally in the Senate will have increased from two to eight. In the House, the black caucus has gone from 25 to 38 members and the Latino caucus from 10 to 18. The Senate added its only black and American Indian in 1992.

The anti-Democratic tide did not wash over black and Latino Democratic strongholds this year, largely because reapportionment created districts that were predominantly minority and Democratic, or made them even more so. At the same time, neighboring districts previously held by Democrats, which lost key pockets of black voters in 1992, fell to Republicans.

The two recent elections have yielded ammunition to bolster both the case for, and the case against, the increasingly successful national campaign to limit congressional terms. This is an integral part of the new House GOP agenda.

No longer is the Congress primarily the domain of aged political barons. A full 41 percent of the new House and nearly a quarter of the Senate will have served two years or fewer.

The average tenure for House members will be seven years and 10 months less than two years longer than the six-year cap sought by many term-limit proponents. The figure in the Senate which will have added 24 newcomers in the past two elections will be 11 years and seven months a shorter tenure than the 12-year ceiling sought by many restrictionists.

Even so, those incumbents who decided to seek re-election were still generally successful. In the House, the incumbent re-election rate was 88 percent in 1992 and 90 percent in 1994. The figures in the Senate were 83 percent and 92 percent. This hardly constitutes an anti-incumbent avalanche.

And many of the open seats resulted from circumstances that may not be repeated, at least not until the year 2002. The once-a-decade redrawing of congressional districts in 1992 placed many incumbents in jeopardy forcing some to retire rather than face colleagues or defeat. Some lawmakers were badly tainted by the scandal at the House bank and others stepped aside two years ago to take advantage of a final opportunity to convert campaign funds to personal use.

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5 of Army's Combat Divisions Suffer Decline in Preparedness (Washn)

By Art Pine= (c) 1994, Los Angeles Times=

WASHINGTON The Pentagon disclosed Tuesday that five of the Army's 12 combat divisions have suffered a significant decline in military preparedness, primarily as a result of cash-flow problems stemming from the deployment of U.S. troops to Rwanda, Haiti and Kuwait this past year.

In a letter to key lawmakers, Defense Secretary William J. Perry said the erosion was caused because the Army was forced to cancel important maintenance operations and training exercises in order to offset the cost of the overseas operations.

The admission was considered likely to be an embarrassment for the Clinton administration, which has been denying allegations that military readiness was being impaired, while Republicans have been warning that preparedness was being hurt.

Defense Department officials said two of the divisions that have been affected were among the rapid deployment forces that are the first to go in any combat operation. But they said the gap involved shortages in equipment and personnel and was being quickly eliminated.

However, the damage incurred in the other three including one heavy armor and two infantry divisions, all in so-called ``later-deploying heavy reinforcing" units that are among the third tier of Army units that would be deployed in a war would require additional funding.

Perry said in his letter that the administration would seek supplemental appropriations to help bolster the Army's operations and maintenance budget to offset the cost of the overseas deployments. He did not say how much that would entail.

Only a few weeks ago, Deputy Defense Secretary John M. Deutch told Congress in testimony that U.S. troops were better prepared than they were before the 1991 Persian Gulf war, and that readiness was not a serious problem.

Defense Department officials insisted that Perry's letter, which was made public in an unusual hastily called late-afternoon briefing, was drafted sometime Monday, after the secretary first learned about the apparent erosion in readiness in the three divisions.

Nevertheless, the briefing came hours after the release of a letter by Rep. Floyd Spence, R-S.C., in line to be the next chairman of the House Armed Services Committee, questioning Deutch's assertion that readiness still was very high.

Spence and other conservatives have been warning

DRAFT MEMO RE WHITE HOUSE POSITION RE SCHOOL PRAYER AMENDMENT

As a result of press reports concerning recent statements by the President on Republican proposals for a school prayer constitutional amendment, we have received a series of calls expressing deep concern from close friends of the Administration in the religious and constitutional rights communities. Particular concern was voiced because the press reports signalling possible Presidential willingness to support such an amendment came at the same time that political and religious conservatives have begun to raise objections to the proposal. For example, at a recent private meeting of the groups supporting RFRA, Forest Montgomery of the National Association of Evangelicals suggested that he personally had serious reservations about such an amendment.

For the following reasons, it is recommended that the White House issue no further statements signalling potential willingness to support a constitutional amendment on school prayer, and that further staff work go forward on the issue in consultation with the religious and other affected communities:

--Religious leaders oppose organized school prayer because it politicizes and harms religion. When a particular prayer is approved for a classroom or other school event, it inevitably puts the government's seal of approval on that prayer and sends a message of disapproval and exclusion to those with different religious beliefs. If schools insist on "nonsectarian" prayer, the result is to secularize and desanctify religion, making it unacceptable to those who take their faith seriously. Over 600 Baptist, Presbyterian, Jewish, and other religious leaders signed a letter to school officials this year making precisely this point. [Do you want a cc of the letter? Signatories include Dunn, James Andrews, Saperstein, and many others]

--Truly voluntary prayer in schools is already protected by the First Amendment, RFRA, and other legislation. Individual students can and do pray, and groups can form prayer and Bible clubs in most middle and high schools to pray in their own way. As religious leaders have stated, "voluntary prayer" as used by Gingrich, etc. is a code word for overturning Supreme Court decisions on organized prayer, which are crucial to protect religious liberty.

--Religious leaders are concerned about the inevitable problem of coercion and offending religious minorities in "voluntary" organized prayer. The President's statement in Jakarta recognized this problem. An op-ed several years ago by AAG Walter Dellinger poignantly described his own experience as the single Jew in a North Carolina classroom where "voluntary" prayer took place. Conservative Justice Anthony Kennedy cast the deciding vote against graduation prayer in Lee v. Weisman because of his concern about "subtle coercive pressure" on students.

--Recent polls and political experience support these concerns. In a recent Peter Hart poll, although over 65% of the public generally supports voluntary school prayer, support fell to less than 35% if the prayers would offend the religious beliefs of "students who had different religious faiths". Support dropped to less than 25% if school officials would be involved in "selecting or approving the prayers to be used." Similarly, although a Republican challenger tried to use the school prayer issue against Rep. Pat Williams of Montana, Williams effectively responded along the lines discussed above and the challenger failed.

--White House involvement in this issue threatens to be diverting and damaging politically. Many firm supporters of the President feel very strongly that no constitutional amendment whatsoever is appropriate. Gingrich and others, on the other hand, clearly want to go very far and to overturn prior Court decisions, and are unlikely to compromise. The result could well be a political trap for the President on an extremely divisive issue. Even in the short run, the issue has diverted significant attention from the President's successful meetings in Jakarta.

--The fact that the proposal is for a constitutional amendment raises additional concerns. Conservatives as well as liberals have objected to opening up the fundamental protections of the Bill of Rights for amendment, as we saw several years ago on the flag debate. In over 200 years, the Bill of RIghts has never been amended. And since the President has no vote, veto, or other formal role in the constitutional amendment process, White House leverage is limited.

--Prior to the President's statements, a number of Republicans and conservative religious leaders had begun to express concern or opposition to the constitutional amendment proposal. Publicly, these have included, for example, William Safire, Rep. Morella and the head of the Christian Legal Society. Privately, there are many more. By suggesting willingness to consider supporting an amendment, the White House makes it much more difficult for such opposition to be expressed, particularly among conservatives.

--After further consultation with religious leaders and work on the issue, a positive and effective position incorporating the President's concern about values and religious liberty can be formulated. Once Gingrich's specific proposal is released, the religious concerns it raises can be clearly articulated. The President can support truly voluntary prayer, and can explain how getting the government involved in and interfering with religious practice would damage religious liberty. We should also be able to work with religious leaders and secure broad support from them for such a position.

File: C:\WHOUSE\PRAY1116.TXT

TO: ALEXIS HERMAN, MELANNE VERVEER
FROM: JIM CASTELLI
RE: SCHOOL PRAYER
11/16/94

The President's comments on school prayer created confusion; they won't help him with his critics, they unnerved his friends, and they won't help with Perot voters.

Let me suggest a policy on prayer, values, and schools that is consistent with administration policy and the President's personal beliefs:

1) Public schools may hold a moment of silence and religious clubs may meet in public schools on the same basis as other non-curricular clubs. Those are both good things. So was the President's support for the Religious Freedom Restoration Act.

2) Public schools should teach civic values, character education, and so on.

3) Public schools should teach honestly and openly about the role that religion plays in American and world history, in art, literature, etc.

4) Government, the state, the public schools must never violate the conscience of students by forcing them to pray against their will. That violates everything the United States stands for.



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The Sound of Silence: An Epistle on Prayer and the Constitution

by
Walter Dellinger

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The Sound of Silence: An Epistle on Prayer and the Constitution*

Walter Dellinger†

July 30, 1986

Members of the United States Senate
United States Capitol
Washington, D.C. 20510

Dear Senator:

A Report of the Committee on the Judiciary of the United States Senate[1] has just crossed my desk. From it I learn that the Committee has, by a substantial majority vote,[2] favorably reported to the full Senate a bill proposing a "Voluntary Silent Prayer Amendment" to the Constitution of the United States. I write to urge you to reject this and similar amendments as they come before you in the future. This particular proposal is, at one and the same time, both trivial and dangerous. In terms of its ostensible objective—to permit a silent time to be set aside during which pupils may choose to engage in silent prayer—it is simply unnecessary. There is no present constitutional barrier to the creation by school boards of such a moment of silence. Its less visible but far more profound effect, however, may be to permit public officials at every level of government to promote a religious exercise and to influence, encourage, and persuade children to engage in a religious activity. This seemingly innocuous amendment, if proposed by Congress and ratified by the states, would thus have consequences significantly more damaging to religious liberty than has yet been acknowledged.

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* This essay is offered in honor of Charles L. Black, Jr., who has more than once intervened in the affairs of state with timely letters on behalf of enduring constitutional values. *See* Black, *Amending the Constitution: A Letter to a Congressman*, 82 YALE L.J. 189 (1972); Black, *The Marital and Physician Privileges—A Reprint of a Letter to a Congressman*, 1975 DUKE L.J. 45; Black, *On Article I, Section 7, Clause 3—and the Amendment of the Constitution*, 87 YALE L.J. 896 (1978); Black, *Amendment by National Constitutional Convention: A Letter to a Senator*, 32 OKLA. L. REV. 626 (1979).

† Professor of Law, Duke University.

1. SENATE COMM. ON JUDICIARY, VOLUNTARY SILENT PRAYER CONSTITUTIONAL AMENDMENT, S. REP. NO. 165, 99th Cong., 1st Sess. (1985) [hereinafter cited as SENATE REPORT].

2. On October 3, 1985, the full Committee on the Judiciary favorably reported S.J. Res. 2, 99th Cong., 1st Sess. (1985), by a vote of 12 to 6. SENATE REPORT, *supra* note 1, at 27.

I.

The proposed amendment reads as follows:

> Article —
>
> Nothing in this Constitution shall be construed to prohibit individual or group silent prayer or reflection in public schools. Neither the United States nor any State shall require any person to participate in such prayer or reflection, nor shall they encourage any particular form of silent prayer or reflection.[3]

An initial reading of the text of this proposed constitutional amendment suggests that its effect would be quite minimal. Unlike an earlier amendment proposed by President Reagan,[4] which would have permitted government-sponsored, teacher-led group recital of spoken prayer, this amendment would avoid the spectre of involving bureaucrats and politicians in the composition or selection of prayers. This apparently more modest Silent Prayer Amendment seems merely to remove some existing constitutional barrier that precludes school children from engaging in a school-organized moment of silence in which those who wish to pray silently may do so.

If this were the only effect of this amendment, then it would address a non-problem. The notion (repeatedly implied but never explicitly stated in the Senate Report) that Supreme Court decisions forbid schools from organizing moments of silence is highly dubious at best. If there is no such existing barrier, then the affirmative case for the amendment virtually collapses.

Nothing in the Supreme Court's 1962 decision in *Engle v. Vitale*[5] precludes a school system from establishing a moment of silence. In *Engle*, the Court considered a prayer that the defendant school board, acting in its official capacity under state law, required every principal to cause to be said aloud by each class at the beginning of each school day. The prayer had been composed by a group of politically-appointed state officials, the Board of Regents. Justice Black, writing for the Court, properly focused

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3. SENATE REPORT, *supra* note 1, at 1-2.

4. The President's proposed amendment read: "Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or any State to participate in prayer." *Message to the Congress Transmitting Proposed Legislation*, 18 WEEKLY COMP. PRES. DOC. 665 (1982). For comments on the effect of this proposal, see *Proposed Constitutional Amendment to Permit Voluntary Prayer, Hearings on S.J. Res. 199 Before the Senate Comm. on the Judiciary*, 97th Cong., 2nd Sess. (1982) [hereinafter cited as *1982 Hearings*], and *Voluntary School Prayer Constitutional Amendment, Hearings on S.J. Res. 73 and S.J. Res. 212 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 98th Cong., 1st Sess. (1983) [hereinafter cited as *1983 Hearings*].

5. 370 U.S. 421 (1962).

upon the state's selection and promotion of the prayer and asserted that "it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government."[6]

There was no indication in the Court's subsequent decisions concerning religious activity in the public schools that it is constitutionally impermissible for pupils themselves to choose to pray.[7] In the two decades since *Engle* many legal scholars—including Paul Kauper, Jefferson Fordham, Paul Freund, Jesse Choper, and Laurence Tribe—have expressed the opinion that school officials themselves could, without constitutional infirmity, provide an organized moment of silence in which students might choose to pray silently.[8]

When the constitutional amendment proposed by President Reagan was first brought before the Senate Judiciary Committee, several witnesses, including Geoffrey Stone, Terrance Sandalow and Norman Redlich, suggested that at least some form of a moment of silence would most likely be sustained by the Court;[9] this would permit an opportunity for prayer in school (though in a form substantially different from the organized group oral prayer then being proposed by the President).

The substitute Silent Prayer Amendment now before you was later brought forward. In subsequent hearings, I argued that such an amendment was unnecessary since "a policy that said that there will be a moment of reflective silence observed at the beginning of each school day, would clearly pass constitutional muster."[10] Even though I erroneously thought that the Supreme Court might in fact sustain even those silence

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6. *Id.* at 425.

7. *Id.* School Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963), was but a step away from *Engle*. The religious exercises at issue in *Schempp* were not composed, but rather chosen by, government officials: The state legislature required daily readings in every school from the Holy Bible; the school district added the requirement that each class recite the Lord's Prayer in unison.

8. *See* Kauper, *Prayer, Public Schools and the Supreme Court*, 61 MICH. L. REV. 1031, 1041 (1963); Fordham, *The Implications of the Supreme Court Decisions Dealing with Religious Practices in the Public Schools*, 6 J. CHURCH & STATE 44, 55-56 (1964); Freund, *The Legal Issue*, in P. FREUND & R. ULICH, RELIGION AND THE PUBLIC SCHOOLS 23 (1965); Choper, *Religion in the Public Schools: A Proposed Constitutional Standard*, 47 MINN. L. REV. 329, 371 (1963); L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 14-6, at 829 (1978).

9. *See* Stone, *In Opposition to the School Prayer Amendment*, 50 U. CHI. L. REV. 823, 844 (1983) ("It is generally accepted, for example, that a public school may set aside a minute at the beginning of the school day for 'silent meditation or prayer' without running afoul of the establishment clause."); *1982 Hearings*, *supra* note 4, at 381 (testimony of Terrance Sandalow) (decisions sustaining moments of silence are "undoubtedly consistent with the Supreme Court's decisions in *Engle* and *Schempp*"); *id.* at 395 (testimony of Norman Redlich) ("there is a reasonably good chance that [a period of silent meditation or prayer] would be sustained").

10. *1983 Hearings*, *supra* note 4, at 369 (testimony of the author). Paul Bender also expressed the view that "[i]f [the amendment] means to authorize a moment of silence during which the children may, if they wish, pray or meditate in other ways, then . . . I think it is unnecessary to amend the Constitution to achieve that result." *Id.* at 381.

statutes that mentioned prayer, I argued that such a statutory mention of prayer was constitutionally dubious, stating that:

> If you add the word "prayer" [to the state statute], or specifically suggest prayer in the school board policy, as one of the alternatives, and if one is litmus paper-sensitive to establishment violations, I think you would have to find there a trace element of establishmentism, if the Government is specifically suggesting that one of the things you might do with your time is utilize it for prayer.[11]

Not long after the Senate Hearings, the Supreme Court decided *Wallace v. Jaffree*.[12] Because a majority of the Court appeared to provide a clear and positive answer to the question of whether a neutral moment-of-silence statute would be held constitutional,[13] I assumed that the Silent Prayer Amendment to the Constitution would no longer be pursued. I was surprised to learn that the Judiciary Committee had nonetheless approved the Silent Prayer Amendment, and I was astonished to read in the Committee Report the statement that "[i]t is the view of the Committee that the *Jaffree* decision effectively prohibits silent prayer in public schools."[14] A review of *Jaffree* demonstrates that this last statement is flatly wrong.

Three separate Alabama statutes were originally challenged in *Wallace v. Jaffree*. One provided that teachers could lead all "willing students" in group oral recital of a specified prayer that was set out in the statute. The Supreme Court summarily upheld the invalidation of this statute, thus unanimously reaffirming its original school prayer decision. A second Alabama statute, adopted in 1978, authorized a one-minute period for silent meditation in all public schools. The district court upheld this statute, and the plaintiffs did not challenge it on appeal. The third Alabama statute, adopted in 1981, differed from the preexisting moment-of-silence statute in that it added the words "or voluntary prayer." It was this statute that the Court considered and invalidated in *Jaffree*.[15]

Justice Stevens noted in his Opinion of the Court that the unchallenged 1978 statute fully accomplished the goal of setting aside a moment of silence in which students who chose to pray could do so. Thus the only thing the 1981 silent prayer statute at issue in *Jaffree* added to the earlier moment of silence law was "the State's endorsement and promotion of

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11. *Id.* at 369-70.

12. 105 S. Ct. 2479 (1985).

13. *Id.* at 2491. I am using the phrases "neutral moment of silence" and "pure moment of silence" to refer to those statutes that simply establish a silent moment without specifying that the moment is "for prayer" or "for prayer or contemplation" of "for prayer or meditations."

14. SENATE REPORT, *supra* note 1, at 36.

15. This statutory history is discussed in *Jaffree*, 105 S. Ct. at 2481-82.

religion and a particular religious practice."[16] Justice Stevens' opinion, joined by Justices Brennan, Marshall, Blackmun, and Powell, suggests that it is a permissible purpose for a state to adopt legislation "protecting every student's right to engage in voluntary prayer during an appropriate moment of silence during the school day"[17]—a right that the Court said was protected by the earlier, neutral moment-of-silence statute. Such a purpose was, in the Court's view, "quite different from" the "legislative intent to return prayer to the public schools."[18] The thrust of Justice Stevens' opinion for the Court—that the flaw in the statute before the Court was the state's explicit endorsement of "prayer" as an officially approved use of a moment of silence—appears to be fully consistent with the idea that a statute like Alabama's earlier, neutral "moment of silence" law is constitutionally permissible.

The implication that the Court would sustain the adoption by states of neutral moment-of-silence statutes becomes even clearer upon reading the concurring and dissenting opinions in *Jaffree*. Although "head-counting" of Justices is generally a poor way to think about constitutional issues, it is certainly worth doing before one proposes what might be an unnecessary constitutional amendment. Three members of the Court, Chief Justice Burger and Justices Rehnquist and White, dissented in *Jaffree* and would have upheld even the Alabama statute that explicitly specified prayer.[19] Justice O'Connor, concurring, stated that moment-of-silence statutes that did not expressly promote prayer would be constitutional, noting that scholars have "suggested that a moment of silence in public schools would be constitutional. As a general matter, I agree."[20] Justice Powell, concurring, stated that "I agree fully with Justice O'Connor's assertion that some moment-of-silence statutes may be constitutional, a suggestion set forth in the Court's opinion as well."[21] Five members of the Court have thus stated clearly that they would sustain moment of silence laws that did not involve legislative promotion of religion by singling out prayer as one of the officially preferred activities. They might well be joined by all the other members of the Court to make that result unanimous.

I would not suggest that Congress set aside its proposed constitutional amendment in reliance on a parsing of the opinions in *Jaffree* were I not also convinced that the Court's apparent resolution of this prob-

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16. *Id.* at 2491 n.45.
17. *Id.* at 2491.
18. *Id.*
19. *Id.* at 2505 (Burger, C.J., dissenting); *id.* at 2508 (White, J., dissenting); *id.* (Rehnquist, J., dissenting).
20. *Id.* at 2499 (O'Connor, J., concurring) (citations omitted).
21. *Id.* at 2493 (Powell, J., concurring).

lem—sustaining laws that simply create an undesignated, neutral moment of silence, while invalidating those that involve governmental promotion or endorsement of "prayer"—is fundamentally sound and therefore likely to become stable constitutional doctrine. As I will attempt to show, neutral moments of silence can withstand criticism both from those who believe that all moment-of-silence statutes (including those specifically designating prayer) should be sustained, and from those who would argue that all silence laws (including those that are facially neutral) should be held unconstitutional.

Jaffree's invalidation of a silence law "merely" because it added to pre-existing law the words "or voluntary prayer" has been criticized by those who would have sustained it as unduly fastidious. Justice White, dissenting, read the Alabama legislature's addition of the word "prayer" not as a state suggestion or endorsement of prayer, but rather as an informational device that merely let students know that prayer is one acceptable activity. So read, White suggests, the statute should no more be unconstitutional than would be a teacher answering in the affirmative if a student were to ask if it is permissible to pray during a moment of silence.[22]

The notion that explicit designation of "prayer" in a state statute does not constitute state endorsement or encouragement seems disingenuous. Imagine a state statute providing that a moment of silence be conducted at the beginning of each school day for "meditation or erotic fantasy." Could one plausibly say in that case that the state is being wholly "neutral" with regard to "erotic fantasy," that the statute merely reflects the fact that students can (and some no doubt will) use any period of silence for that purpose? In my view, the seemingly trivial fact of the addition of the word "prayer" crosses the line of constitutionality precisely because it is utterly unnecessary to the goal of creating a formal opportunity for reflection in which students can, if they wish, choose to pray. That purpose is wholly accomplished by a statute or policy that simply provides that a moment of silence be set aside. If a simple moment of silence is created, parents, priests, rabbis, and ministers can, if they wish, suggest to their children or parishioners that they use the moment of silence for prayer. Providing in the state's Code of Laws that "prayer" is a designated activity takes the state itself across a thin line and into the improper business of official endorsement of a religious exercise.

The other apparent conclusion of *Jaffree*—that moment-of-silence statutes not specifically mentioning prayer are constitutionally permissible—is somewhat more problematic. As I continue to reflect on this problem, I

22. *Id.* at 2508 (White, J., dissenting).

become less certain that such laws should be upheld,[23] (even though I remain convinced that the Supreme Court will in fact sustain such statutes). Silence can be a powerful message. Since a normal school day ordinarily includes any number of occasions during which an individual student acting on her own initiative can engage in a moment of silent prayer or reflection, the formal creation in public school classrooms of an organized, teacher-supervised moment of silence is an event that has no readily apparent purpose—unless the government is attempting to convey a message.[24] Even where no textual mention is made of prayer, a community of observers may well perceive that the "meaning" of a school-organized moment of silence is that the government is endorsing something, and that something might be seen as religion. As Dean Redlich notes, "[a]ll prescribed moments of silence are highly suspect."[25]

There remains, nonetheless, a substantial basis for the Court's conclusion that "pure" moment-of-silence statutes should be sustained. Commentators who have found such statutes invalid[26] have generally done so for reasons that seem to me to be unpersuasive. Some have found that neutral moment-of-silence statutes fail to be supported by a "secular purpose"—the first requirement of what is awkwardly known as the "three-pronged Lemon test" used by the Court in establishment clause cases.[27] The district court that decided *May v. Cooperman*,[28] for example, first found that the alleged secular purposes of a silence statute—such as pro-

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23. Compare my testimony in the *1983 Hearings*, *supra* note 4, 369-70.

24. For thoughtful discussions of these issues, see Gedicks, *Motivation, Rationality, and Secular Purpose in Establishment Clause Review*, 1985 ARIZ. ST. L.J. 677, 720-721, and Marshall, *"We Know It When We See It:" The Supreme Court and Establishment*, 59 S. CAL. L. REV. 495, 541-44 (1986).

25. Redlich, *Separation of Church and State: The Burger Court's Tortuous Journey*, 60 NOTRE DAME L. REV. 1094, 1136 (1985). Dean Redlich nonetheless agrees that "one can conclude that a 'pure' moment of silence law is probably valid unless the legislative history dilutes the purity." *Id.* at 1135 (citation omitted).

26. *See, e.g.*, Note, *The Unconstitutionality of State Statutes Authorizing Moments of Silence in the Public Schools*, 96 HARV. L. REV. 1874 (1983); Note, *Daily Moments of Silence in Public Schools: A Constitutional Analysis*, 58 N.Y.U. L. REV. 364 (1983) [hereinafter cited as Note, *Daily Moments of Silence*].

27. The "test" was first fashioned into a formula in Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). There, the Court attempted to reduce its rich jurisprudence of religion into a three-part formula. To "pass muster" under the establishment clause: "First, the statute must have a secular legislative purpose; second, its principle or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'" *Id.* (citations omitted).

Like most such formulae, the "three-pronged Lemon test" tends to give a misleading impression that some fixed mechanism can lead to consistent and predictable results. This test is an example of the unfortunate "formulaic style" of opinion-writing that the Supreme Court has been given to in recent years. As Charles Black, Jr. has written: "Some people seem to think such general formulae should be essayed as often as possible; I think they should be constructed as rarely as possible." C. BLACK, DECISION ACCORDING TO LAW 61-62 (1981). *See also* Nagel, *The Formulaic Constitution*, 84 MICH. L. REV. 165 (1985).

28. 572 F. Supp. 1561 (D.N.J. 1983).

viding a transition to the school day or a means for settling children down—were "pretextual," post-hoc rationalizations. Since no legitimate "secular purpose" was found for the statute, it was held invalid.[29]

The problem with this analysis is the initial assumption that a literal "secular purpose" is required. The "secular purpose" part of the Lemon formula is a somewhat inaccurate reformulation of the sensible principle drawn from earlier cases that if the purpose of an enactment is the advancement (or inhibition) of religion, it violates the Establishment Clause.[30] The encapsulation of this principle as the "secular purpose prong" does not quite capture the original meaning: The absence of a secular purpose is not co-extensive with the presence of a forbidden purpose of advancing religion. The creation of a moment of reflective silence may be a case falling precisely into this gap. A statute that provides an occasion in which those who freely choose to do so may pray cannot candidly be described as having a "secular" purpose; this, however, does not mean that the legislative purpose is necessarily to "advance religion," nor (to use Justice O'Connor's promising approach) does such a neutral moment invariably constitute a legislative "endorsement" of religion.[31]

A neutral moment of silence is a brief "open forum" functionally similar to the student activity period whose use for religious purposes by voluntary groups of university students was upheld by the Supreme Court in *Widmar v. Vincent*.[32] By requiring equal access by student-organized religious groups to university facilities, the *Widmar* decision necessarily rejects the proposition that the Constitution precludes prayer or religious activity from occurring in public buildings or on other state property. Those who would invalidate a neutral moment-of-silence law on the basis that such a statute is a "'subterfuge' for restoring prayer to the classroom"[33] thus overlook the fact that there is nothing constitutionally offensive about the mere existence of prayer in the public schools or anywhere else.[34] The constitutional evil to be avoided is government encouragement

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29. *Id.* at 1572. A panel of the Court of Appeals for the Third Circuit affirmed, even though its decision came after the Supreme Court's decision in *Jaffree*, and even though it concluded that there was no legislative intention to encourage prayer over other alternatives. May v. Cooperman, 780 F.2d 240, 252-53 (3d Cir. 1985).

30. The transition may have first occurred in a passing phrase in School Dist. of Abington Township v. Schempp, 374 U.S. 203, 222 (1963), where Justice Clark equated the "advancement of religion" with the absence of "a secular legislative purpose."

31. Wallace v. Jaffree, 105 S. Ct. 2479, 2497 (1985) (O'Connor, J., concurring). I think that the correct approach was most nearly captured by John Hart Ely in 1970 when he wrote that judicial intervention is warranted whenever there is proof that a government decision "resulted from a desire comparatively to favor or disfavor a religion or religion generally." Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205, 1314 (1970).

32. 454 U.S. 263 (1981).

33. *See* Note, *Daily Moments of Silence*, *supra* note 26, at 371 (citations omitted).

34. For a thoughtful discussion of the open forum concept, see Loewy, *School Prayer, Neutrality, and the Open Forum: Why We Don't Need a Constitutional Amendment*, 61 N.C.L. REV. 141

or inducement to pray or not to pray. As long as prayer results from the private choice of individual citizens, the Constitution is not violated.[35]

The fact that some legislators may hope (or even "hope and pray") that children will choose to use an undesignated moment of reflective silence for prayer should not in itself be sufficient to invalidate such a statute. It is often the case that one who helps create an open, "neutral" forum has some hope or expectation about how that forum will be used. A Republican city councilman may vote to create a "first come, first served" speaker's box in the public park in the hope that most speakers will choose to argue persuasively the case for the virtues of the Republican Party, while a Democratic colleague may support the ordinance with exactly the opposite hope or expectation. The key factor, for neutrality analysis, is the dispositive role of private citizen choice. If the government has scrupulously refrained from tilting the forum for or against religion or Republicans or Democrats, but has provided an occasion for wholly free choice by the speaker (or in our case, the meditator), uninfluenced by any governmental endorsement or promotion, the fact that some or many legislators expect or hope that many citizens will in fact use the forum as the legislators would have wished should not in itself render the forum-creating law invalid.[36] Where a statute creates an open and undesignated time for personal reflection, government itself has not undertaken comparatively to favor or disfavor religion.

I am thus persuaded that there is a substantial constitutional basis for the Supreme Court's suggestion that it will sustain most statutes providing for a simple moment of silence[37] while continuing to invalidate those spe-

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(1982).

35. I find the argument that some neutral moment of silence statutes promote religion *because* they are sponsored by the same people who previously supported oral prayer statutes (or silence statutes specifically designating prayer) to be unpersuasive. What these legislatures have in fact done is to move from a statutory framework under which prayer was established or explicitly suggested by the government to one in which any prayer that occurs will be a product of private citizen choice. That, in my view, is a constitutionally critical difference.

36. One plausible piece of "legislative history" that could provide a basis for sustaining a state statute creating a neutral moment of silence would be a statement by the sponsoring State Representative to the effect:

> The bill I have introduced provides simply that there will be one minute of silence at the beginning of each school day. I would not bother to bring this bill forward if I did not have some idea about how I would like to see that time used. Quite frankly, my personal goal is that I want my children to have an opportunity for a silent prayer each day, and I will, as a parent, encourage them to use the time for that purpose. You, however, may want your children to reflect upon the evils of racism or sexism, or the need for a more humane society. This legislation does not in any way suggest or favor any of these alternatives over the others. It merely creates an opportunity for personal reflection.

While I would not think it accurate to say that this legislator had a "secular purpose," neither would I say of this statute that its purpose was the "advancement or inhibition of religion," or that it was designed comparatively to favor or disfavor religion.

37. It is possible, of course, that any particular moment of silence might be implemented by local officials in a manner that impermissibly promoted religion generally or a particular religion. For

cifically designating prayer. The Supreme Court has in fact consistently reached sound results in cases involving religion in the public schools and state universities, and is unlikely to arrive at results in this area that conflict with common sense. And here common sense would seem to indicate that a moment of reflective silence does not ordinarily constitute a legislative endorsement of religion, while the creation of a moment of silence "for prayer" does constitute such an endorsement.

II.

Whether or not a neutral moment for reflective silence is theoretically sound constitutional doctrine, the fact remains that the Supreme Court is likely to sustain such statutes. Anyone who can count to five should conclude, as Justice White did, that "a majority of the Court would approve statutes that provided for a moment of silence but did not mention prayer."[38] If the proposed amendment is to have any operative effect, therefore, it must do more than merely permit the setting aside of a moment of silence. And it does: It would permit government authorities at all levels to engage in the active promotion of religious exercises. This would be a substantial change in our constitutional fabric, but it is one that the Senate Report obscures and nowhere defends.

By asserting that the amendment is "intended to reverse the effects of *Jaffree v. Wallace* as it relates to silent prayer,"[39] and by erroneously stating that the Supreme Court had "effectively outlawed" silent prayer,[40] the Senate Report seems to suggest that the modest effect of adopting this amendment would be no greater than a judicial decision that permitted a state to set aside one minute for "silent prayer or meditation." Only obliquely does the Report acknowledge that the real thrust of the amendment would be to permit state sponsorship of a religious practice; such acknowledgments are accompanied by assertions of limits on state promotion that are simply inconsistent with the proposed amendment's text.[41]

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school officials or teachers to urge that an undesignated moment of silence be used for prayer would, of course, be constitutionally invalid. There are so many ways in which government officials might promote particular religious practices that it is not possible to specify in advance all those that might be constitutionally offensive. This is in itself an argument for rejecting the blunderbuss approach of a constitutional amendment that would wholly withdraw the subject from judicial scrutiny, and an argument for retaining case-by-case adjudication.

38. *Jaffree*, 105 S. Ct. at 2508 (White, J., dissenting).

39. SENATE REPORT, *supra* note 1, at 27.

40. *Id.* at 36.

41. *See id.* at 29:

> [I]t is intended that the Government be authorized to sponsor such prayer or reflection, to the extent of permitting the classroom teacher or other school administrator to structure the opportunity for prayer by formally announcing the period for silent prayer or reflection, ensuring discipline during the period for prayer, and formally concluding the period for prayer.

These suggested "limits" on state promotion of the exercises are wholly unrealistic and understated, as

The critical fact that the defenders of the amendment obscure is this: Adoption of a constitutional amendment that states "[n]othing in this Constitution shall be construed to prohibit [a certain practice]" creates something like a constitutional black hole. Once constitutional limits are removed in this blanket fashion, extreme as well as moderate government actions in furtherance of the practice will be left to the vagaries of future political processes. The potential effects of this proposed amendment to the Constitution are perhaps best illustrated by the following hypothetical question: If this amendment were proposed by Congress and ratified by the States, would there remain anything in the Constitution that would prevent the U.S. Department of Education from issuing the following Federal Prayer Regulation binding on each of the 38,000 local school districts in the United States that receive federal funds?

> Regulation Z—U.S. Department of Education:
>
> Effective September 1, 2000, all school districts must, as a condition of eligibility for federal funds, comply with this regulation. Each school district shall require that ten (10) minutes be set aside at least six (6) times during each school day for silent prayer exercises. All pupils must be assembled in a common place for these prayer exercises. Use of prayer cards and rosary beads shall be permitted. (Nonconforming pupils may be released from these exercises by a timely annual filing of Form Z-1). The Superintendent of Schools, the School Board, and every principal, teacher and counselor (except for those excused on grounds of conscientious objection by annual filing of Form Z-2) shall regularly urge every pupil to participate in these silent prayer exercises through public address announcements and individual counseling. Continued eligibility for federal funding shall be dependent upon a school system having an affirmative program to encourage every child to participate in the silent prayer exercises. School districts shall file compliance forms with the Undersecretary for Prayer at the beginning of each school year.

I do not mean to suggest that such a regulation is (in the present) politically likely.[42] The proposed amendment—which would be the first amendment of the First Amendment in its nearly 200-year-old history—could, however, be a part of a constitutional structure that may endure for another two centuries. We should therefore attend to its potential consequences regardless of time-bound notions of plausibility. I believe that I can defend the proposition that after adoption of this proposed amendment, Regulation Z (and similar, but less radical, federal regulations) would be constitutional.

I attempt to show below. *See infra* text accompanying notes 42-51.

42. *But see* Margaret Atwood's new novel, M. ATWOOD, THE HANDMAID'S TALE (1985).

The amendment begins with the provision that "[n]othing in this Constitution shall be construed to prohibit individual or group silent prayer or reflection in public schools." The expectation of the proponents of the amendment may be that state and local governments would elect to create only one-minute periods once a day to take place in the classroom where students were already seated. But once the subject of silent prayer is liberated from constitutional constraint, officials may in the course of time decide that ten minutes six times a day is more appropriate. Neither the term "moment" nor any other time limit appears in the proposed amendment. And what would stand in the way of assembling the entire student body in daily convocation for "silent prayer"? The amendment specifically immunizes "group" silent prayer from constitutional review, without limiting the size of the "group."

It will not avail to object that the hypothetical regulation would be invalid because it requires local school districts to actively promote religion. While under present constitutional law such active promotion of religion would be invalid, it is precisely this principle that, as applied to group silent prayer, the proposed amendment is designed to overturn. According to the Senate Report the purpose of the amendment is to restore "the original understanding of the 'establishment clause.'"[43] The supposed "original understanding" to which the Committee seeks to return is the understanding that the Constitution only precludes government promotion of particular sects, while permitting "congressional support for religion in general."[44]

At another point the Senate Report states that the amendment's purpose is "to restore the historic meaning of the first amendment [which has been] sharply altered by the Court's decision in *Jaffree*."[45] Since the very basis of the *Jaffree* decision is that governments may not go beyond the creation of a moment of silence and affirmatively engage in the endorsement and promotion of religion (as the Alabama legislature had done), the only sensible reading of this passage is that government action promoting religion (at least with respect to silent prayer exercises) will be immune from constitutional scrutiny after the adoption of the amendment.[46]

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43. SENATE REPORT, *supra* note 1, at 2.

44. *Id.* at 4.

45. *Id.* at 2.

46. The Senate Report confidently asserts as a fact the proposition that the establishment clause ("Congress shall make no law respecting an establishment of religion") was only "intended" to preclude the creation of a national church or governmental preference for one particular sect, and that the First Amendment left the government free to promote, aid, and advance religion generally. *Id.* at 4. There is, to say the least, considerable dispute about the validity of this assertion. For a recent argument that the the establishment clause precluded governmental promotion of religion generally, see L. LEVY, *The Original Meaning of the Establishment Clause*, in CONSTITUTIONAL OPINIONS: ASPECTS OF THE BILL OF RIGHTS 135 (1986).

Either this amendment permits governments to promote group silent prayer exercises, or it does nothing at all. If it permits government endorsement and promotion, it permits it without any apparent limit, other than that stated in the second sentence: "Neither the United States nor any State shall require any person to participate in such prayer or reflection, nor shall they encourage any particular form of silent prayer or reflection." This is less of a qualification than might at first appear. Note that the amendment forbids only the encouragement of "any particular form" of silent prayer, thereby leaving government free to "encourage" silent prayer generally. It forbids government from "requiring" students to participate; it does not forbid government from encouraging students to participate. In short, government officials at every level would be free to promote participation by students—to suggest, counsel, and urge participation—as long as they stopped short of compulsion.

The Senate Report shows remarkably little sensitivity to the potential effects of the amendment. In one sanguine passage the Report states that "[a] reasonable effort should be made to minimize any inconvenience or embarrassment caused the nonparticipating student, and to minimize the conspicuousness with which his nonparticipation is accommodated."[47] The operative word here is "should." After ratification of the amendment such sensitivity would be wholly a matter of grace with each set of government officials. Even more striking is the Report's next sentence: "No inquiries into the reason for such nonparticipation would be permitted."[48] This statement is just flatly inconsistent with the text of the amendment. The amendment prevents officials only from "requiring" participation. It does not prevent officials from inquiring of students why they have chosen not to participate or from suggesting, urging, or counseling them to see the error of their ways and join group gatherings officially designated as silent prayer meetings. As long as officials refrain from "encouraging any particular form of silent prayer" they are free to encourage silent prayer generally. The Report also errs in assuming that the decision "[w]hether or not to structure a devotional exercise consistent with this amendment would be a decision in the sole discretion of those State and local authorities who are otherwise responsible for determining and administering public school policies."[49] The amendment would remove, for group silent

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The notion that government may promote "religion generally" but not any particular religion is an almost incoherent concept. In the real world, any actions by government officials purportedly designed to promote "religion generally" will almost inevitably benefit some religions more than others. When the government establishes public group prayers, for example, it favors those religions for whom collective prayer is a tradition over those that prefer more private and individualized prayer.

47. SENATE REPORT, *supra* note 1, at 30.

48. *Id.*

49. *Id.* at 27.

prayer, the constitutional barrier of the First Amendment that presently precludes the federal government from promoting religious exercises.[50] Whatever decisions state and local authorities made concerning group silent prayer exercises could simply be overridden by the federal government under the spending power.[51]

In short, while the amendment is not necessary to permit states to establish a moment of silence, it (1) would permit state and local officials to take whatever steps they desired (short of compulsion) to persuade pupils to participate in silent prayer, and (2) would remove the present First Amendment barrier that precludes federal government officials from taking steps to persuade children to engage in silent prayer exercises, or from imposing federal silent prayer guidelines on state and local school systems.

I would not advance these objections so strongly if I believed that they resulted only from minor problems of drafting. These and similar problems are, on the contrary, embedded in the structure of any amendment seeking to overturn either *Engle* or *Jaffree*, for the heart of those decisions is that government itself may not sponsor, promote, or endorse religious exercises. Once government promotion is deemed acceptable, the amendment provides no stopping point that would limit the zeal which federal, state, and local governments may bring to the task.[52]

III.

Casting a shadow over the specific issues I have raised above is the more general question of how this Silent Prayer Amendment would be brought into harmony with the existing religion clauses of the First Amendment. Even though this amendment deals specifically only with silent prayer exercises, its underlying theory is that it is permissible for

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50. The argument that federal legislative authority could be invoked was first made in testimony in opposition to President Reagan's proposed amendment by my colleague William Van Alstyne. *See 1982 Hearings*, *supra* note 4, at 466-68 (prepared statement of Professor Van Alstyne); *see also* Van Alstyne & Dellinger, *Government Control of Religion?*, Wash. Post, Nov. 7, 1982, at B5, col. 1.

51. Anyone who doubts that after adoption of this amendment the federal government would have legislative jurisdiction to provide nation-wide guidelines requiring local school districts to hold and actively promote group silent prayer convocations should take a look at the Equal Access Act, 20 U.S.C. § 4071 (Supp. II 1984). It provides that it shall be unlawful for any public secondary school which receives federal financial assistance to deny, under described circumstances, equal access for religious speech. *Id.* § 4071(a). Once the barrier to government-promoted silent prayer exercises had been removed, Congress could use the spending power in precisely this way to impose whatever guidelines it wished on the practice of group silent prayer.

52. This is not a flaw that is likely to be cured by revision of the amendment. One could imagine adding to the amendment a list of specific steps that would constitute the exclusive means that government officials could use to endorse and promote silent prayer exercises. Such a revision, by giving prominent visibility to the fact that the amendment permits government endorsement and promotion of religion, would likely spell political doom for the amendment. If all government endorsement and promotion were forbidden, then, as I have argued above, the amendment would become a pointless recapitulation of existing law.

government to engage in the business of promoting religion. How are the courts to reconcile the dissonance created by this principle and the contrary view that has emerged through interpretations of the establishment clause? How can one justify a jurisprudence predicated upon the notion that the Constitution (through the First Amendment) precludes governmental promotion of religion when another part of the same Constitution—the Silent Prayer Amendment—would endorse governmental promotion for one kind of religious activity? Would "silent prayer" remain an exceptional case? Or would adoption of this amendment be more properly viewed as rejection of the larger principle that forms the core of the present establishment clause? If the latter is the case, then adoption of this amendment could ultimately undercut the force of the establishment clause across the entire spectrum of government-sponsored religious activities, and not simply with respect to silent prayer exercises. This is a basic issue of constitutionalism that extends well beyond the immediate area of prayer and religion. The awkwardness and uncertainty of reconciling the specific with the general counsels strongly, in my view, against placing in the Constitution any provision (other than one dealing with organizational matters, such as the term of the President) that does not establish a constitutional principle, but deals instead with one very specific practice.

IV.

It is, of course, possible that I am mistaken that this amendment would permit active, intrusive governmental promotion of silent prayer exercises. It is possible that the amendment would be tightly and strictly construed. If it were interpreted to permit only the setting aside of an undesignated moment of silence, it is simply unnecessary. If it goes one step further and permits legislators to designate such a moment as being "for prayer" while somehow precluding any additional promotional activities, it would change in that one respect what seems to be the evolving law. It would, in that case, constitute the most trivial amendment to the Constitution of the United States ever proposed by Congress.

Even if the amendment is so trivial that its incorporation into the Constitution would do no lasting harm to the fabric of religious freedom, its submission to the states could nonetheless be a thoughtlessly harmful act. Proposal by the Congress of an amendment to the Constitution launches an uncertain process.[53] There is much that we do not know about the law of constitutional amendment. We have no definitive answer to questions as basic as whether a state may rescind an earlier ratification, or whether

53. On the present uncertainty of the amendment process, see Dellinger, *The Legitimacy of Constitutional Change: Rethinking the Amendment Process*, 97 HARV. L. REV. 386 (1983).

Congress can extend a time deadline for ratification. What the Senate Judiciary Committee proposes to do is to send out to fifty state capitols a potentially divisive amendment that is likely to heighten religious tensions in this country. From Montpelier to Sacramento, from Tallahassee to Juneau, we are likely to witness ratification debates that set Jew against Gentile, and that place the Knights of Columbus in conflict with the United Presbyterian Church. For seven (perhaps ten) years, we may witness a struggle among religious groups over whether to ratify this apparently trivial but potentially dangerous amendment to the Constitution.

I urge you and your colleagues to refrain from submitting this unwise and unnecessary amendment to the states.

Respectfully,

Walter Dellinger /s/
Professor of Law
Duke University

Statement of Walter Dellinger

Last summer, Professor Walter Dellinger testified before both the United States Senate Subcommittee on the Constitution and the full Senate Judiciary Committee on proposed constitutional amendments relating to school prayer. On April 29, 1983, Professor Dellinger testified before the Subcommittee chaired by Senator Orrin Hatch (R-Utah) on S.J. 73, a constitutional amendment proposed by President Reagan. The text of the amendment provides:

> Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or by any State to participate in prayer.

Excerpts from the transcript of Professor Dellinger's oral testimony follow:

Professor Dellinger. Senator Hatch, I would prefer to summarize my views this morning and, with the permission of the Chair, submit next week a full written statement addressing the constitutional amendment proposed in S.J. Resolution 73.

Senator Hatch. We will be delighted to put that in the record, without objection.

Professor Dellinger. The constitutional amendment, Senator Hatch, proposed by this Administration is one that I fear would lead to government control of the content of religious exercises. The issue of government control is one which the Administration has assiduously sought to avoid discussing. Deputy Attorney General, Mr. Schmults, again avoided discussing that question this morning.

I believe that if S.J. Resolution 73 is fully analyzed, many of those who believe that they support that amendment will not support it. It is an amendment that would permit state officials and elected and appointed bureaucrats and politicians to compose prayers and religious liturgies and to require that those prayers be said in every school district in a state.

Senator Hatch. You would not have the same objection with a silent prayer?

Professor Dellinger. No. In fact, one of the virtues of a period of silent meditation is that no government official is involved in the composition of prayer.



Dellinger

Senator Hatch. Yes.

Professor Dellinger. Now, what is so troublesome about S.J. Resolution 73 is that several of those who testified at the hearings last summer in favor of it—Mr. Murphy, the Deputy Supreme Knight of the Knights of Columbus, and Mr. Jarmon of Project Prayer—stated that they were *opposed* to allowing state officials to compose and draft official prayers. They did not understand this amendment to permit that. They are wrong, and I think they would not necessarily support this amendment if they were, for example, to attend to the Department of Justice's own analysis of this amendment—an analysis that the Administration has attempted to avoid since last summer.

Senator Hatch. Well, that is a good point.

Professor Dellinger. I would like to cite to you, Senator, chapter and verse from the legal analysis prepared by the Office of Legal Policy of the Department of Justice and transmitted by the President of the United States which states, "The determination of the appropriate type of prayer is a decision which should properly be made by state and local authorities." The Administration also expressly recognizes that the amendment would allow "arguably sectarian prayer" to be "promoted by the state." The Department of Justice's legal memorandum states further, "The proposed amendment also does not specifically limit prayer in public schools and other public institutions to non-denominational prayer." Finally, the Administration states, "The language of the amendment is intended to overrule *Engel v. Vitale,* which forbade the reading of brief *state-composed* prayers" (emphasis added).

In the question and answer list provided by the White House on May 6, 1982, the White House said that state governments "could choose prayers that have already been written or they could compose their own prayers." Indeed, there is no way around that conclusion. What the amendment does is to remove the present First Amendment barrier to

prayer in public schools and public institutions. By removing the First Amendment barrier presently existing, power resumes in state legislatures, which have control over the schools of the state, to make whatever rules or regulations they wish.

So, for example, if this amendment is adopted and ratified by three-fourths of the states, a local school board could have a meeting of its elected officials and sit down and hammer out and compose a prayer that every school within the district in every classroom is required to recite every day. An individual child, I quite clearly understand, could absent himself from such an exercise. But the vice here is the *composition* of that prayer by school board officials.

If the state department of public instruction is not satisfied with what some localities are requiring in the way of sectarian prayer, that department could mandate its own bureaucratically-composed prayer required of every school district in the state.

*The vice here is the **composition** of [an official] prayer by school board officials.*

The Administration must acknowledge this to be so, because the very case they expressly seek to overrule, *Engel v. Vitale,* involved a prayer whose vice was that it was composed by state government officials. It was composed by state officials who were politically appointed and who drafted and composed an official prayer for New York public schools.

Finally, we need to look at an aspect of this proposal that should be seriously considered by someone who has shown the great concern for the principles of federalism that you have exhibited throughout your career in the United States Senate. Ponder this next possibility: If this amendment is adopted, there would be nothing in the Constitution of the United States to prevent the federal government, through bureaucrats in the United States Department of Education, from conditioning all federal funding in 38,000 school districts in the United States on those school districts engaging in a religious exercise which is composed, drafted, and mandated by bureaucrats in the United States Department of Education. If there were any doubt as to the plausibility of that scenario, I think that doubt is removed by the fact that that very same legislative device has been utilized in two bills which are also before this Committee.

Senator Hatch. Do you think a statute could actually enable that to happen?

Professor Dellinger. Yes. Congress could say that future federal funding to all 38,000 school districts is dependent upon those school districts following the religious ritual mandated by Congress, or it could simply turn that determination over to the Department of Education for the issuance of appropriate religious liturgy and approved liturgical guidelines.

Now, the Administration is obviously very concerned about the issue of who would control and compose the prayers because they seek in every way possible to avoid that issue. The Deputy Attorney General's testimony was carefully rewritten from last year to dance around their previous clear acknowledgement that state officials could compose prayers if that amendment were adopted.

Senator Hatch. I would have to acknowledge that.

Professor Dellinger. Once you remove the only barrier in the Constitution that prevents a prayer from being drafted by government officials —once you remove that by completely carving out of the Constitution all issues relating to prayer in public schools and other public institutions, then whoever is in charge of the premises, whatever level of government has ultimate authority to make determinations about the public institution or public school, has a constitutional carte blanche to draft and determine whatever the prayer will be.

Senator Hatch. Let me interrupt you on that point.

Professor Dellinger. Yes.

Senator Hatch. I really think you are doing the Committee a great service in pointing that out. I feel the same way. I feel we have to resolve that in this Subcommittee in what we will come up with as a final draft of this constitutional amendment.

I agree with you that the Administration witnesses have carefully skirted that issue.

Professor Dellinger. My colleague William Van Alstyne, and I published a short piece in the *Washington Post* and indicated the possibility that the federal government would indeed have the authority under the spending power, if this amendment passed to mandate a federally-composed prayer. There followed a considerable silence from the Department of Justice which I think recognized the correctness of our position. We did find a response published in the *Post* from the Deputy in the Department of Education, who just simply characterized that suggestion as ludicrous. We wrote back in response and went through the Department of Justice's own memorandum, citing the Department's own acknowledgement that government control could follow from this amendment.

The First Amendment has been part of our Constitution for 192 years and this amendment, were it, say, the Twenty-Seventh Amendment, would be part of our Constitution perhaps for centuries to come, and it would thus permanently remove the First Amendment barrier to control of prayer by government officials.

My only closing remark, Senator, is that I wish, if representatives of either the Department of Education or the Department of Justice come back before the Commitee on this issue, I would like to see the Com-

Government control could follow from this amendment.

mittee directly put to those officials —for example, to the Deputy Attorney General—this question: *if this amendment is adopted and ratified by the states, will there be anything in the Constitution that would prohibit the federal government from conditioning the receipt of federal funds in all school districts in the United States on the adoption by those school districts of federal religious exercise guidelines issued by the United States Department of Education?*

Senator Hatch. We will be happy to submit that to them.

Professor Dellinger. Thank you.

Senator Hatch. We will see that they answer that question.

What about the intent of the Fourteenth Amendment to incorporate the First Amendment?

Professor Dellinger. Those are issues that I think, Senator, are buried in the womb of time. I certainly agree that the First Amendment of the Constitution was only intended to limit the federal government and not to limit the states at all.

After the adoption of the Fourteenth Amendment, it then became the responsibility of the courts to determine the content of liberty protected against state interference by the Fourteenth Amendment. There are many sources for a court to provide some content for that "liberty." One source is to look and see what liberties were guaranteed against the federal government, and to ask whether the meaning of the Fourteenth Amendment is that those same liberties should be applied against the state governments.

Even those Justices who do not believe in some strict incorporation, however, like Justices Harlan and Frankfurter, believed that the principle of liberty guaranteed against state infringement by the Fourteenth Amendment is one which the courts are in a very real sense charged with developing.

You have to remember, Senator, that the Congress which proposed the Fourteenth Amendment was made up very largely of lawyers—lawyers who were fully familiar with both *Marbury v. Madison* and *McCulloch v. Maryland.* So, those who drafted the Fourteenth Amendment and sent it to the states were familiar both with the concept of judicial review and with an open-textured reading of the Constitution. They knew John Marshall, so in that sense they knew what they were doing.

Senator Hatch. That is great. In light of the intent of the Framers concerning the Establishment Clause of the First Amendment, do you not feel that there is a need for amending the Constitution to erase the Court's error?

Professor Dellinger. I am not at all persuaded that the Court is in error. Senator, one problem is this: the Supreme Court's decisions have only invalidated teacher-led, school-initiated, government-sponsored prayer. Now, this Committee has heard accurate statements from around the country that there are school principals who say, "We cannot allow the Fellowship of Christian Athletes to have a meeting at our school, even though we permit the key club and the rodeo club to meet."

There are school principals around the country that think that. Do you know why they think that? They think that, in part, because the President of the United States and many distinguished members of Congress have for many years been misleading the American people by constantly stating that the U.S. Supreme Court has forbidden all prayer in the public schools.

That just is not true, but unfortunately a lot of school principals believe what United States Senators and Presidents tell them the Supreme Court has decided. Members of Congress have gone out telling people over and over again, and the President has said as a candidate and later, that the Supreme Court of the United States has forbidden little children to pray in schools. And what happens? Some people take them at their word, including a lot of school principals who think that you cannot allow any prayer on public premises.

The Supreme Court has never held that. And when the Court in *Widmar v. Vincent* had the first occasion to deal with any truly voluntary student activity, they expressly held that on state university property, built with state funds and paid for by state taxpayers, you could indeed have prayer. And you could have worship to the extent that the facilities were available to similarly situated, nonreligious organizations. That was concurred in, might I say, by Justices Brennan, Marshall, Blackmun, Powell, Rehnquist, Stevens, and O'Connor and by the Chief Justice—eight of the nine Justices agreeing on a single opinion.

Senator Hatch. That is astounding.

Professor Dellinger. I think what we have here is a non-problem, a problem which, if it exists, it exists because a lot of school principals have been misled by statements attributing to the Supreme Court something the Supreme Court has never held.

Senator Hatch. Well, let me at least say this. Things have been so confused that there at least has been a chilling effect on the free exercise of religion.

What we have here is a non-problem which... exists because a lot of school principals have been misled....

Professor Dellinger. I think that may be a problem.

Senator Hatch. It may take a constitutional amendment to resolve that problem, in the opinion of a number of us.

Professor Dellinger. Well, the reason I think we do not need a constitutional amendment is that the Supreme Court has not addressed the question of whether high schools, junior high schools, or any school that allows student-initiated, voluntary activities must also allow student-initiated religious clubs.

What evidence do we have on this question? We have an eight-to-one

opinion that firmly states the principle that you can use public property for religious activities—an eight-to-one decision of the United States Supreme Court in the college setting. The Court noted in a footnote, "We do not reach in this case the high school issue." I am willing to bet, Senator, though I know that you are not a betting man, that in a case involving truly student-intiated, voluntary activities in a public school setting, the Supreme Court will apply the principles of *Widmar* and forbid discrimination against truly voluntary extra-curricular activities involving religious speech.

The idea that we need a constitutional amendment to beat the Supreme Court to the punch—an amendment to the Constitution to deal with, at the most, two erroneous decisions of lower three-judge court panels—does not strike me as very persuasive, given the risk that this particular amendment does so much more by creating a First Amendment black hole with respect to prayer.

When you create a black hole in the Constitution—which is what you do when you use the language "nothing in this Constitution prohibits,"—no matter how sectarian the prayer, no matter how many politicians and bureaucrats were involved in divisive religious warfare in agreeing on the liturgy, when such a case comes to the Supreme Court they are going to say that nothing in this Constitution prohibits it.

This...amendment [creates] a First Amendment black hole with respect to prayer.

Senator Hatch. Let me just say something to you. I have really appreciated your testimony today because I agree with much of it.

Professor Dellinger. Well, Senator, one of the reasons I enjoy testifying before this Committee is that you take these issues very seriously.

Senator Hatch. Well, let me say that I think you and your colleague, Bill Van Alstyne, have both contributed generously to this Committee and to its thought processes on constitutional issues. I think you have been very helpful. I have had lots of questions about the Administration's constitutional amendment. I have no doubt that that is not going to be the final language out of this Committee; at least I do not believe it will be.

Professor Dellinger. People tend to overreact to lower court decisions. We have a whole lot of federal judges these days, and in area after area I find people overreacting to lower court decisions which often do not stand the test of time when they come to the scrutiny of the United States Supreme Court.

Senator Hatch. I agree with you on that. You know, among you, Bill Van Alstyne, and Don Horowitz, I think we have had some tremendous testimony up here.... I just want to personally thank you for being with us today. As usual, you folks from Duke never let us down. You know, I commend your university for having the high quality of thinking that you have down there. I do not always agree with you, but that does not mean that I am right either. All I can say is that I think you have added a lot to this Committee's deliberation and the future deliberations of this Committee on this very important issue. Thank you so much, Professor Dellinger; we appreciate it.

Professor Dellinger. Thank you.

On July 27, 1983, Professor Dellinger testified before the Senate Judiciary Committee, chaired by Senator Strom Thurmond (R-S.C.), on the original Administration proposal, S.J. 73, and on a milder substitute proposal by Senator Hatch permitting for a moment of silence for prayer or meditation and requiring equal access to the use of public school facilities for all voluntary student groups (which would include voluntary student religious groups). Dellinger first addressed again the original Administration proposal, S.J. 73.

Professor Dellinger. Mr. Chairman, my statement is not a formally-prepared statement. I would like to directly confront the statements made by the previous witness, the Deputy Attorney General, which I think go to the heart of the matter that is before this Committee. I think that once again spokesmen for the Administration have evaded addressing the central issue under the Administration's proposal, S.J. Resolution 73: Who will compose the group prayer?

If S.J. Resolution 73 is adopted as a part of the Constitution, there would be nothing left in that document that would prevent federal bureaucrats in the Department of Education from requiring, as a conditioning of federal funding, that local school districts adopt religious prayer guidelines issued by the Department of Education. My colleague and I previously challenged the Administration in the *Washington Post* and in my testimony last April to show why this would not be the case. They had no answer then; they have not answered since; they have not answered that question today.

[The central issue is:] Who will compose the group prayer?

When you asked the Deputy Attorney General the very pertinent question this morning, at what level of government would the determination of the proper prayer be made, he said, "Oh, we expect the determination to be made by local people,

maybe even in each classroom." But the first local determination could clearly be overruled, as can all other affairs in the school districts, by the school board, by the state education board, by the state legislature, or by whoever would otherwise have authority to set the rules.

Only one thing now prevents state and federal officials from prescribing their preferred official religious guidelines, and that one thing is the First Amendment's ban on government-sponsored prayers in the public schools, a ban the Administration explicitly wishes to overturn.

The Chairman [Senator Thurmond]. Did you have any suggestions on that point? What would you suggest?

Professor Dellinger. I would suggest, Senator, that no amendment that eliminates the constitutional barrier to organized group prayer in the public schools can avoid the problem of having a government official determine that prayer.

The Chairman. I understand. Now, you are opposed to that?

Professor Dellinger. Yes, sir.

The Chairman. I understand your position. But now, do you have a suggestion to make that would modify that or remedy that?

Professor Dellinger. The only suggestion I have, Senator, is that the Committee propose no amendment.

The Chairman. Well, if they do propose one, what do you suggest?

Professor Dellinger. Senator, I do not believe that any constitutional amendment is necessary.

The Chairman. In other words, do you not think it could be modified to stand the test?

Professor Dellinger. No, I do not think it could be modified in any way to make it acceptable.

Professor Dellinger then addressed the modified school prayer amendment offered as a committee substitute by Senator Hatch. The Hatch substitute would propose a constitutional amendment providing that:

> Section 1. Nothing in this Constitution shall be construed to prohibit individual or group silent prayer or meditation in public schools. Neither the United States nor any State shall require any person to participate in prayer or meditation, nor shall they encourage any particular form of prayer or meditation.
> Section 2. Nothing in this Constitution shall be construed to prohibit equal access to the use of public school facilities by all voluntary student groups.

Professor Dellinger. I would like to commend the Subcommittee for its wisdom in offering a substitute for what I think is the extremely dangerous amendment proposed by President Reagan which was unfortunately defended again this morning by Deputy Attorney General Schmults. The Subcommittee proposal which Senator Hatch and Senator Grassley have endorsed avoids the central vice of the Administration's proposal since it provides for a moment of silent prayer or meditation. It thus leaves to each individual child the choice of a prayer or whether to pray at all. That avoids the problem of government control of the prayer itself. It does not give a constitutional carte blanche to government officials, as does the Reagan proposal, to compose official prayer.

The second portion of the Committee substitute concerning equal access for student groups states a basically sound constitutional principle. It is indeed with some reluctance, given how preferable the Committee substitute is, that I urge you not to report either of these proposed constitutional amendments to the Senate floor.

The two provisions in the Committee substitute, which I will refer to as the "moment of silence/equal access" amendment, generally represent present law, or the law that I would expect the Supreme Court to adopt. There are three relevant Supreme Court decisions. They do not preclude all prayer in the public schools. They do not preclude an individual student from quietly saying a prayer. They do not preclude a school board from adopting a pure moment for silent meditation which would afford an opportunity for individual prayer. The Deputy Attorney General stated this morning that there are "lots of lower court decisions" holding that silent prayer is impermissible. I beg to differ. On my count, there are now three lower federal court decisions which hold moment of silence statutes unconstitutional; and a fourth issuance of a temporary restraining order in New Jersey. There are also three lower court decisions sustaining moments of silence—one by the New Hampshire court, one by the New Jersey state court, one by the federal district court in Massachusetts.

Relevant Supreme Court decisions... do not preclude all prayer in the public schools.

The opinion of scholars who have studied this constitutional issue, however, is that a pure moment of silence would be sustained by the United States Supreme Court. It therefore seems to me clearly premature to adopt this amendment.

The Chairman. As I understand your position, Professor Dellinger, you are strongly opposed to the President's proposal on the grounds that it is very dangerous, and as to the alternative, you feel that they can do that now without a constitutional amendment; is that correct?

Professor Dellinger. I think that is what the Supreme Court will hold, Senator. A school board policy that there will be a moment of reflective silence observed at the beginning of each school day would in my view pass constitutional muster. If you add

the word "prayer," or specifically suggest prayer in the school board policy, I have some doubt about its validity. If one is litmus-paper sensitive to establishment violations, I think you would have to find there a trace of establishmentism, since the government would be specifically suggesting that one of the things you might do with your time is utilize it for prayer. I would therefore think it more constitutionally defensible if any moment of silence were designated simply as a moment for reflection—period, and letting each individual child choose how to use that time, free of governmental suggestion. Their parents can suggest that they use it for prayer; their ministers, their rabbis can suggest that they use it for prayer—or, if they wish, the children may reflect on non-religious matters. But whether or not the word "prayer" appears in a moment of silence provision, I think the Supreme Court might well sustain such a policy. Justice Brennan so indicated in his concurring opinion in *Abington Township v. Schempp*.

Thus, while the Administration's proposal is, in my opinion, deeply pernicious, the Subcommittee substitute is merely unnecessary. If it is unnecessary but might clarify the situation, why not adopt it? I think there is a very good reason for not proposing an unnecessary constitutional amendment dealing with prayer.

The Administration's proposal is, in my opinion, deeply pernicious.

During the ratification debate over the Equal Rights Amendment, we learned how much we do not know about the ratification process. We do not know whether states can rescind a ratification. We have no definitive answer to whether Congress can extend the time for ratification. Proposing amendments at this time is a very uncertain process. What this Committee proposes to do is to send to 50 state capitals two potentially divisive amendments, one that would be harmful, and one that is unnecessary, which are likely to heighten religious tensions in this country. From Montpelier to Sacramento, from Tallahassee to Juneau, you are inviting proceedings that set Jew against Gentile, that put the Knights of Columbus in conflict with the United Presbyterian Church. For 7 to 10 years, we will have a struggle among religious groups over whether to adopt these amendments.

This is a time in our country and other countries when many religious minorities feel that there is great stress on religious liberty. To propose either amendment would add to that stress.

To summarize my views on the two amendments, I find it extraordinary that anyone who is serious about religion could support S.J. 73, the Reagan Administration's proposal, that could lead to meddling by government officials and bureaucrats in determining the proper, official, governmentally-sanctioned prayer. And I am unpersuaded that we need a constitutional amendment to deal with issues that have not yet come before the Supreme Court concerning a moment of reflective silence and equal access to public school facilities, when the amendment process itself could foster religious strife and turmoil in 50 state legislatures.

Thank you, Mr. Chairman, and members of the Committee.

Melanne Verveer
Office of the First Lady
Room 101 OEOB

Office of the Press Secretary

For Immediate Release July 12, 1995

PRESS BRIEFING
BY SECRETARY OF EDUCATION RICHARD RILEY
AND ASSISTANT ATTORNEY GENERAL WALTER DELLINGER

The Briefing Room

1:30 P.M. EDT

SECRETARY RILEY: Thank you. The President's speech today is, as you know, the third speech in the last seven days in which he has articulated and defined his views on finding new common ground for the American people. At Georgetown last week, his speech on civic responsibility, and just a few days ago in Nashville at the Vice President's conference on the family and the media, the President got to the heart of the concerns that are troubling so many Americans over the breakdown of values and related issues.

The last two years I have visited with many educators, parents, religious leaders, and I've become increasingly aware of the real need to find a new common ground when it comes to the place of religious expression and religious freedom in our schools. Public schools should not be hostile to religion. They must protect the established rights of students -- and there are many, as you can see from the directive that the President has just issued.

Confusion about what the courts will and will not allow should not lead teachers or principals to violate the many established religious rights of students. But we really do need to do a better job, I think, of giving school officials the kind of information that they do need to protect those rights. And I believe that this directive will go a long way to reducing the confusion and ending the unnecessary litigation. And I think that's very good.

In his speech, the President is saying quite clearly that too many people have interpreted the Supreme Court decisions as precluding religious expression. He strongly disagrees and believes that the decisions do, in fact, allow great latitude for religious expression in a very significant way.

The President feels that those who believe that religious expression, religious freedom are precluded by the decisions of the Court and the Constitution are wrong. Equally, the President rejects those who want organized prayer in our public schools also. Public schools and, for that matter, any other level of government should not interfere or intrude on a family's religious beliefs, and goes against our grain to coerce people on something so important as their religious beliefs. Public education should be respectful of religion, open to appropriate religious expression and teach about religion because it is so very much a part of our nation's history.

But teachers and principals should not be in the position of advocating religion. Freedom of conscience and freedom of religion are at the very heart of American democracy. And that's why we should be very cautious about tampering with the Bill of Rights. The President has always been opposed to altering the First Amendment. It has never been altered in the entire history of this nation and it should not be altered now.

MORE

Today, however, we want to stress where we can find a new common ground. And I think this is the right way to go to resolve many of the conflicts that are out there, and get on with the important work of education.

Now, let me introduce Walter Dellinger, who's representing the Attorney General. Walter is Assistant Attorney General, and legal counsel to the Attorney General.

Walter.

ASSISTANT ATTORNEY GENERAL DELLINGER: Thank you, Mr. Secretary.

The President took a step today that other presidents should have taken a long time ago. And that step was to instruct his Secretary of Education to be very aggressive about letting the school districts of this country know that it is not, in fact, the case that the Constitution has expelled religion from the public schools of America.

I can recall more than a dozen years ago, in 1983, when the Congress was considering these issues before; and how many of us testified at that time that much of what was driving this problem and causing so much divisiveness and confusion and conflict was a widespread sense, created by a number of public figures who would repeatedly tell the American people that God and religion were precluded from our public schools.

Unfortunately, some school officials, some principals were confused by that and believed what they heard; and would rule that the Fellowship of Christian Athletes could not meet on school property, even though a wide array of other clubs were meeting. They would say that all their students were free to bring virtually any book of their choice to school; they couldn't bring the Bible. And if you're doing a book report, you couldn't report on a book that was about religion even if you had a broad range of topics otherwise to choose from. So that there was this very unfortunate dynamic in which the misunderstanding about what the religious rights of Americans truly are, including those Americans who are our children, fed a drive to violate one of our other basic principles. And that principle was enunciated by Justice Black over three decades ago when he said that it is no part of the business of government to compose prayers for any group of the American people. That's a bedrock principle.

But as Justice O'Connor wrote in 1990 for the Court, there is a crucial difference between government speech endorsing religion which the establishment cause forbids, and private speech endorsing religion which the First Amendment protects. It should have been clear for a long time that student religious groups are entitled to hold meetings at their schools, just as other extracurricular groups are allowed to meet; that they can come together to discuss their religious beliefs with each other, to pray, to read religious scriptures, and that they have the same right as other groups to publicize their meetings through the school's bulletin board and its newspapers and over its PA system.

It should have been clear for a long time that the Constitution does not require the subject of religion to be excluded from the classrooms. In the plainest terms a school need not attempt to teach about the abolitionist movement in America, while avoiding any mention of its wellspring in religion. And there's no reason for a school to exclude from a lesson about the civil rights movement any sense of how it drew so much of its strength from the African American church in the southern communities of this nation.

Needless to say, the application of these principles will sometimes require the making of careful judgment and the drawing of narrow lines. But the President has directed the Secretary to make sure that every school district understands those rights of religion that are available and that this be made clear to them while the President is maintaining his commitment to the bedrock principle that forbids government itself from interfering with or promoting religion.

And we'll be happy to take your questions.

Q Does this mean you can have prayer in the classroom, you can have an organized prayer in the classroom, you have a moment of silence, or does it mean that the teacher has all of these problems that she will face in terms of religious response?

SECRETARY RILEY: Well, I might say, first of all, that all of these issues are out there now. We didn't create any issues --

Q Nobody said you did.

SECRETARY RILEY: No, but I say that -- those problems that you mentioned, they are problems now. We've tried to clarify as best possible those areas which can be clarified based upon court decisions and the interpretation of the Supreme Court.

Now, a lot of things haven't been clarified yet, and those generally are not dealt with. So you cannot have, under the Court decisions -- and maybe Professor Dellinger should speak to that -- but you can't have, obviously, a school-sponsored prayer in the school or whatever. However, this idea of private prayer in the school is an entirely different matter.

Q But that doesn't -- that begs the question that Helen just asked. ANd that is, somebody can sit and choose to drop out of class and not pay attention and pray. But that's different than the teacher saying, okay, we're going to set aside a period of time, a moment of silence -- for want of a better word -- which has, in a lot of school districts, not been allowed to happen because it's been considered prayer in school. What's your -- what is the administration's position on a moment of silence?

ASSISTANT ATTORNEY GENERAL DELLINGER: Well, I can say -- to answer Ms. Thomas' question first -- that you cannot have religious activities that are organized by any government official, and that includes teachers and principals as well as school superintendents. They're not to do that.

And I think, in response to Ms. Braver's question, that a majority of the Supreme Court has clearly indicated that a neutral moment of silence, one in which the individual and not the government makes the decision about whether and how to pray, is constitutional.

Q So it's okay in the classroom, right?

ASSISTANT ATTORNEY GENERAL DELLINGER: A true neutral moment of silence the Court will sustain.

Q A lot of the provisions in the President's letter, though, go right around the edges of some Court decisions. Some of them are new ground; some of them require interpretations by the Justice Department. Do you expect challenges on those?

ASSISTANT ATTORNEY GENERAL DELLINGER: I hope and expect that when this is communicated by the Department of Education, it will greatly reduce the amount of conflict and controversy. Because there are some very clearly established rights. You cannot

discriminate against the bringing of a book because it's the Bible. You can't discriminate against a topic merely because it's a religious topic. You can't discriminate against a club because it wants to engage in religious activity. And, for example, students who are free in the informal settings to discuss politics with each other are also free to discuss religion. And by getting that message out against this large counter-sense in the culture that religion has been excluded, we hope that it will resolve a lot of controversies -- which is not to say that there is anything that any of us could do to remove all of the controversies.

I mean, one of the areas that you will inevitably have will arise when you try to draw that fine line between whether the prayer is a product of government or produce of wholly private belief. And sometimes what makes cases difficult is trying to decide when the connection between the government and the prayers become so attenuated that it is no longer a government decision to have prayer.

Q What if in your truly neutral moment of silence a student wished to unroll a prayer rug and kneel toward Mecca or engage in some even more demonstrative prayer -- would that be permitted in the President's thinking?

ASSISTANT ATTORNEY GENERAL DELLINGER: That is a detail about that issue which we simply haven't addressed.

Q I just want to ask you, do you consider that this directive from the President breaks any new interpretive ground or is simply a statement as best you can do at the Justice Department of existing law? And, Secretary Riley, will your memo or whatever it will be to school districts essentially just be this directive from the President to you, or is it a document yet to be prepared that will have further guidance interpretations in it?

SECRETARY RILEY: Well, I think the answer to your first question is it's basically an interpretation of current law, however you put it in words, we think that are clear and are helpful.

Now, in terms of how we will then distribute, we have instructions from the President, of course, to get to every school district by the first of the year in time to have this kind of information. Obviously, the directive itself will be sent to them because it is carefully thought out and the Justice Department and our people have worked on it together.

What we will do in addition to that I really cannot say at this time. Whether we would try to give some clarifying examples and other helpful information, I really cannot say at this time, but we will certainly investigate all that. What we want to be is helpful. We're not trying to make a point, but to be helpful as to what religious expression is protected and so people can have that to rely on.

Q Just to follow up, Mr. Dellinger, do you think there are any elements of these points the President cites that push the interpretive envelope at all or would be, as Mr. Williams suggested, the subject of any material controversy?

ASSISTANT ATTORNEY GENERAL DELLINGER: You know, it is impossible to act in this area without controversy. And it is impossible to develop a set of guidelines for the schools without having to engage in very, very serious discussion and debate. We had a lot of people talk about how we thought these basic principles ought to be applied. And we tried to give as much guidance as possible and to demonstrate really how much room there is for private religious activities just as we emphasize the other principle.

These are two principles that really are not very hard to keep in mind -- that government has no business organizing or mandating or directing or endorsing prayers and religious activities; and that private citizens, including those who are our students, do have the right not to be discriminated against on the basis of the religious content of their speech. And all of their robust activities may include their religious activities.

Those are the two great principles, both of which the President strongly endorsed in his speech today. And what we've tried to do is to see from looking at these two principles how we can make specific directives, give people answers to some of their simple questions: Can a student keep a Bible on a desk. Well, the answer is, can they generally keep books they want on the desk. If the answer to that question is yes, then that's the student's choice.

Q Specifically on the timing of this, how is this geared specifically to preempting attempts on Capitol Hill to have a constitutional amendment on school prayer?

ASSISTANT ATTORNEY GENERAL DELLINGER: Well, I think in terms of the timing, it certainly seems both to Secretary Riley, who has been working on this issue for some time, and to others of us, that before the country embarks on what has the potential to be a divisive debate on religion in the schools, that it's important to reduce the amount of confusion and misunderstanding that currently surrounds the subject. So, in that sense, it is a good time, if we're going to be entering a period of debate about this subject, that we let people know really how well -- if properly interpreted, how well our existing constitutional principles are working.

Q If we're starting to enter down into that debate, why didn't the President today specifically mention what several Republicans want to do in terms of amending the Constitution?

ASSISTANT ATTORNEY GENERAL DELLINGER: As far as I know, there's no official draft or a text of a constitutional amendment. The President's made it clear before that he is not in favor of amending the Bill of Rights.

Q Except for the time when he said he might be --

Q Wait. The White House has made it clear. The President actually hasn't, has he?

ASSISTANT ATTORNEY GENERAL DELLINGER: I thought the President spoke very powerfully today that the First Amendment has served it well and can't be improved upon. That is not consistent with any desire to edit the Bill of Rights. And he has made it perfectly clear that he is opposed to any editing of the Bill of Rights, any amendment. We've been through this with other amendments, and the President has taken the position that he is not going to support or improve any effort to amend any part of the Bill of Rights and the First Amendment.

Q Will there be guidelines issued on what a truly neutral moment of silence is? And is the administration advocating a moment of silence in America's public schools?

ASSISTANT ATTORNEY GENERAL DELLINGER: This is not something that I believe is being advocated, but I'll let the Secretary --

SECRETARY RILEY: Well, I don't know how much of a guideline you have to describe neutral, but it's a pretty good word in itself. It's my thinking that we are not recommending that, but it has been constitutionally determined to be valid and protected if it is, in fact, a neutral moment of silence.

Q Secretary Riley, does the President think that a teacher should be able to call a moment of silence in a classroom?

SECRETARY RILEY: Well, I'll tell you what I think -- that the teacher is protected constitutionally to have a neutral moment of silence. Now, if a teacher calls for a moment of silence and clouds that with the language leading into the moment of silence, it becomes not neutral.

Q Are you going to give recommendations to them on language that wouldn't get them in trouble?

SECRETARY RILEY: I'll have to take a look at that. I do not expect to do that. That's a constitutionally determined factor, but it's not one that we've dealt with here.

Q How many school districts are there? And the President mentioned some of the same examples you did, and said these were rare cases -- not being able to say grace or not having a Bible on the desk. Just how widespread do you think the interest is, nationwide in the school districts to have instructions like this?

SECRETARY RILEY: Well, I know for a fact that there's an awful lot of confusion out there. And I see it and hear it. And we've had a number of meetings all across the country with religious leaders, with teachers, principals, students, parents, and it is very clear to me that this kind of approach will be helpful. It is treading on -- certainly borders on controversy every time you mention religion in the public space. But it needs to be dealt with. And I'm very pleased the President has.

Let me mention a couple of situations, just to give you an example of the kind of thing. The Baptist Press reported in December of '89 a Georgia high school principal refused to allow students to bring Bibles, religious paraphernalia to school, and threatened to suspend one student. In Montgomery County, Maryland, a kindergarten student was told she could not sing a verse of a religious song to her classmates, even though the teacher was allowing each of the children to share his or her favorite song with the group. And finally, a Southern California student was arrested for praying around the flagpole before school. Now, that's just some clear, simple examples of the kind of thing.

ASSISTANT ATTORNEY GENERAL DELLINGER: Let me add just a word to that, that while I do not know what a survey would show in terms of how frequent has been the practice of depriving kids in school of their individual religious rights, you do see in the reported cases the fair persistence of the idea that religion has to be excluded.

You will start with the case -- the Lubbock case in Texas -- where they say, no Fellowship of Christian Athletes can meet because the principal believes that he has learned that it would be wrong to have the Fellowship of Christian Athletes meet, even though there's every variety of other kinds of student groups meeting.

And then you will have cases, even after you establish the equal access principle, that say, well, we do have an act that would allow student groups to actually meet, but they certainly wouldn't be allowed to pray. Well, that's clearly contrary to the intent. And a group that can meet has the same right to engage in prayer activity.

And then you'll have principals who will say, because they think there is this overwhelming exclusion of private religious speech, well, they certainly couldn't allow them to announce their meetings on the PA system, the way other groups announce. And all of

these have resulted in reported cases that have gone to litigation. I don't see them until they have gone tc the United States Court of Appeals. So that's a lot of time and money and expense.

Q Hasn't there always been a wall, though -- I mean, going back even to the founding fathers, between church and the state? And who's really prevented anyone from praying in schools throughout a lifetime?

ASSISTANT ATTORNEY GENERAL DELLINGER: Well, there have been, Ms. Thomas, real and actual cases, and quite numerous, and certainly before the Equal Access Act in 1984, of not allowing a student religious group to meet on the same terms as other groups. So you could obviously pray privately and silently as if it were some secret and disfavored activity. But you couldn't meet and pray, even though the Young Democrats and the Young Republicans and heaven knows what else were meeting in the other rooms.

Q Since the cases you're citing you portray as misinterpretations, apparently, of what laws are already on the books, and because today's presidential directive carries no weight of law, what effect does this really have? Because any individual school district, any individual, would still have the right to challenge the current activities.

ASSISTANT ATTORNEY GENERAL DELLINGER: I may have inadvertently misled you. These cases have eventually come out the right way, sometimes with the passage of legislation. It's the school officials who have sometimes gotten the answer wrong. Because they've heard so much and so powerfully the statement that religion must constitutionally be excluded from the schools that they get some of these questions wrong.

Q To what extent do you think the President's speech today has dealt with any sort of political attack on the issue from, say, the religious right or from the Republican Party?

SECRETARY RILEY: Well -- and I have no way of judging the impact on anything at this moment. I would say this: that I think the President has the responsibility to try to lead this nation in a way that we can resolve conflicts in a better way. And that's what this series of talks and conversations that he's had with the American people -- to seek new common ground. And if there's any area in the country where this common ground is needed it's in this area of religious expression in the public schools.

How that impacts what's going to happen in Congress, or how -- the politics of that, that is not my concern at all. I am concerned from a school standpoint. And in my judgment, it will be a tremendous help and it's fresh air into a very confusing situation in the public schools.

Q How is a third-grade teacher in Youngstown, Ohio going to hear about what he or she can or cannot do now under these guidelines?

SECRETARY RILEY: Well, of course, we would contact by order the school district, maybe going further than that, but certainly the school district. The question was asked about how many, and I think there are approximately 15,000 school districts. But we would notify every school district. It would be the district's, I would think, very happy responsibility then to see that all their principals, first of all, were informed; and the principals, of course, their teachers and parents. So I think the network would be very clear as far as getting the word out, and I believe it would be received in a very positive way. People would be relieved in many, many cases.

Q You have clearly focused on the people in school districts who have been cut off from religion. But how would this

directive be used to stop school districts from -- which currently have prayer in the classrooms and go on the other side of the issue, allowing too much religion in the classes?

SECRETARY RILEY: Well, as was said by the President and both of us, it is a two-sided coin. And certainly, if it's being stretched on the other side, that also -- there should be clarifying information in that regard also. So it's a two-sided situation. The establishment cause and the religious freedom cause must be taken, as the President said, as two pillars there for you to deal with both of them. So it's a good question because that's very true. If it's being violated on the other side, hopefully, this kind of directive would be helpful.

Thank you.

END 1:56 P.M. EDT

The Washington Times
★ TUESDAY, JULY 11, 1995

Pro-religion proposal sparks heated debate in New York

Some see First Amendment clauses in direct conflict

By Liz Trotta
THE WASHINGTON TIMES

NEW YORK — Members of a U.S. House Judiciary subcommittee got a taste of urban guerrilla warfare yesterday as friends and foes of the proposed Religious Equality Amendment, passionate in defining the limits of personal belief, confronted one another in hearing rooms, hallways, and even on the sidewalks of New York.

The constitutional amendment would protect religious freedom by preventing government from blocking all prayer in public schools or denying "benefits to or otherwise discriminate against any person or group on account of the religious character of their speech, ideas, motivations, or identity."

New York's top Catholic official, Cardinal John O'Connor, and one of the state's most prominent Jewish leaders, Rabbi Emeritus Arthur Hertzberg of Temple Emmanuel, were among those who testified before the panel.

"This is a tricky business," Cardinal O'Connor said. "All I know is that we need help to free religion to do its job." He catalogued the health and educational services the archdiocese provides to the city, implying that cooperation and financial support are often denied because of anti-Catholic bias.

He cited Fordham University's recent request for a license to build a new tower for its radio station, which has broadcast for 47 years. The request, he said, was turned down because of objections to the inclusion of an hourlong Catholic Mass once a week on the program schedule.

Committee Chairman Henry J. Hyde, Illinois Republican, referred to the "tremendous contradiction" of the courts in emphasizing one half of the religious clauses of the First Amendment, namely the no-establishment clause, to the disparagement of the free-exercise clause.

These clauses, he said, designed to complement each other, are now in "mortal combat," meaning to diminished religious freedom.

The fireworks started even before the panel sat as a group of rabbis and Lou Sheldon, president of the Traditional Values Coalition, a key group behind the proposed constitutional amendment, were talking to reporters outside the hearing.

Rabbi Mayer Schiller, who favors the amendment, was explaining why he thought "the public forum had turned against God." A public-relations man appeared, trying to lure the press into a news conference with the American Jewish Committee elsewhere in the building. The AJC opposes the amendment.

"Maybe you could delay that until this one is over," suggested an irked Rabbi Schiller.

"It's in progress now," said the retreating recruiter.

William A. Donohue, president of the conservative Catholic League, held still another news conference, where he said a mistaken reading of the First Amendment has relegated religious speech to second-class status. He cited cases where football coaches are not allowed to call for prayers in a huddle.

At the hearing, an animated audience of about 200 was divided between tie-wearing supporters from religious groups and a determined assembly of middle-aged women carrying large notebooks. They said they were from the liberal People for the American Way and had already dropped in on the AJC briefing.

Rabbi Hertzberg, who opposes the amendment and wants to "keep the religion of the majority off the backs of the minority," recalled that as a child he had no choice but to listen to Christian prayers in school. "I felt I was an American on suffrance, because the true American is a Christian."

Mr. Hyde said he doesn't feel that way when he sees the Star of David. "It seems to me discriminators of the free-exercise clause are not tolerant of diversity," he said.

Yesterday's hearing was the fourth in a series of seven. The next one is scheduled in Oklahoma City on Friday, to be followed by another in Los Angeles next Monday. No date has been set for the final one in Washington, D.C.

THE RELIGIOUS EQUALITY AMENDMENT

This text of the amendment, which drafters say is "not carved in stone," is the latest proposal for amending the Bill of Rights of the Constitution.

In order to secure the unalienable right of the people to acknowledge God according to the dictates of conscience;

Section I. Neither the United States nor any state shall abridge the freedom of any persons or group, including students in public schools, to engage in prayer or other religious expression in circumstances in which expression of a nonreligious character would be permitted, nor deny benefits to or otherwise discriminate against any person or group on account of the religious character of their speech, ideas, motivations, or identity.

Section II. Nothing in the Constitution shall be construed to forbid the United States or any state to give public or ceremonial accommodation to the religious heritage, beliefs, or traditions of its people.

Section III. The exercise, by the people, of any freedoms under the First Amendment or under this amendment shall not constitute an establishment of religion.

The Washington Times



Cardinal O'Connor said "we need help to free religion to do its job."



Rep. Henry Hyde said the clauses are now in "mortal combat."

The Washington Times
★ TUESDAY, JULY 11, 1995

Control panel's 1st public meeting spurs over 100 calls to board office

By Lisa Nevans
THE WASHINGTON TIMES

Callers jammed the phone lines at the D.C. financial control board's temporary office yesterday, with more than 100 callers in two hours requesting information about the board's first public meeting, a board spokeswoman said.

But only a handful asked to address the board because few people knew the board was accepting public comment at the daylong meeting Thursday, community activists said.

Meanwhile, School Superintendent Franklin Smith and Vernon Hawkins, acting director of the city's human services agency, were among four D.C. officials who testified in a closed meeting with the board and 25 to 50 onlookers yesterday at the General Accounting Office (GAO), school and control board spokeswomen said. Mr. Smith spoke about the school budget and measuring school performance, schools spokeswoman Beverly Lofton said.

The flurry of activity comes five days before the board is to submit its recommendations on the city's fiscal 1996 budget to Congress, President Clinton, Mayor Marion Barry and the D.C. Council. Thursday's meeting — the first public discussion to be held by the board's five unpaid members — comes just two days before those recommendations are due.

Today is the deadline for those wanting to testify to submit a written summary of their speech to the board. The board will select from the summaries who will speak during the 90 minutes set aside for public testimony.

Board officials are expecting a large crowd and have scheduled the meeting in a 400-seat auditorium at the Agriculture Department.

Admission to the 9 a.m. meeting is on a first come, first served basis, and all attendees must present photo identification. They must register at the Wing 4 entrance of the department's South Building at 14th Street and Independence Avenue SW.

Congress created the D.C. Financial Reponsibility and Management Assistance Authority — commonly called the financial control board — to help the city with its fiscal crisis.

The GAO has questioned the $722 million deficit figure estimated by Mr. Barry, saying the city overstated the problem by more than one-third.

The board has sweeping powers to approve or veto city budgets and recommend — and ultimately force — management changes affecting everything from employee benefits to privatization.

A published report said the board is likely to reject the city's 1996 budget proposal. John W. Hill Jr., the board's executive director and a former GAO auditor who has studied the city for more than a year, has said the city has not cut its budget as ordered by Congress, continues to overspend and does not need more money.

Mr. Hill, board Chairman Andrew Brimmer and other board members could not be reached for comment. Mr. Brimmer's secretary said he was in meetings all day.

But city activists said they had a host of topics they would like to talk to the board about, if given the chance, from the need for openness in the board's operations to the city's budget.

Marilyn Groves, co-convenor of a citywide group advocating cleaner streets and one of the few who has signed up to speak, said her topic would be trash — an easier problem to tackle than social issues such as crime, crumbling public housing and foster care, she said.

Activists opposed to the creation of the board questioned whether Thursday's meeting will be more than a staged show with a predetermined outcome.

"This is meant to take us through the motions of a public meeting," said the Rev. Graylan Ellis-Hagler of Plymouth Congregational Church and a member of the Coalition for Political and Financial Accountability.

Clinton threat not first for suspect

By Kristan Metzler
THE WASHINGTON TIMES

Barry Oliver, whose threats against the president turned into a marijuana bust at his Adams Morgan house Sunday, was charged with making threats against D.C. police 2½ years ago, when he said he planted a bomb at a police station, D.C. Superior Court records show.

Mr. Oliver, 44, called a Bell Atlantic operator about 5 a.m. Sunday and began a discussion before the operator transferred the call to a 911 operator.

During the 25-minute conversation, Mr. Oliver threatened to "cut the president of the United States from ear to ear two times and threatened to go to the White House and kil him," according to court documents.

Law-enforcement authorities traced the call to a house in the 1800 block of Monroe Street NW. Metropolitan Police officers and U.S. Secret Service agents arrived at the four-story house and found more than 920 marijuana plants, about 20 pounds of dried marijuana, 12 blotters of LSD and drug paraphrenalia, according to court records in the U.S. District Court.

Mr. Oliver was charged with making threats on the president and possession with intent to distribute marijuana, both felony charges. His roommate James Rapp, 40, also was charged with the drug offense.

Both men appeared in District Court yesterday where Magistrate Judge Deborah Robinson read them the charges. She released Mr. Rapp to a halfway house and ordered Mr. Oliver held in jail to undergo a psychological examination to determine if he is able to assist his lawyer in his defense. Both men were ordered to reappear in court Friday for a preliminary and detention hearing.

If convicted, Mr. Oliver faces five years in prison on the threats charge. Both men face a mandatory five years in prison if convicted on the drug charge. According to court records, Mr. Rapp and Mr. Oliver were handcuffed in the house when Mr. Rapp asked his roommate why he wanted to kill the president.

"Oliver responded that he wanted to because 'Clinton had threatened to kill me,'" according to court documents.

After his arrest, Mr. Oliver told law-enforcement authorities that the CIA had illegal real estate dealings in the District, said Assistant U.S. Attorney Peter White who will prosecute the case.

Mr. Oliver referred to the CIA after his arrest in 1993, when on Jan. 22 he called the 2nd District police station and said he had planted a bomb, according to Superior Court records.

He said: "The 2nd District is going down because I planted a bomb. Come and get it. I'll have a .357 magnum waiting for you," according to the records.

He talked about a CIA plot to destroy him and that he was with the British intelligence agency, according to court records.

A Superior Court judge ordered him into the psychiatric division of pretrial services diversion program, which he successfully completed and the charges were dropped, according to court records.

On Feb. 22, Mr. Oliver pleaded guilty to attempted possession of marijuana and is on unsupervised probation. Mr. Rapp was arrested in New Orleans on an unspecified misdemeanor charge and is on probation in that case, according to the U.S. Attorney's Office.

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

STATEMENT BY SECRETARY RILEY ON AGUILAR v. FELTON

In 1985, the Supreme Court held in Aguilar v. Felton that it is unconstitutional for public school personnel to provide instruction in religiously-affiliated private schools under Title I of the Elementary and Secondary Education Act. This decision has caused continuing problems in the Title I program for both public and private school children who need extra help. I therefore support reconsideration of the Felton decision in an appropriate case. In my opinion, Felton does not advance the progress of education or pass the test of good common sense. At a time when school budgets are under increased scrutiny, Felton places an additional undue burden on them.

The Felton decision has had a significant negative impact on Title I services for the neediest children in both public and private schools. Importantly, the costs of compliance with Felton are taken off the top of the school district's total Title I allocation, prior to providing funds for comparable instructional services for public and private school children. Therefore, compliance with Felton reduces the amount of Title I funds available for public school children, as well as private school children. Also, in the years immediately following the decision, there was a dramatic decrease in the number of private school children participating in the Title I program. Although the number has increased in subsequent years, the underlying problems caused by the Felton decision continue. Instead of having Title I services in their own school buildings, as public school children generally have, religious school children must go to another location to receive instruction from a teacher. This creates not only logistical problems, but significantly increases costs (for such things as transportation or the purchase or rental of mobile vans) which adversely affects both public and private school children. I believe we must make more effective use of Title I dollars to support our neediest students in both public and private schools. Felton stands in the way of our doing so.

Based on a 1989 study by the General Accounting Office, we estimate that school districts have expended hundreds of millions of dollars on non-instructional costs in order to comply with Felton. For example, for the 1995-96 school year, New York City alone is budgeting $16 million for these costs. It is estimated that $10 million of this amount will come from a special Title I

appropriation, but the remaining $6 million will have to come off the top of New York City's regular Title I grant. This $6 million could be used to serve 5600 additional needy students in both public and private schools, or alternatively to improve services for the thousands of children already being served under Title I in New York City. However, until Felton is reconsidered, New York City and other school districts must continue to comply with that decision.

As demonstrated by the facts of the original case, we believe that Title I services can be provided in private schools without aiding religion or creating excessive entanglement between government and religion. This Department has also supported and defended in litigation a variety of alternative arrangements for providing Title I services for private school children, including providing computer-assisted instruction in private schools and, in appropriate circumstances, parking mobile vans on or near private school property. There has been criticism, however, that even the alternative arrangements that have developed as a result of Felton are not the most educationally effective methods for providing Title I services. In addition, the Felton decision at times has caused unnecessary tension between public and private school officials concerning how and where Title I services should be provided for private school children.

In light of these continuing problems, I support efforts to have the Felton decision reconsidered in an appropriate case.

file ~~Religion~~ / Schools prayer
Billy Webster

THE PRESIDENT HAS SEEN
1/27/95

THE WHITE HOUSE
WASHINGTON

January 27, 1995

MR. PRESIDENT:

The attached memo from Joel Klein, George, Galston, Melanne and Steve Neuwirth, reports that eight major religious organizations have agreed on a set of principles -- consistent with your own views -- governing religious expression in the schools.

These groups plan to hold a press conference to announce their agreement on February 2 -- the day of the national prayer breakfast in Washington.

The memo recommends that you invite these organizations to the White House on February 2, immediately after the prayer breakfast; allow them to make their announcement here; and then make or issue a statement praising the announcement.

Leon concurs. Billy Webster has no objection.

Agree___ Disagree___ Discuss___

John Podesta
Todd Stern

(1) What can the Org. do?
(2) - Shouldn't it be 14 Org.
Any schools should (not may) teach - it's in our bill, it's in our bill
(3) Has Bill Bennett seen this?

THE WHITE HOUSE

WASHINGTON

THE PRESIDENT HAS SEEN
1/27/95

January 20, 1995

95 JAN 20 P2:45

MEMORANDUM FOR THE PRESIDENT

THROUGH: **LEON PANETTA**

FROM: **JOEL KLEIN** JK
GEORGE STEPHANOPOULOS
BILL GALSTON
MELANNE VERVEER
STEVE NEUWIRTH

SUBJECT: **RELIGION IN SCHOOLS**

We recently met with representatives from eight major religious organizations representing a broad spectrum of views.

We learned that these and other organizations have reached agreement on a set of principles governing religious expression in schools. We believe that these principles, summarized in the attached list, are consistent with your views. These principles reflect the extent to which current law -- which is often mischaracterized by Speaker Gingrich and others -- actually protects religious freedom in schools.

Moreover, the ability of these organizations to reach agreement demonstrates that support of religious freedom can draw our communities together, rather than tear them apart.

The religious organizations currently plan to hold a press conference on **February 2** -- the date of the national prayer breakfast in Washington -- to announce their agreement. **It is our recommendation that the White House provide a forum for this announcement.** Specifically, we recommend that:

1. the leaders of these organizations be invited to meet with you at the White House, preferably immediately after the prayer breakfast;

2. the organizations then be permitted to announce their agreement and speak to the press on the White House grounds, perhaps in front of the West Wing; and

3. you make or issue a statement praising the efforts of these groups to reach common ground, reiterating your support for RFRA and the Equal Access Act, and recognizing the frustration so many Americans feel on issues relating to religion in our schools.

APPROVE _____ DISAPPROVE _____ DISCUSS _____

SUMMARY OF AGREEMENT ON RELIGION IN PUBLIC SCHOOLS

1. Students, individually or in groups, can engage in private, non-disruptive prayer and discussion of religion.

2. Teachers and school administrators may not encourage or solicit student religious or anti-religious activity.

3. While public schools can teach about religion -- e.g., comparative religion, the history of religion, etc. -- they may not teach religion itself.

4. While "creationism" can be discussed in comparative religion or social studies classes, schools must not teach as scientific fact any religious doctrine of a supernatural creator, including "creationism." At the same time, teachers may not ridicule any religious doctrine of origins.

5. Student religious speech in the form of reports, homework and artwork is constitutionally protected.

6. Some other forms of public religious expression in the classroom are also protected.

7. Students may distribute religious literature to their school-mates, subject to reasonable time, place and manner restrictions.

8. Outsiders may not distribute religious literature in the classroom. Courts have not yet addressed whether outside groups can distribute religious literature in common areas of public schools if other community groups are permitted to distribute secular publications.

9. Students may participate in religious events -- e.g., at a flagpole -- before or after school.

10. Students may attempt, in non-harassing ways, to persuade their peers about religious topics.

11. The Equal Access Act should be enforced.

12. While public schools may not observe holidays as religious events, those schools may teach about religious holidays and celebrate the secular aspects of those holidays.

13. Schools have substantial discretion to excuse individual students from lessons that are objectionable to the students on the basis of religion.

14. Schools may teach civic virtues -- such as honesty, civility, tolerance and hard work -- so long as these virtues are not taught as religious tenets. At the same time, the fact that religions also teach these values does not make it unlawful to teach them in school.

15. Students may wear religious attire, and religious messages on shirts or other clothing items may not be singled out for suppression.

16. Schools have the discretion to permit students to participate in off-premises religious instruction during the school day, so long as the schools do not encourage or discourage participation.

To: GS
BG
AH
MV
from JK

school prayer

CHRISTIAN LEGAL SOCIETY

4208 Evergreen Lane, Suite 222
Annandale, VA 22003-3264
(703) 642-1070
FAX (703) 642-1075

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: JH DATE: 7/17/20N

~~CONFIDENTIAL~~

M E M O R A N D U M

TO: Stephen Neuwirth, Esquire
White House Office of Legal Counsel

FROM: Steven T. McFarland, Director
Center for Law and Religious Freedom
Christian Legal Society

DATE: January 19, 1995

RE: Recommendations for Administration Action in Religious Liberty Matters

==========

This memo suggests a position for the Administration in the school prayer maelstrom that would send positive messages to the born-again Christian community without requiring new legislation or endorsement of a constitutional amendment. We also suggest reasons why a moment of silence law would be ill-advised at this time.

The recent national focus on a school prayer amendment raises the visibility of religious liberty, particularly its restraint on public school campuses. This is an ideal opportunity for the President to use his "bully pulpit" to disabuse school administrators, government lawyers, and the general populace on all sides of the controversy surrounding religion in the schools, as to what the law already protects and permits. The President can also assure the religious community that the Justice Department will monitor and, when necessary, intervene in cases in which the Equal Access Act, the Religious Freedom Restoration Act, and other applicable federal law should be brought to bear to accomplish their broad remedial purposes.

The Christian Legal Society (CLS) and others will support a Constitutional Amendment. If the Administration chooses not to, nevertheless it may effectively clear the air as to the current status of the law so that any debate over a Constitutional Amendment is an informed one based upon real points of disagreement, not horror stories that simply distort how bad the situation really is. CLS believes that such an education of the

public, and especially of educators, will be an invaluable cure and substitute for much litigation and rhetoric, regardless of whether it results in an amendment or enactment of legislation.

Specifically, we would urge the President to: acknowledge that the pendulum has swung too far toward sanitizing public schools of religious expression by anyone, anywhere, anytime; then educate the public on the guarantees of the Equal Access Act, the Religious Freedom Restoration Act, the availability of school policies permitting a moment of silence, the expression of religious opinions in class, and the release of students for off-campus religious instruction at local houses of worship. These are federal laws or rulings, that are not universally understood or used, and should be the subject of Justice Department enforcement and attention with the same vigor as the Freedom of Access to Clinic Entrances Act.

a. Vocalize the public frustration. It would be important for the President to share that he agrees with millions of evangelicals and other religious citizens, especially parents, that the pendulum has swung too far toward a sanitized campus from the days before 1962 when teachers led religious litany in the classroom. For too long now, well intentioned but misinformed educators have unnecessarily (and unconstitutionally) enforced a policy of "if it's religious, keep it out" -- regardless <u>who</u> is expressing the religious thought or where. The President has frequently quoted Professor Stephen L. Carter's book *The Culture of Disbelief* on this very point. Hearing the President express empathy for this pent up frustration among believers would be akin to lancing a boil, provided it is followed by specific and unambiguous commitment of the Justice Department to enforcement of federal law currently protecting or permitting a broader scope of student religious expression.

b. Educate parents and educators. The public needs to hear from the President that religion should not be suppressed at public schools. School districts may constitutionally enact a moment of silence. Students may pray individually almost any time during the school day and in groups outside of class. Curriculum can and should include a description of the role of religion and religiously inspired persons in history, literature, the arts, sciences and virtually every other subject.

We recommend that the President especially highlight two statutes the evangelical and religious community consider to be the most important of this century: the **Equal Access Act** and the **Religious Freedom Restoration Act (RFRA).**

We urge the President to remind America that, for over ten years, the Equal Access Act has guaranteed that students may meet for student-led prayer and Scripture study before or after class if any other student club is permitted to meet at that time. They need to hear the President state that he has directed the Attorney General to form a task force to enforce the Equal Access Act against any recalcitrant school district.

Similarly, the President can certainly take credit for supporting and signing RFRA, and ought to explain that it is the tool with which religious parents may "opt out" their child from an objectionable portion of school curriculum or reading assignment. The President can certainly fairly say that generally such an objection should be accommodated, with the student given an alternative assignment. This is the command of RFRA, which the President supported and signed fourteen months ago. Again, especially if the President is going to be calling for federal marshals to protect abortion clinics, the evangelical community wants to hear that the Attorney General takes just as seriously her responsibility to protect the right of parents under RFRA to direct the education of their children.

Finally, another tool that has been around much longer but used far too infrequently by the religious community is **released time religious education.** The President could remind the religious community that for over 45 years every school has been free to let local churches, mosques and synagogues organize off-campus released time religious instruction. Many evangelicals, including CLS, would laud the President if he were to chide believers on their expectation that the government should be responsible for supplementing the religious training of their children. "Ask not what the government can do to indoctrinate the children of America; rather ask what you and your church are willing to do with the rights we already have." With the emphasis on parental rights, downsizing government, and promoting unadulterated religious teaching by private individuals, this point should certainly strike a chord with millions.

Why a moment of silence statute would be too little, too late. A statute permitting or mandating a moment of silence would be insufficient to divert or reduce much of the wind velocity circulating in and through the religious community, for a number of reasons.

1. "Born again citizens", especially parents, are well aware of and fed up with the discrimination they face against the expression of their faith in public schools. It seems to us a double standard. Secularists and even anti-religious viewpoints certainly do not have to remain

silent. In presenting only one theory of origins in biology class, in teaching the acceptability of homosexuality in "family life education" courses, in presenting how to use contraceptives in health education, the secularist hardly needs to remain silent. Meanwhile, the fundamentalist cannot have even a moment of vocal prayer either in the classroom or once in twelve years at a graduation ceremony. Thus, I believe that a moment of silence statute would be viewed as symbolic tokenism and would only emphasize the unequal playing field as far as classroom religious expression is concerned.

2. The U.S. Supreme Court's decision in Wallace v. Jaffree creates a substantial risk that the Court would strike such a statute, especially because it would be impossible to keep 535 MC's from telling the folks at home on C-Span that this is a vote for prayer and returning God to the classroom. For those who are confident that such a statute could survive Establishment Clause scrutiny, then this statute does not give us anything we do not already have. In other words, the President will not get many accolades for gift-wrapping something that already belongs to the recipient.

3. None of the House leadership wants a moment of silence (as opposed to vocal classroom prayer) and the Senate Republican leadership has been cool to any prayer amendment whatsoever. Hence, introduction of such a statute would likely be viewed as a token offered by the President with full knowledge that it was dead on arrival, thereby calling into question the sincerity of the President's desire to really give anything to the religious conservative.

4. Furthermore, a moment of silence statute, if it were mandatory, would inflame federalist and states rights passions. School districts are the quintessential institutions of representative democracy in most communities. It could be viewed as Washington, D.C., dictating policy to every school district in the nation. Criticism, however, would not be equally applicable to a Constitutional Amendment; with its requirement of 38 state legislatures' ratification, an amendment is perhaps democratic decision-making at its best. A mandatory

moment of silence statute might be Big Brother at its worst.[1]

5. The evangelical community is deeply concerned about the entire school day, not just about the first minute. According to the Christian Coalition's exit polls, the born-again voter was the single biggest voting bloc in November (over one third of those they interviewed). They are informed, they vote, and they will not be easily placated with tokens or symbolic gestures by the President, no matter how well-intentioned.

For these reasons, we strongly urge the President to call for the protection and exercise of existing rights of student religious expression on campus, educating the public about them in the process and committing his Administration to their vigorous enforcement.

Thank you for considering our views on this important matter.

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[1] CLS drafted and was intimately involved in the lobbying for both the EAA and RFRA, because they restored free speech and free exercise rights guaranteed in our Constitution. In contrast, a moment of silence is permissible, but not a right, under the First Amendment.

U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

file
School
Prayer

February 23, 1995

MEMORANDUM FOR

JANET RENO
ATTORNEY GENERAL

ABNER J. MIKVA
COUNSEL TO THE PRESIDENT

From: Walter Dellinger

Re: School Prayer Issues

This memorandum sets forth some preliminary views regarding the status of prayer and other religious speech in public schools. First, the memorandum outlines briefly what we understand to be the legal principles that govern this area. Second, the memorandum describes a possible legislative response to recent calls for action, in the form of amendments to the Equal Access Act, 20 U.S.C. §§ 4071-4074.

A. Legal Premises

The following legal premises guide our response to the current debate over prayer and religious speech in public schools. Putting aside the possibility of a constitutional amendment, these principles set the boundaries for congressional action in the area. In our view, they leave significant room for additional legislative intervention.

Official prayer is prohibited. As the Supreme Court recently reaffirmed, a school may not "persuade or compel a student to participate in a religious exercise." Lee v. Weisman, 112 S. Ct. 2649, 2661 (1992). A state's use of its public school system to encourage recitation of prayer is a "practice wholly inconsistent with the Establishment Clause." Engel v. Vitale, 370 U.S. 421, 424 (1962). Accordingly, public schools may not hold official prayer exercises.

We think this basic principle rests on very strong ground and merits vigorous defense. It is difficult to improve on the formulation of Justice Black, writing for the Court in Engel:

> [T]he constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

Id. at 425. The Establishment Clause prohibition on government sponsorship of official prayer exercises is necessary to protect the rights of religious minorities and, for religious believers and nonbelievers alike, "that sphere of inviolable conscience and belief which is the mark of a free people." Weisman, 112 S. Ct. at 2658. It also is intended to protect religion itself, as against the "degrad[ation]" that tends to follow from "a union of government and religion." See Engel, 370 U.S. at 431.

At a minimum, this principle prohibits school or other government officials from leading or directing students in prayer as part of a school's curricular activities. See Abington Sch. Dist. v. Schempp, 374 U.S. 203, 223 (1963). This prohibition applies regardless of whether students may be excused from the prayer session, see id. at 224-25; Engel, 370 U.S. at 430, and it applies as well when state officials invite a private party to lead the prayers, see Weisman, 112 S. Ct. at 2655. Moreover, it is clear that at least some important school functions that occur outside the normal school day, such as graduations, are among the school activities at which official prayer is impermissible. See id., 112 S. Ct. at 2659-60.

This basic prohibition on official school prayer renders legally questionable any organized prayer at official school functions like graduations, even when the prayer is directed and led by students or private parties. For the nonadhering student, whose presence is in every "real sense" compelled, id. at 2659, the school's involvement in the function as a whole is likely to exert pressure to participate in all of the function's component parts. Cf. id. at 2658 (discussing "subtle coercive pressure" exerted by school control of graduation ceremony itself). While it may be permissible for the valedictorian to offer her own religious thoughts, determination by school officials that there will be a prayer, or delegation by school officials of that decision to a collective student referendum, may violate the principle against officially organized prayers. Though the question is not free from doubt, and its resolution may in some cases turn upon particular factual nuances, we think that in the end appellate courts are likely to conclude that organized prayer at high school graduations violates the Establishment Clause. See Harris v. Joint Sch. Dist. No. 241, No. 93-35839, 1994 U.S. App. LEXIS 32646 (9th Cir. June 6, 1994) (student-organized graduation prayer violates Establishment Clause); but see Jones v. Clear Creek Indep. Sch. Dist., 977 F.2d 963 (5th Cir. 1992) (student-organized graduation prayer does not violate Establishment Clause), cert. denied, 113 S. Ct. 2950 (1993).

Private prayer is permitted. By contrast, the Establishment Clause does not prohibit prayer in schools under circumstances which neither convey endorsement of religion by the state nor exert pressure to participate upon nonadhering students. See Westside Community Bd. of Educ. v. Mergens, 496 U.S. 226, 250-51 (1990) (plurality opinion) (equal access to school facilities for student-initiated religious groups creates "little if any risk of official state endorsement or coercion").

Indeed, the Supreme Court already has made clear that purely voluntary, student-initiated religious meetings may be held at public universities and secondary schools consistent with the Establishment Clause. See Widmar v. Vincent, 454 U.S. 263, 270-75 (1981) (public university); Mergens, 496 U.S. at 247-53. This is so even if the meetings in question involve actual religious worship exercises. Widmar, 454 U.S. at 265, 271 n.9; Mergens, 496 U.S. at 232. Congress has codified the right of student-initiated religious clubs to meet at secondary schools on the same basis as other student clubs in the Equal Access Act, 20 U.S.C. §§ 4071-4074.

Moreover, under the Establishment Clause as interpreted by the Supreme Court, students at all public schools may, in appropriate circumstances, engage in silent prayer during the school day. Cf. Wallace v. Jaffree, 472 U.S. 38, 57-58 n.45, 59 (1985) (discussing ability of students to pray silently at school even in absence of legislation so providing). By the same token, the Establishment Clause does not prohibit discussion among students about religion under appropriate circumstances.

A moment of silence is likely permitted. From the principles described above, it follows that a truly neutral moment of silence, offering an opportunity for private prayer, does not necessarily violate the Establishment Clause. To the contrary, the Supreme Court suggested very strongly in Jaffree that such a moment of silence would be permissible. See id. at 59 ("merely protecting every student's right to engage in voluntary prayer during an appropriate moment of silence" distinguished from promotion of prayer); id. at 62 (Powell, J., concurring); id. at 76 (O'Connor, J., concurring in the judgment).

The Court in Jaffree, to be sure, invalidated the particular moment of silence law before it on the grounds that the statute was enacted for the "sole purpose of expressing the State's endorsement of prayer activities," id. at 60, and hence lacked the requisite "secular purpose" under Lemon v. Kurtzman, 403 U.S. 602 (1971). In reaching this conclusion, the Court relied in part on expressions of motivation by the sponsor of the bill, Jaffree, 472 U.S. at 56-57, and in part on the fact that the law singled out in its text "voluntary prayer" as a "favored practice," id. at 60 (law establishes period of silence for "meditation or voluntary prayer"). Later case law, however, suggests that emphasis on the motives of legislators is misplaced, and that a moment of silence statute neutral as to religion on its face and in application would not be rendered unconstitutional by the fact that "some legislators were motivated by a conviction that religious [thought] in particular was valuable and worthy of protection." See Mergens, 496 U.S. at 248-49 (plurality opinion) (Equal Access Act meets

"secular purpose" standard because it protects secular as well as religious speech, regardless of legislative motivation).

What would render a facially neutral moment of silence law impermissible is any effort by school or other state officials applying the law to "convey the message that children should use the moment of silence for prayer." Jaffree, 472 U.S. at 73 (O'Connor, J., concurring in the judgment). Any moment of silence law must be implemented by school officials in a manner that conveys neither endorsement nor disparagement of religion.

Speech rights are limited in the school setting. The Free Speech Clause of the First Amendment protects "personal intercommunication among the students" on school premises. See Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 512 (1969). At the same time, schools maintain the right to control the content of their curricula, and to set standards for student speech in official, school-sponsored activities and gatherings. See Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 270-73 (1988) (school newspaper); Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 683-86 (1986) (school assembly). With respect to school-sponsored, rather than purely personal, expressive activities, schools may "exercis[e] editorial control over the style and content of student speech" so long as their actions are "reasonably related to legitimate pedagogical concerns." Hazelwood, 484 U.S. at 273; see also Fraser, 478 U.S. at 685 (school may impose sanctions for vulgar speech that "undermine[s] the school's basic educational mission").

Congress can address discrimination against religious speech in public schools. Finally, we think it clear that Congress has the authority to pass legislation addressing discrimination by public school officials against student religious speech.

As a threshold matter, Congress could determine that school officials currently are engaging in unwarranted discrimination against personal religious speech by students. Such discrimination may well be the product of sincere but misguided efforts to conform to sometimes ill-defined Establishment Clause requirements. Whatever the cause, however, there appears to be growing concern that the attitude of school officials toward religious speech is having a chilling effect on the religious expression of students. See generally Christina Engstrom Martin, Note, Student-Initiated Religious Expression after Mergens and Weisman, 61 U. Chi. L. Rev. 1565 (1994) (discussing examples).[1]

The Equal Access Act, upheld by the Supreme Court in Mergens, is precedent for legislation "intended to address [such] perceived widespread discrimination against religious speech in public schools." Mergens, 496 U.S. at 239. It is clear from Mergens that Congress, pursuant to its Spending Clause power, may impose obligations regarding protection of religious speech on public schools as a condition of receiving federal financial

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[1] See also Letter from Jay Alan Sekulow, Chief Counsel, The American Center for Law & Justice, to Janet Reno, Attorney General, and Richard W. Riley, Secretary of Education, re: Patterns of Violations of the Equal Access Act (Feb. 15, 1994) ["Sekulow Letter"].

assistance. Id. at 241. At the same time, however, it was important to the Court in Mergens that the Equal Access Act does not purport to dictate the contents of school curricula, but rather leaves school districts with "their traditional latitude to determine appropriate subjects of instruction." Id. at 240-41 (citing Hazelwood). Finally, as discussed above, Mergens establishes that the legal prospects of such legislation are improved significantly if it is facially neutral, extending to secular as well as to religious speech. Id. at 248-49 (plurality opinion).

B. Possible Legislation

Whether the Administration should propose legislation addressing prayer and religious speech in public schools is, of course, a question with important policy dimensions deserving of careful study. As a legal matter, however, we think it clear that the principles outlined above permit significant legislative action in this area.

If legislation is deemed advisable, then we suggest that it might appropriately take the form of amendments to the Equal Access Act. Such legislation would have two primary virtues. First, it would call attention to the existence of a statute that itself addresses many of the perceived problems in this area. Second, amendments to the Equal Access Act could take advantage of the carefully drafted general provisions that already are a part of that statute.

We recognize that extension of the equal access principle on which the current Act rests may in practice raise significant concerns. However unobjectionable the principle in theory, there may be circumstances in which what is intended as equal treatment is experienced by school children as endorsement -- or, in the words of Justice Marshall, in which "the failure of a school to stand apart from religious speech can convey a message that the school endorses rather than merely tolerates that speech." Mergens, 496 U.S. at 264 (Marshall, J., concurring in the judgment). It is our view that the applications of the equal access principle discussed here are on their face constitutionally permissible. However, we do not doubt that their implementation must be monitored closely to avoid specific outcomes that are problematic from both a legal and a policy perspective:

> [V]igilance must extend to our monitoring of the actual effects of an "equal access" policy. If public schools are perceived as conferring the imprimatur of the State on religious doctrine or practice as a result of such a policy, the nominally "neutral" character of the policy will not save it from running afoul of the Establishment Clause. Id.

a. The Equal Access Act

A copy of the Equal Access Act, which is quite short, is attached to this memorandum. Very briefly, the Equal Access Act provides that secondary schools receiving federal funds may not discriminate in access to a "limited open forum" for student-initiated

meetings on the basis of the "religious, political, philosophical, or other content" of the speech at such meetings. 20 U.S.C. § 4071(a). A school has a "limited open forum" if it allows one or more "noncurriculum related" student group to meet on school premises during "noninstructional time." Id. § 4071(b). In granting a "fair opportunity" for student meetings, a school must provide, inter alia, that meetings are voluntary and student-initiated; that there is no school sponsorship of meetings; and that meetings do not "materially and substantially" interfere with the educational activities of the school. Id. § 4071(c).

A definitional section of the Act defines "noninstructional time" as time set aside by the school before or after actual classroom instruction; "meeting" to include those activities generally permitted in the limited open forum; and "sponsorship" to include "promoting, leading, or participating" in a meeting. Id. § 4072. General qualifiers provide that nothing in the Act shall be construed to authorize school "influence" over the content of any religious activity or the expenditure of public funds beyond the incidental cost of providing space. Id. § 4071(d). The authority of schools to maintain discipline and student well-being is expressly preserved. Id. § 4071(f). Finally, the Act creates no express remedies, and provides that denial of federal funds to schools is not authorized. Id. § 4071(e).

b. Possible Amendments

1. Lunch-time and recess covered. The question has arisen under the Act whether a school creates a limited open forum, triggering equal access rights, when it allows students to meet during their lunch period. The United States has taken the position that the Act does apply in such circumstances.[2] To clarify this point, the Act's definition of "noninstructional time" might be amended to include *"time set aside by the school before, after, or in between actual classroom instruction."* Arguably, the risk of peer pressure increases if student religious meetings are held during the school day, when nonconforming students are necessarily present. Nevertheless, so long as no classroom time is involved, there is "little if any risk of official state endorsement or coercion." Mergens, 496 U.S. at 251 (plurality opinion).

2. Prayer services and worship exercises covered. Some school districts may have read the Equal Access Act narrowly and concluded (erroneously in our view) that the Act permits religious groups to hold "meetings" but that the Establishment Clause would prohibit prayers from being recited or worship services held at such meetings. To clarify that such prayer meetings, as well as other worship services, may be protected by the Act, the definition of **"meeting"** might be amended by adding at the end a new sentence: *"A meeting may include a prayer service, Bible reading, or other worship exercise."*

One area of controversy has been over what is commonly known as "flagpole" prayer, a nationwide Christian prayer exercise in which participating students gather around

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[2] Ceniceros v. San Diego Unified Sch. Dist., 9th Cir. No. 94-55257 (argument pending).

school flagpoles to pray before each school day.[3] The amendment proposed here would make clear that such gatherings are not excluded from the scope of the statute on the grounds that they involve a prayer service. Whether such activities qualify as protected "meetings" under § 4072(3) would continue to turn on whether similar gatherings generally "are permitted under a school's limited open forum" -- that is, whether other noncurriculum related student groups are given access to comparable sites at the school.

3. Fair opportunity criteria. There have been reports that schools sometimes deny student religious groups the same access as other groups to the means of publicizing their meetings, as by use of the school public address system.[4] In our view, such denials, if they indeed have occurred, very likely violate § 4071(a)'s mandate that student groups be provided "equal access" to and a "fair opportunity" to use a school's limited open forum: if a school generally opens its public address system to announcements concerning events that are not school sponsored or approved, then equal access would appear to require that announcements concerning the activities of student religious groups also be permitted. To clarify this point, § 4071(c)'s list of "fair opportunity criteria" might be amended by adding a requirement that *"students initiating meetings covered under this section are not denied access to means of publicizing their meetings on the basis of the religious, political, philosophical or other content of the speech at such meetings."*

4. Religious literature permitted in otherwise available forum. Students have advanced, unsuccessfully, claims that the distribution of religious literature may be deemed a "meeting" for purposes of the Equal Access Act, and hence protected by the statute against discriminatory suppression.[5] We agree with the courts that the Act does not now cover distribution of literature. The principles that underlie the Act, however, might well support a prohibition on discrimination in this context, as well. At least with respect to material that is not school-sponsored, see Hazelwood, 484 U.S. at 273, and as applied to secondary school students, who are "mature enough . . . to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis," see Mergens, 496 U.S. at 250 (plurality opinion), a prohibition on discriminatory suppression of student-distributed material might be appropriate.[6]

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[3] See Student-Initiated Religious Expression, supra, at 1573.

[4] See Sekulow Letter at 2.

[5] See Clark v. Dallas Indep. Sch. Dist., 806 F. Supp. 116, 120 (N.D. Tex. 1992); Thompson v. Waynesboro Area Sch. Dist., 673 F. Supp. 1379, 1383-84 (M.D. Pa. 1987).

[6] Indeed, such a prohibition, at least in some contexts, may be compelled in any event by the Free Speech Clause of the First Amendment. See Clark, 806 F. Supp. at 120 (prohibition on distribution of religious materials by public high school students violates Free Speech Clause); Thompson, 673 F. Supp. at 1388-92 (content-based restriction on distribution of Christian newspaper by junior high school students violates Free Speech Clause).

To achieve this end, a new section closely paralleling § 4071 could be added to the Equal Access Act. The new section might be drafted along the following lines:

> *It shall be unlawful for any public secondary school which receives federal financial assistance and which has a limited open forum for distribution of printed or other expressive material to deny equal access or a fair opportunity to, or discriminate against, any students who wish to distribute material within that limited open forum on the basis of the religious, political, philosophical, or other content of the material in question.*
>
> *For purposes of this section, a school has a limited open forum for distribution of printed or other expressive material if it grants students the opportunity for distribution on school premises during noninstructional time of material that is unrelated to the school curriculum or to school activities.*
>
> *Schools shall be deemed to offer a fair opportunity to students who wish to distribute printed or other expressive material within its limited open forum if such school uniformly provides that--*
>
> > *(1) the distribution is student-initiated and the receipt of such material is voluntary;*
> >
> > *(2) there is no sponsorship of the material or the distribution by the school, the government, or its agents or employees;*
> >
> > *(3) the distribution does not materially and substantially interfere with the orderly conduct of educational activities within the school, or undermine the school's basic educational mission;*[7] *and*
> >
> > *(4) nonschool persons may not direct, conduct, control, or participate in the distribution.*
>
> *Nothing in this provision shall preclude a school from adopting time, place and manner restrictions that are applicable without regard to the content of the literature being distributed.*

5. Silent prayer and religious discussion permitted. There appear to have been instances, some of them well-publicized, in which individual students have been prevented

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[7] Consistency with the school's "basic educational mission" is not now a requirement for student meetings under the Act. Insertion of this standard, derived from the Bethel case, will preserve the authority of schools to restrict the distribution of vulgar material.

from engaging in nondisruptive prayer or religious discussion at school.[8] To codify the right of students at both elementary and secondary schools to engage in such activities, two new sections could be added to the Equal Access Act, as follows:

> *It shall be unlawful for any public elementary or secondary school which receives federal financial assistance to punish a student for, or otherwise prevent a student from, engaging in silent and nondisruptive activity during noninstructional time on the basis of the religious, political, or philosophical nature of such activity.*
>
> *It shall be unlawful for any public elementary or secondary school which receives federal financial assistance to punish a student for, or otherwise prevent a student from, engaging in nondisruptive discussion with other students who voluntarily participate in such discussion during noninstructional time on the basis of the religious, political, philosophical or other content of such discussion.*

Of course, the general qualifiers already a part of the Equal Access Act, prohibiting school influence over religious activity and preserving school disciplinary authority, would apply to these new provisions, as well.

6. Moment of silence permitted. As discussed above, it is our view that truly neutral moments of silence in public school are likely permissible under the Establishment Clause. The Equal Access Act might be amended to codify that understanding, and to ensure the necessary neutrality in implementation of moments of silence. A possible amendment is sketched out below:

> *Any public elementary or secondary school receiving federal financial assistance may provide for the observance by its students of a period of silent and private contemplation or introspection during the school day.*
>
> *If a school provides for a period of silent and private contemplation, then the school may not:*
>
> > *Punish a student for, or otherwise prevent a student from, using the period at his or her discretion to engage in the silent and private contemplation or introspection of his or her choice.*
> >
> > *Direct, control, conduct, or otherwise seek to influence the form or content of silent and private student contemplation or introspection.*

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[8] See, e.g., Student-Initiated Religious Expression, supra, at 1575 & n.58.

7. Enforcement. As noted above, the Equal Access Act currently contains no express provision for enforcement. At least one court has held that the Act creates rights enforceable through an implied private cause of action,[9] while other courts appear simply to assume the existence of such an implied cause of action. Both to clarify this issue and to signal support for vigorous enforcement of the Act, an amendment providing for an express private cause of action might be appropriate.

[9] See Student Coalition for Peace v. Lower Merion Sch. Dist., 776 F.2d 431 (3d Cir. 1985).