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~~DRAFT -- CONFIDENTIAL -- PRIVILEGED~~

April __, 1995

MEMORANDUM FOR LEON PANETTA
HAROLD ICKES
ERSKINE BOWLES

Jen - Revised
Version
Steve

FROM: GEORGE STEPHANOPOULOS
ALEXIS HERMAN/FLO MCAFEE
ABNER MIKVA/JAMES CASTELLO/STEVE NEUWIRTH
CAROL RASCO/BILL GALSTON
MELANNE VERVEER

SUBJECT: RELIGION

President Clinton has a powerful message to share with the American people about the role of religion in American life. The President, like most Americans, believes that the government should protect -- but not sponsor -- religious expression. As the President showed in Oklahoma City, he understands that religion and religious institutions offer our communities support, values and hope. Religion is an important part of the President's own life. And he wants to create an environment in which religious discourse draws people together, rather than pushes them apart.

The American people seem intensely concerned about moral drift in the nation, and about the many outside influences that are shaping their children's character. In some respects, people may be far less interested in the Washington legislative process than in concepts like family, individual responsibility, community and religion.

Unfortunately, many, if not most, Americans remain unaware of the President's views. We believe the White House should develop a strategy by which the President can exercise genuine leadership on the issues of religion and values. The President cares deeply about these issues. These issues also offer a thematic basis to tie together various Clinton initiatives, from welfare reform to education to urban economic development.

The window of opportunity for the President to seize the initiative and define the debate may be small. We expect that in the coming months -- and perhaps promptly -- congressional Republicans will introduce either a constitutional amendment on religion and school prayer, or some form of religion legislation. Dole and Gramm have already expressed support for action in this area. Without a reasonable alternative, these Republican initiatives could set the standard for debate and even prove attractive to citizens who generally fear state involvement in religion but yearn for a return to morality and virtue in our communities.

The themes articulated by the President in Oklahoma City -- in particular, how we raise our children and what kind of communities do we want to live in -- lay an important groundwork for further Presidential discussion of values and religion.

Several other Presidential efforts could also be built upon. In 1993, with bipartisan support and to the accolades of "conservative" and "liberal" religious leaders, the President signed the Religious Freedom Restoration Act. (President Bush had been unwilling to support similar legislation.) The President has demonstrated his commitment to the Act on several occasions. White House Public Liaison has coordinated a substantial effort of outreach to the religious community, including private meetings at the White House and Presidential speeches at prayer breakfasts and other religious events. Each of our offices has engaged in a dialogue with religious leaders, several of whom have offered to support the President in this area.

At the same time, the Education Department has pursued several relevant initiatives, including a Family Involvement Initiative that now includes 33 different religious organizations. Secretary Riley meets on a regular basis with religious leaders both in Washington and in his travels around the country. The Secretary met most recently with Cardinal Bernardin in Chicago and spoke last week at the National Catholic Education Association. Secretary Riley has established his credibility with many of the participants in the coming school prayer debate, including leading religious conservatives. The Secretary, in coordination with the White House, recently worked with and supported a broad spectrum of religious groups that issued a statement setting forth the extent to which current law actually permits student religious expression in our schools. The Secretary also supported another broad coalition of organizations that agreed to address school-religion issues in a spirit of decency and good will.

We believe that several options should be considered promptly:

Presidential speeches: Determine whether the President will give one or more speeches to address the role of religion and values in American life. These speeches could set forth the President's vision and broad themes, including the themes the President began to articulate this past weekend in Oklahoma City. The Vice President, Secretary Riley and Attorney General Reno might make follow-up speeches on more specific topics, such as proposed legislation or an executive order. We have attached at Tab 1 two schedules of upcoming events that might provide forums for such Presidential speeches.

Convene religious leaders: The President could address religious leaders at the White House and ask religious organizations to support a spirit of community and healing.

Executive Order: Review options for an executive order that might address, for example, agency enforcement of the Religious Freedom Restoration Act and the Equal Access Act (concerning religious activities at schools). Several groups have proposed that the President order enforcement of these statutes at civilian schools on defense installations.

Legislation: Develop a legislative strategy -- do we support any legislation, and if so, what type? The Justice Department is drafting legislative options that could codify the extent to which religious expression is currently permitted in public schools.

Sch Prayer 4-19-95

- Christian Coalition broke off w/ Riley b/c has deal w/ Newt for something phat & proper → what kids can say

- Can we preempt?

- Potter has supported RFRA & religion

Riley has met w/ these folks

Sec'y primarily w/ mch of parents

& word bps of educators & conserv Christian teachers

Joint statement on school prayer

~~potter~~ sec'y spent hours on phone
meel to bring in S. Baptists &

rest gyp met w/ Catholics

Cardinal Bernardine - Thinks sch prayer
cnp but won't speak on it

Catholics working on stmnt re: new
voucher issue

we're in pos'n where sec'y has some
credibility

he's cautious on the same
need guidance

Some time to build a strategy

call today parents + went and
Hatch interested

maybe outreach to Hatch on bipart
legisl initiative

alt. to govt sponsored prayer is equal access
Hatch loved it

got behind equal access
SCT upheld

prayer can't be turned down for a meeting

conserves when it looks like govt sponsored
prayer

non discrim / equal access / permit moment of silence

S. Baptists + went and
pulls too

read it as met but nothing else

→ not flyers

→ not praying in the meeting

→ only before + after school day

you can strengthen the equal access act by
fixing this thing

make it apply all day
allow people at the meetings

Melanne - to it w/o legislation

[Missing Catholics, Methodists, Episcopalians
at the moment]

allowing moment silence is huge next
step

need agmt on what can't be added
or hit else veto

dec: speech, legis, e.o.

Cs - need FE to get to Hatch
are you determined to be partners

+ Gingrich too

then know if any path or no;
if no, then speech, e.o., leg,
procl, guidance, etc,

? Q: moment of silence;
Potus = wouldn't be against if we b/c

DRAFT

AGENDA

Meeting on Religion

I. WHY WE ARE HERE (James)

- Religion seems poised to become a key issue in coming months
- A Presidential election issue now that Dole has stated he wants legislation on voluntary school prayer
- Ishtook and House Republicans interested in pursuing a general prayer amendment
- Ralph Reed's "contract for families"
- This is an issue the President cares passionately about, and on which he can play a leadership role.
- Purpose of this meeting is to determine what we should do, who should do it, and on what timetable.

II. BACKGROUND

A. White House (Steve)

- RFRA
- Outreach
- Legal issues
- Religion in schools
- Overlap with other policy issues

B. Education (Kevin Sullivan)

III. OPTIONS WE KNOW THE CONGRESSIONAL REPUBLICANS ARE CONSIDERING

- Constitutional amendment
- Legislation on school prayer
- Legislation or other action on school vouchers (e.g., in D.C.)

IV. SOME OF OUR OPTIONS FOR RESPONDING INCLUDE:

- introducing legislation
- executive order
- Presidential speech
- speeches by Cabinet officials (Riley, Reno)
- elevate what we have already done and build on it

V. TO DO:

- What do we need to find out?
By when?
Who will do it?
- How should we organize this effort, given that time is of the essence?
- Legislative strategy: key Democrats, moderate Republicans
 - use our existing contacts in the religious community
- Outreach (including Catholic, United Methodist, Presbyterian)
- Press strategy

Drafting Committee

American Jewish Congress, Chair

American Civil Liberties Union

American Jewish Committee

American Muslim Council

Anti-Defamation League

Baptist Joint Committee

Christian Legal Society

General Conference of Seventh

Day Adventists

National Association of Evangelicals

National Council of Churches

People for the American Way

Union of American Hebrew Congregations

RELIGION IN THE PUBLIC SCHOOLS:

Endorsing Organizations

American Ethical Union

American Humanist Association

Americans for Religious Liberty

Americans United for the Separation
of Church and State

B'nai B'rith International

Christian Science Church

Church of the Brethren,
Washington Office

Church of Scientology International

Evangelical Lutheran Church in America,
Lutheran Office of Governmental Affairs

Federation of Reconstructionist
Congregations and Havurot

Friends Committee on National Legislation

Guru Gobind Singh Foundation

Interfaith Impact for Justice and Peace

National Council of Jewish Women

National Jewish Community Relations
Advisory Council (NJCRAC)

National Ministries, American Baptist
Churches, USA

National Sikh Center

North American Council for Muslim Women

Presbyterian Church (USA)

Reorganized Church of Jesus Christ of
Latter Day Saints

Unitarian Universalist Association
of Congregations

United Church of Christ, Office for
Church in Society

A JOINT STATEMENT OF CURRENT LAW



APRIL 1995

**RELIGION IN THE PUBLIC SCHOOLS:
A JOINT STATEMENT OF CURRENT LAW**

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RELIGION IN THE PUBLIC SCHOOLS: A JOINT STATEMENT OF CURRENT LAW

The Constitution permits much private religious activity in and about the public schools. Unfortunately, this aspect of constitutional law is not as well known as it should be. Some say that the Supreme Court has declared the public schools "religion free zones" or that the law is so murky that school officials cannot know what is legally permissible. The former claim is simply wrong. And as to the latter, while there are some difficult issues, much has been settled. It is also unfortunately true that public school officials, due to their busy schedules, may not be as fully aware of this body of law as they could be. As a result, in some school districts some of these rights are not being observed.

The organizations whose names appear below span the ideological, religious and political spectrum. They nevertheless share a commitment both to the freedom of religious practice and to the separation of church and state such freedom requires. In that spirit, we offer this statement of consensus on current law as an aid to parents, educators and students.

Many of the organizations listed below are actively involved in litigation about religion in the schools. On some of the issues discussed in this summary, some of the organizations have urged the courts to reach positions different than they did. Though there are signatories on both sides which have and will press for different constitutional treatments of some of the topics discussed below, they all agree that the following is an accurate statement of what the law currently is.

STUDENT PRAYERS

1. Students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive. Because the Establishment Clause does not apply to purely private speech, students enjoy the right to read their Bibles or other scriptures, say grace before meals, pray before tests, and discuss religion with other willing student listeners. In the classroom students have the right to pray quietly except when required to be actively engaged in school activities (e.g., students may not decide to pray just as a teacher calls on them). In informal settings, such as the cafeteria or in the halls, students may pray either audibly or silently, subject to the same rules of order as apply to other speech in these locations. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate.

GRADUATION PRAYER AND BACCALAUREATES

2. School officials may not mandate or organize prayer at graduation, nor may they organize a religious baccalaureate ceremony. If the school generally rents out its facilities to private groups, it must rent them out on the same terms, and on a first-come first-served basis, to organizers of privately sponsored religious baccalaureate services, provided that the school does not extend preferential treatment to the baccalaureate ceremony and the school disclaims official endorsement of the program.
3. The courts have reached conflicting conclusions under the federal Constitution on student-initiated prayer at graduation. Until the issue is authoritatively resolved, schools should ask their lawyers what rules apply in their area.

**OFFICIAL PARTICIPATION OR ENCOURAGEMENT
OF RELIGIOUS ACTIVITY**

4. Teachers and school administrators, when acting in those capacities, are representatives of the state, and, in those capacities, are themselves prohibited from encouraging or soliciting student religious or anti-religious activity. Similarly, when acting in their official capacities, teachers may not engage in religious activities with their students. However, teachers may engage in private religious activity in faculty lounges.

TEACHING ABOUT RELIGION

5. Students may be taught about religion, but public schools may not teach religion. As the U.S. Supreme Court has repeatedly said, "[i]t might well be said that one's education is not complete without a study of comparative religion, or the history of religion and its relationship to the advancement of civilization." It would be difficult to teach art, music, literature and most social studies without considering religious influences.

The history of religion, comparative religion, the Bible (or other scripture)-as-literature (either as a separate course or within some other existing course), are all permissible public school subjects. It is both permissible and desirable to teach objectively about the role of religion in the history of the United States and other countries. One can teach that the Pilgrims came to this country with a particular religious vision, that Catholics and others have been subject to persecution or that many of those participating in the abolitionist, women's suffrage and civil rights movements had religious motivations.

6. These same rules apply to the recurring controversy surrounding theories of evolution. Schools may teach about explanations of life on earth, including religious ones (such as "creationism"), in comparative religion or social studies classes. In science class, however, they may present only genuinely scientific critiques of, or evidence for, any explanation of life on earth, but not religious critiques (beliefs unverifiable by scientific methodology). Schools may not refuse to teach evolutionary theory in order to avoid giving offense to religion nor may they circumvent these rules by labeling as science an article of religious faith. Public schools must not teach as scientific fact or theory any religious doctrine, including "creationism," although any genuinely scientific evidence for or against any explanation of life may be taught. Just as they may neither advance nor inhibit any religious doctrine, teachers should not ridicule, for example, a student's religious explanation for life on earth.

STUDENT ASSIGNMENTS AND RELIGION

7. Students may express their religious beliefs in the form of reports, homework and artwork, and such expressions are constitutionally protected. Teachers may not reject or correct such submissions simply because they include a religious symbol or address religious themes. Likewise, teachers may not require students to modify, include or excise religious views in their assignments, if germane. These assignments should be judged by ordinary academic standards of substance, relevance, appearance and grammar.
8. Somewhat more problematic from a legal point of view are other public expressions of religious views in the classroom. Unfortunately for school officials, there are traps on either side of this issue, and it is possible that litigation will result no matter what course is taken. It is easier to describe the settled cases than to state clear rules of law. Schools must carefully steer between the claims of student speakers who assert a right to express themselves on religious subjects and the asserted rights of student listeners to be free of unwelcome religious persuasion in a public school classroom.
 - a. Religious or anti-religious remarks made in the ordinary course of classroom discussion or student presentations are permissible and constitute a protected right. If in a sex education class a student remarks that abortion should be illegal because God has prohibited it, a teacher should not silence the remark, ridicule it, rule it out of bounds or endorse it, any more than a teacher may silence a student's religiously-based comment in favor of choice.

Religion In The Public Schools: A Joint Statement Of Current Law**Page 4**

- b. If a class assignment calls for an oral presentation on a subject of the student's choosing, and, for example, the student responds by conducting a religious service, the school has the right -- as well as the duty -- to prevent itself from being used as a church. Other students are not voluntarily in attendance and cannot be forced to become an unwilling congregation.
- c. Teachers may rule out-of-order religious remarks that are irrelevant to the subject at hand. In a discussion of Hamlet's sanity, for example, a student may not interject views on creationism.

DISTRIBUTION OF RELIGIOUS LITERATURE

- 9. Students have the right to distribute religious literature to their schoolmates, subject to those reasonable time, place, and manner or other constitutionally acceptable restrictions imposed on the distribution of all non-school literature. Thus, a school may confine distribution of all literature to a particular table at particular times. It may not single out religious literature for burdensome regulation.
- 10. Outsiders may not be given access to the classroom to distribute religious or anti-religious literature. No court has yet considered whether, if all other community groups are permitted to distribute literature in common areas of public schools, religious groups must be allowed to do so on equal terms subject to reasonable time, place and manner restrictions.

"SEE YOU AT THE POLE"

- 11. Student participation in a before or after school events, such as "see you at the pole" is permissible. School officials, acting in an official capacity, may neither discourage nor encourage participation in such an event.

RELIGIOUS PERSUASION VERSUS RELIGIOUS HARASSMENT

- 12. Students have the right to speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. But school officials should intercede to stop student religious speech if it turns into religious harassment aimed at a student or a small group of students. While it is constitutionally permissible for a student to approach another and issue an invitation to attend church, repeated invitations in the face of a request to stop constitute harassment. Where this line is to be drawn in particular cases will depend on the age of the students and other circumstances.

EQUAL ACCESS ACT

13. Student religious clubs in secondary schools must be permitted to meet and to have equal access to campus media to announce their meetings, if a school receives federal funds and permits any student non-curricular club to meet during non-instructional time. This is the command of the Equal Access Act. A non-curricular club is any club not related directly to a subject taught or soon-to-be taught in the school. Although schools have the right to ban all non-curriculum clubs, they may not dodge the law's requirement by the expedient of declaring all clubs curriculum-related. On the other hand, teachers may not actively participate in club activities and "non-school persons" may not control or regularly attend club meeting.

The Act's constitutionality has been upheld by the Supreme Court, rejecting claims that the Act violates the Establishment Clause. The Act's requirements are described in more detail in *The Equal Access Act and the Public Schools: Questions and Answers on the Equal Access Act*, a pamphlet published by a broad spectrum of religious and civil liberties groups.

RELIGIOUS HOLIDAYS

14. Generally, public schools may teach about religious holidays, and may celebrate the secular aspects of the holiday and objectively teach about their religious aspects. They may not observe the holidays as religious events. Schools should generally excuse students who do not wish to participate in holiday events. Those interested in further details should see *Religious Holidays in the Public Schools: Questions and Answers*, a pamphlet published by a broad spectrum of religious and civil liberties groups.

EXCUSAL FROM RELIGIOUSLY OBJECTIONABLE LESSONS

15. Schools enjoy substantial discretion to excuse individual students from lessons which are objectionable to that student or to his or her parent on the basis of religion. Schools can exercise that authority in ways which would defuse many conflicts over curriculum content. If it is proved that particular lessons substantially burden a student's free exercise of religion and if the school cannot prove a compelling interest in requiring attendance the school would be legally required to excuse the student.

TEACHING VALUES

16. Schools may teach civic virtues, including honesty, good citizenship, sportsmanship, courage, respect for the rights and freedoms of others, respect for persons and their property, civility, the dual virtues of moral conviction and tolerance and hard work. Subject to whatever rights of excusal exist (see ¶15 above) under the federal Constitution and state law schools may teach sexual abstinence and contraception; whether and how schools teach these sensitive subjects is a matter of educational policy. However, these may not be taught as religious tenets. The mere fact that most, if not all, religions also teach these values does not make it unlawful to teach them.

STUDENT GARB

17. Religious messages on T-shirts and the like may not be singled out for suppression. Students may wear religious attire, such as yarmulkes and head scarves, and they may not be forced to wear gym clothes that they regard, on religious grounds, as immodest.

RELEASED TIME

18. 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 premises during the school day.

* Copies may be obtained from any of the undersigned organizations.

Appendix

Organizational Contacts for "Religion in the Public Schools: A Joint Statement of Current Law

American Civil Liberties Union

Bob Peck, Legislative Counsel
202/675-2313

American Ethical Union

Herbert Blinder, Director, Washington Ethical Action Office
301/229-3759

American Humanist Association

Frederick Edwards, Executive Director
800/743-6646

American Jewish Committee

Richard Foltin, Legislative Director/Counsel
202/785-4200

American Jewish Congress

Marc D. Stern, Co-Director, Commission on Law and Social Action
212/360-1545

American Muslim Council

Abdurahman M. Alamoudi, Executive Director
202/789-2262

Americans for Religious Liberty

Edd Doerr, Executive Director
301/598-2447

Americans United for the Separation of Church and State

Steve Green, Legal Director
202/466-3234

Anti-Defamation League

Michael Lieberman, Associate Director/Counsel, Washington Office
202/452-8320

Baptist Joint Committee

J. Brent Walker, General Counsel
202/544-4226

B'nai B'rith

Reva Price, Director, Political Action Network
202/857-6645

Christian Legal Society

Steven T. McFarland, Director, Center for Law and Religious Freedom
703/642-1070

Christian Science Church

Phillip G. Davis, Federal Representative
202/857-0427

Church of the Brethren, Washington Office

Timothy A. McElwee, Director
202/546-3202

Church of Scientology International

Susan L. Taylor, Public Affairs Director, Washington Office
202/667-6404

**Evangelical Lutheran Church in America,
Lutheran Office for Governmental Affairs**

Kay S. Dowhower, Director
202/783-7507

Federation of Reconstructionist Congregations and Havurot

Rabbi Mordechai Liebling, Executive Director
215/887-1988

Friends Committee on National Legislation

Ruth Flower, Legislative Secretary/Legislative Education Secretary
202/547-6000

General Conference of Seventh Day Adventists

Gary M. Ross, Congressional Liaison
301/680-6688

Guru Gobind Singh Foundation

Rajwant Singh, Secretary
301/294-7886

Interfaith Impact for Justice and Peace

James M. Bell, Executive Director
202/543-2800

National Association of Evangelicals

Forest Montgomery, Counsel, Office of Public Affairs
202/789-1011

National Council of Churches

Oliver S. Thomas, Special Counsel for Religious and Civil Liberties
615/977-9046

National Council of Jewish Women

Deena Margolis, Legislative Assistant
202/296-2588

National Jewish Community Relations Advisory Council (NJCRAC)

Jerome Chanes, Director, Domestic Concerns
212/684-6950

National Ministries, American Baptist Churches, USA

Renee Ladue, Program Assistant, Office of Government Relations
202/544-3400

National Sikh Center

Chatter Saini, President
703/734-1760

North American Council for Muslim Women

Sharifa Alkhateeh, Vice-President
703/759-7339

People for the American Way

Elliot Mincberg, Legal Director
202/467-4999

Presbyterian Church (USA)

Eleonora Giddings Ivory, Director, Washington Office
202/543-1126

Reorganized Church of Jesus Christ of Latter Day Saints

W. Grant McMurray, First Presidency
816/521-3002

Union of American Hebrew Congregations

Rabbi David Saperstein, Director, Religious Action Center
202/387-2800

Unitarian Universalist Association of Congregations

Robert Alpern, Director, Washington Office
202/547-0254

United Church of Christ, Office for Church In Society

Patrick Conover, Acting Head of Office, Washington Office
202/543-1517

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 16, 1993

REMARKS BY THE PRESIDENT
AT SIGNING CEREMONY FOR THE RELIGIOUS FREEDOM RESTORATION ACT

The South Grounds

9:15 A.M. EST

THE PRESIDENT: Thank you very much, Mr. Vice President, for those fine remarks, and to the members of Congress, the chaplains of the House and the Senate, and to all of you who worked so hard to help this day become a reality. Let me especially thank the Coalition for the Free Exercise of Religion for the central role they played in drafting this legislation and working so hard for its passage.

-It is interesting to note, as the Vice President said, what a broad coalition of Americans came together to make this bill a reality. It's interesting to note that that coalition produced a 97-to-3 vote in the United States Senate, and a bill that had such broad support it was adopted on a voice vote in the House.

I'm told that, as many of the people in the coalition worked together across ideological and religious lines, some new friendships were formed and some new trust was established, which shows, I suppose, that the power of God is such that even in the legislative process miracles can happen. (Laughter.)

We all have a shared desire here to protect perhaps the most precious of all American liberties, religious freedom. Usually the signing of legislation by a president is a ministerial act, often a quiet ending to a turbulent legislative process. Today, this event assumes a more majestic quality because of our ability together to affirm the historic role that people of faith have played in the history of this country and the constitutional protections those who profess and express their faith have always demanded and cherished.

The power to reverse legislation by legislation, a decision of the United States Supreme Court, is a power that is rightly hesitantly and infrequently exercised by the United States Congress. But this is an issue in which that extraordinary measure was clearly called for.

As the Vice President said, this act reverses the Supreme Court's decision Employment Division against Smith, and

Supreme Court decision, Employment Division, Against Union, and reestablishes a standards that better protects all Americans of all faiths in the exercise of their religion in a way that I am convinced is far more consistent with the intent of the founders of this nation than the Supreme Court decision.

More than 50 cases have been decided against individuals making religious claims against government action since that decision was handed down. This act will help to reverse that trend -- by honoring the principle that our laws and institutions should not impede or hinder, but rather should protect and preserve fundamental religious liberties.

The free exercise of religion has been called the first freedom -- that which originally sparked the development of the full

MORE

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range of the Bill of Rights. Our founders cared a lot about religion. And one of the reasons they worked so hard to get the First Amendment into the Bill of Rights at the head of the class is that they 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. They knew that religion helps to give our people the character without which a democracy cannot survive. They knew that there needed to be a space of freedom between government and people of faith that otherwise government might usurp.

They have seen now, all of us, that religion and religious institutions have brought forth faith and discipline, community and responsibility over two centuries for ourselves and enabled us to live together in ways that I believe would not have been possible. We are, after all, the oldest democracy now in history, and probably the most truly multiethnic society on the face of the Earth. And I am convinced that neither one of those things would be true today had it not been for the importance of the First Amendment and the fact that we have kept faith with it for 200 years. (Applause.)

What this law basically says is that the government should be held to a very high level of proof before it interferes with someone's free exercise of religion. This judgment is shared by the people of the United States as well as by the Congress. We believe strongly that we can never -- we can never be too vigilant in this work.

Let me make one other comment if I might before I close and sit down and sign this bill. There is a great debate now abroad in the land which finds itself injected into several political races about the extent to which people of faith can seek to do God's will as political actors. I would like to come down on the side of encouraging everybody to act on what they believe is the right thing to do. There are many people in this country who strenuously disagree with me on what they believe are the strongest grounds of their faiths. I encourage them to speak out. I encourage all Americans to reach deep inside to try to determine what it is that drives their lives most deeply.

As many of you know, I have been quite moved by Steven Carter's book, *The Culture of Disbelief*. He makes a compelling case that today Americans of all political persuasions and all regions have created a climate in this country in which some people believe that they are embarrassed to say that they advocate a course of action simply because they believe it is the right thing; because they believe it is dictated by their faith, by what they discern to be, with their best efforts, the will of God.

I submit to you today, my fellow Americans, that we can stand that kind of debate in this country. We are living in a country where the most central institution of our society, the family, has been under assault for 30 years. We are living in a

country in which 160,000 school children don't go to school every day because they're afraid someone will shoot them, or beat them up, or knife them. We are living in a country now where gun shots are the single leading cause of death among teenage boys. We are living in a country where people can find themselves shot in the cross fire of teenagers who are often better armed than the police who are trying to protect other people from illegal conduct.

It is high time we had an open and honest reaffirmation of the role of American citizens of faith -- not so that we can agree, but so that we can argue and discourse and seek the truth and seek to heal this troubled land.

So today I ask you to also think of that. We are a people of faith. We have been so secure in that faith that we have enshrined in our Constitution protection for people who profess no

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faith. And good for us for doing so. That is what the First Amendment is all about. But let us never believe that the freedom of religion imposes on any of us some responsibility to run from our convictions. Let us instead respect one another's faiths, fight to the death to preserve the right of every American to practice whatever convictions he or she has, but bring our values back to the table of American discourse to heal our troubled land.

Thank you very much. (Applause.)

(The bill is signed.) (Applause.)

END

9:25 A.M. EST



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

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

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

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

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

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.

yes if
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prohibits
moments
of
silence

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.

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).

The Religious Right Readies Agenda for Second 100 Days

By GUSTAV NIEBUHR

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WASHINGTON, May 14 — For months, religious conservatives watched, and many applauded, as the new Republican majority in Congress wielded its political muscle against Government spending. Now, they are pushing those same Republicans to take up moral issues as well and push for restricting access to abortion, reducing Federal influence in education and, most important, creating a Constitutional protection for student-led school prayer.

"It's not that we're showing up, saying, 'O.K., guys, it's our turn,'" said the Rev. Louis P. Sheldon, chairman of the Traditional Values Coalition, an organization based in Anaheim, Calif., that says it represents 31,000 churches nationwide. After all, he said, the organization has supported spending cuts on the ground that national financial and spiritual stability are linked.

But in the second 100 days, Mr. Sheldon said, he expects to see moral issues on Congress's agenda. "There's a lot of social legislation we're going to work on and support, but our main thrust is going to be the Religious Equality Amendment," he said.

Indeed, some form of constitutional protection for student-led school prayer seems to be at or near the top of just about every agenda among religious conservatives.

The call for such an amendment will be featured in the Contract With the American Family that the Christian Coalition is scheduled to unveil at a news conference on Capitol Hill on Wednesday. The 10-point document will also call for turning over much of the Department of Education's budget to local schools, imposing new restrictions on abortion and making Federal prisoners pay restitution to victims of their crimes, said Ralph Reed, executive director of the Christian Coalition, the nation's

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largest group of religious conservatives, with 1.5 million members.

The news conference will start a new phase in the Republican-led Congress, one that some analysts say is fraught with peril for the Republican Party. The relative harmony of the first 100 days reflected, in part, the understanding that the more divisive social issues, like abortion and prayer in schools, would be deferred. Now, with that cease-fire over, conservative Christians are eager to move forward.

But the Republican Party has a painful history on this agenda. Abortion has long divided the party between conservative Christians and less ideological party members; the issue has bubbled up in state races and in struggles over the party's platform, which since the Reagan ascendancy has called for a constitutional amendment to outlaw abortion.

Moreover, the 1992 Republican convention, with its explicit appeals to traditional values, was considered by many analysts to have backfired. A convention speech by the conservative commentator Patrick J. Buchanan, declaring that a "religious and cultural war" was under way in the country, was widely denounced as polarizing and counterproductive

to a party whose electoral fortunes depend on casting a wide net.

Already, the backlash to this newest offensive by conservative Christians has begun.

An alliance of some 50 religious, civil liberties and educational organizations has denounced the proposed Religious Equality Amendment as a breach of the principle of separation of church and state. The Coalition to Preserve Religious Liberty, as the alliance is called, is lobbying Con-

At the top of the list, an amendment to allow school prayer.

gress and trying to rally popular opposition to the proposal, said its co-chairman, J. Brent Walker, who is also general counsel for the Baptist Joint Committee on Public Affairs. "We're pretty much working all fronts," Mr. Walker said.

The Contract With the American Family follows in title and form the House Republicans' Contract With America, the political manifesto introduced in the election campaign last fall and taken up by the new Congress, and which the Christian Coalition supported.

"The economic and the cultural issues are a seamless web," Mr. Reed said. "And part of our broad agenda of limiting government is to turn power back to parents and families and local schools."

If the coalition stands in a position to make such recommendations, it is because religious conservatives claim credit for helping transform Congress in a conservative Republican direction. "In November, evangelicals turned out in record numbers," said James Dobson, president of Focus on the Family, a conservative Christian organization with a daily nationwide radio broadcast on social issues.

An exit poll survey conducted by Mitofsky International of 5,200 voters in that election found that just over 20 percent of voters identified themselves as Protestants who were evangelicals or born-again Christians. And 3 out of 4 of those Protestants reported voting for Republican candidates, said John Green, a political science professor at the University of Akron and director of its Ray Bliss Institute, a political research center.

"It was the largest single voting bloc among Republican voters," said Professor Green, an expert on voting patterns among religious groups. "It represents just about a third of the Republican vote."

With this political potency in mind, religious conservatives have watched Republican decisions with a keen and critical eye. Dr. Dobson said he had been disturbed when Republican leaders chose Gov. Christine Todd Whitman of New Jersey to deliver the party's response to President Clinton's State of the

Union Message in January. Given her support of abortion rights, he said, Governor Whitman represented the "antithesis" of what religious conservatives value.

But Dr. Dobson said he had since met with Speaker Newt Gingrich and come away with assurances that Congress would soon begin to address moral concerns. "He did say that by the end of the second 100 days, we'd be more pleased with the outcome in respect to family values than we have been in the past," Dr. Dobson said.

As Speaker, Mr. Gingrich has not specifically endorsed a school prayer amendment. Rather, he has spoken in general terms about "religious freedom" legislation that would "create a legal framework that allows us to recognize that this is a profoundly religious country, but there is no state church."

Although the final wording of a proposed Religious Equality Amendment is still uncertain, a widely circulated version would bar Federal and state authorities from preventing students, or anyone else, from engaging in "prayer or other religious expression" in situations, like graduation ceremonies, where "expression of a nonreligious character" would be allowed.

That wording represents a break with how religious conservatives approached school prayer in the past. Absent is any mention of teacher-led classroom prayer, which was declared unconstitutional by the Supreme Court 33 years ago.

Instead, the emphasis is on public expression of religious belief. The amendment would forbid the authorities to cite constitutional grounds to block "ceremonial" expression of religion, a clause that could allow Christmas crèches and Hanukkah menorahs on courthouse lawns.

The Christian Coalition, Mr. Reed said, wants the measure to guarantee "student-initiated" prayer, allowing students, for example, to bring in a minister, priest or rabbi for an invocation at graduation.

Lawyers with the American Center for Law and Justice, an organization founded in 1991 by Pat Robertson, the religious broadcaster and founder of the Christian Coalition, have played a major role in drafting the proposed amendment. Jay Sekulow, the center's general counsel, said the measure "gives those who have been concerned about morality in schools and the role of religion in public life a reason to hope that they will not be isolated or marginalized."

But Mr. Walker of the Coalition to Preserve Religious Liberty said the amendment "involves a drastic reordering of church and state."

He recently wrote a memorandum warning, for example, that the amendment could allow a public school teacher to "evangelize kindergarten students," a minister to preach "a hell-fire sermon" at a graduation ceremony or the Government "to fund religious schools in the same way it funds other, nonreligious schools."

Religious conservatives assert that the measure is popular with their constituencies, many of whom believe that an aggressive secularism in courts and city halls threatens to undercut religious liberties. They cite startling stories — a pupil reprimanded for saying grace or for wanting to write about Jesus in a classroom essay — as evidence that the religious are being shoved to the margins of society, their right to voice their faith under attack.

"In recent years, that right has been eroded," Dr. Dobson said. The proposed amendment, he said, would "put it specifically in the Constitution that children and adults have a right to express their faith."

By casting the proposed amendment as a religious liberty measure, religious conservatives think they have a legislative winner. Mr. Sekulow of the American Center for Law and Justice said, "This is a very different approach than has ever been taken before."

Still, the measure is not their only hope. Mr. Sheldon, for example, said the Traditional Values Coalition was working with the office of Representative Philip M. Crane, Republican of Illinois, for a "clarification" of what Federal tax laws say about how much time, money and labor that religious groups can spend on influencing legislation.

His group, Mr. Sheldon said, wants to see the limit for time, money and

labor set at 19 percent. Currently, there is no specified limit other than it should be "insignificant," he said. "Churches across America would like to be more active in the influencing of public policy and that's what this would do," he said.

And in its Contract With the American Family, the Christian Coalition expects to call for new regulations on abortion, like limiting late-term abortions, Mr. Reed said.

Some action against abortion is vital to religious conservatives, Mr. Sekulow said, adding, "To ignore the life issue is to ignore the ongoing culture clash in our society."

THE NEW YORK TIMES, TUESDAY, MAY 16, 1995

file sub page

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and other defendants had collectively promised slightly more than \$2 billion. But Judge Sam C. Pointer Jr., who is overseeing the case, recently ruled that the compensation pool could not cover the number of claims against it and sent the parties back to renegotiate.

Dow Corning has said that \$2 billion over 30 years is all that it can afford in light of the huge claims against it by more than 4,000 women who have refused to join in the settlement. Many are pursuing cases in states like Texas and California that are known for their large jury awards. Dow had cited its inability to mount so many trial defenses as one reason for its bankruptcy filing.

Now, lawyers say, the bankruptcy filing will force all women to draw from the same pool. Unless the parties agree on the size of that pool, it will be decided in a hearing before the bankruptcy court. Any claims would have to be filed against whatever trust fund is set up to handle them and any suits by women dissatisfied with their settlement offers would have to be against the trust fund, not Dow Corning.

The supplier of 90 percent of medical silicone may pull out of the business.

One result could be that the other participants in the proposed Alabama settlement reach a separate agreement, severing their liabilities from Dow Corning's. But it is not clear that they are prepared to raise their contributions enough to induce plaintiffs attorneys to go along.

Even if Dow Corning tries to stay in the Alabama settlement talks with the Michigan bankruptcy court's blessing, matters could be complicated by new plaintiffs' lawyers demanding to participate.

"Plaintiffs lawyers get even more piggish and abrasive in Chapter 11," said one attorney who has been involved in several asbestos cases. "This is not an efficient or quick way to handle things."

The filing also focused new attention on Dow Chemical as a defendant. Dow Chemical, which is also based in Midland, Mich., has repeatedly denied that it ever played any role in the design, manufacture or testing of implants and has refused to contribute to the class action settlement. However, Judge Pointer ruled April 25 that Dow Chemical may have been negligent in how it handled information about potential problems based on its silicone research dating back to 1948.

Plaintiffs attorneys have said that the ruling gives them the ammunition to force Dow Chemical into a major contribution to the settlement talks. Now, however, Dow Corning is expected to ask the bankruptcy court to stop all claims against Dow Chemical. The argument would run that Dow Chemical would have a right to sue Dow Corning for contributing to any liability Dow Chemical had. Thus, Dow Corning could argue, any breast implant claim against Dow Chemical could worsen Dow Corning's financial health and should be halted until the bankruptcy reorganization plan pinning down Dow Corning's liabilities has been approved.

The filing came at time when Dow Corning's business has been booming. Sales have been strong in all of its product lines and in all geographic regions.

Following in Others' Footsteps

The status of other bankruptcies prompted by product-liability suits.

JOHNS-MANVILLE CORPORATION, Denver

- Filed for Chapter 11 bankruptcy protection in August 1982 after claims by workers and others who said they suffered from cancer and other lung ailments as a result of exposure to asbestos.
- Emerged from bankruptcy in 1988 as Manville Corporation.
- A trust was endowed with \$1.8 billion to \$2.2 billion to settle 200,000 claims. The initial estimates of liability proved low and, after years of negotiations, just 43,000 claims have been settled. The trust plans to offer settlements to 100,000 claimants this year.

More than a dozen other asbestos-producers have filed for Chapter 11 bankruptcy as a result of liability cases. They include Walter Industries, USG Corporation, National Gypsum and Eagle-Picher Industries.

A. H. ROBINS COMPANY, Richmond

- Filed for bankruptcy protection in August 1985, after thousands of women who had used the Dalkon Shield birth-control device filed claims saying they suffered injuries or had children who suffered from birth defects.
- The settlement trust has about \$2.47 billion to cover 240,000 claimants. Offers have been made to settle all but a few thousand late claims.

PIPER AIRCRAFT CORPORATION, Vero Beach, Fla.

- After being named in 322 claims related to various aircraft crashes, Piper filed for bankruptcy protection in August 1991.
- A new reorganization plan calls for \$51 million to be placed in a trust to meet the claims.
- Unlike cases in which a product was blamed, Piper's bankruptcy followed the company's inability to buy insurance once claims had been made.
- After Congress in 1993 established an 18-year statute of limitations on product-liability suits against aircraft manufacturers, Piper found an insurer. It is now trying to emerge from bankruptcy. No claims have been settled.

Prelude to Chapter 11

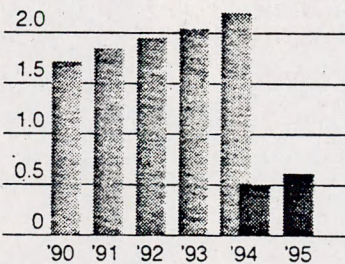
Dow Corning, once the nation's leading maker of breast implants, filed for bankruptcy protection because of lawsuits over the devices.

OVERVIEW

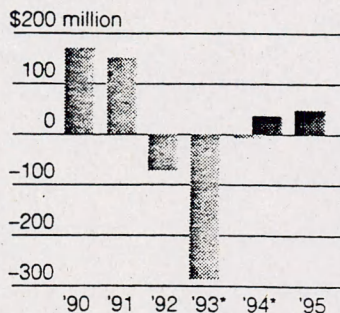
- Joint venture of Dow Chemical Company and Corning Inc. founded in 1943 in Midland, Mich.
- Makes more than 8,700 products, including auto parts, bake ware, adhesives and medical tubing.
- World's leading maker of silicone breast implants until 1992, when it stopped producing them.
- 8,300 employees.
- Manufactures in 33 locations, 12 in the United States.

NET SALES

■ Three months ended March 31
\$2.5 billion



NET INCOME



*Include pretax charges related to breast implants.

Source: Company reports

5/12

Religion

Riley, Penetta, Kline, Tharnton, ?, Holmen (Castle),
Newworth, McAff, Sullivan, Gilson, Stephens

- 1) not weds, Chr Coal not
- 2) wants Potus to make annet initially
that asked Sr Staff to long
rel. leaders together, etc
- 3) also need big moral stmt fr. Potus

Riley -

we met w/ 35 rel gyps spread common purpose
stmt - par/kids + educ

some answer gyps

75% of Ames rep'd by gyps

issue = par. inv. w/kids educ

then - Freedom Forum - work on "common
good" - consens but not trusted by
r. wing. He comes in (Charles Hays)
to broken stuff

- Mar - 6 broad principles -
A tone of debate etc

April - 8 gyps - joint stmt - progressive gyp
except evangelicals were included

to define what pub school / rel
definitions are

- lawyers

- effort to help sch ppl try to understand
what law is

Reley participated in it; they wanted us in it

Reley said no until right org
wld say it's all politics

in the end, S. Baptists bought
SO against it b/c this wld
make enough of sch. prayer issue

Chr. Leal = moment of silence, most likely;
religious equality amdt - expression
in schools - can kids write prayers
in English class, etc.

Hatch's alt - const amdt for moment
of silence where teacher can tell
kids can use it for prayer
(current law wldn't permit it
now)

ACHU wld raise Can abt this

Straight moment of silence = ok now
under const - need a statute

Potus = on record for neutral mom of Sil.

Duke's proposal - bring rel. leaders together

GS -

call, fast, a Pres-summit on
healing community civility
→ invite in rel leaders

Colston -

- Potus - impt marker end Soft
+ concerned b/c nothing since
- we must be heard
large visible public things

Have in 20-30 ppl in Blair House

Do it on ongoing basis

+ publish it

rel leaders conf on violence

→

Memo to Potus -

urg

mkt w/ rel leaders

1st one on violence, civility & community

w) proposed press rel. for this Sunday

THE WHITE HOUSE

WASHINGTON

April 27, 1995

MEMORANDUM FOR LEON PANETTA
HAROLD ICKES
ERSKINE BOWLES

FROM: GEORGE STEPHANOPOULOS
ALEXIS HERMAN/FLO MCAFEE
ABNER MIKVA/JAMES CASTELLO/STEVE NEUWIRTH
BILL GALSTON
MELANNE VERVEER

SUBJECT: RELIGION

President Clinton has a powerful message to share with the American people about the role of religion in American life. The President, like most Americans, believes that the government should protect -- but not sponsor -- religious expression. As the President showed in Oklahoma City, he understands that religion and religious institutions offer our communities support, values and hope. Religion is an important part of the President's own life. And he wants to create an environment in which religious discourse draws people together, rather than pushes them apart.

The American people seem intensely concerned about moral drift in the nation, and about the many outside influences that are shaping their children's character. In some respects, people may be far less interested in the Washington legislative process than in concepts like family, individual responsibility, community and religion.

Unfortunately, many, if not most, Americans remain unaware of the President's views. We believe the White House should develop a strategy by which the President can exercise genuine leadership on the issues of religion and values. The President cares deeply about these issues. These issues also offer a thematic basis to tie together various Clinton initiatives, from welfare reform to education to urban economic development.

The window of opportunity for the President to seize the initiative and define the debate may be small. We expect that in the coming months -- and perhaps promptly -- congressional Republicans will introduce either a constitutional amendment on religion and school prayer, or some form of religion legislation. Dole and Gramm have already expressed support for action in this area. Without a reasonable alternative, these Republican initiatives could set the standard for debate and even prove attractive to citizens who generally fear state involvement in religion but yearn for a return to morality and virtue in our communities.

The themes articulated by the President in Oklahoma City -- in particular, the concerns about how we raise our children and the kind of communities in which we live -- lay an important groundwork for further Presidential discussion of values and religion.

Several other Presidential efforts could also be built upon. In 1993, with bipartisan support and to the accolades of "conservative" and "liberal" religious leaders, the President signed the Religious Freedom Restoration Act. (President Bush had been unwilling to support similar legislation.) The President has demonstrated his commitment to the Act on several occasions. White House Public Liaison has coordinated a substantial effort of outreach to the religious community, including private meetings at the White House and Presidential speeches at prayer breakfasts and other religious events. Each of our offices has engaged in a dialogue with religious leaders, several of whom have offered to support the President in this area.

At the same time, the Education Department has pursued several relevant initiatives, including a Family Involvement Initiative that now includes 33 different religious organizations. Secretary Riley meets on a regular basis with religious leaders both in Washington and around the country. The Secretary met most recently with Cardinal Bernardin in Chicago and spoke last week at the National Catholic Education Association. Secretary Riley has established his credibility with many of the participants in the coming school prayer debate, including leading religious conservatives. The Secretary, in coordination with the White House, recently supported a broad spectrum of religious groups that issued a statement on the extent to which current law actually permits student religious expression in our schools. The Secretary also supported another broad coalition of organizations that agreed to address school-religion issues in a spirit of decency and good will.

HUD and HHS are also actively involved in outreach to the religious community, particularly on matters related to housing programs and welfare reform.

We suggest that several options for Presidential action be considered promptly:

Presidential speeches: The President could give one or more speeches to address the role of religion and values in American life. These speeches could set forth the President's vision and broad themes. The Vice President, Secretary Riley and Attorney General Reno might make follow-up speeches on more specific topics.

White House Conference on Character Formation: Scheduled for May 19-20, this may be an attractive forum for Presidential discussion of values, community and religion.

Convene a meeting of religious leaders: The President could host an event to ask religious organizations to support a spirit of community and healing. The President might also reestablish a series of smaller breakfast meetings with religious leaders.

Executive Order: The President could develop an executive order that enhances, for example, agency enforcement of the Religious Freedom Restoration Act and the Equal Access Act (concerning religious activities at schools).

Legislation: Develop a legislative strategy. The President might develop legislation to clarify religious rights in certain settings.

School prayer
Newworth 5/10

① See's - pol agency

1) in my near future, Rs will enter a court and it is
statute of both → wedge issue

log r const and t - pass quickly, on ballot/
pull voters out

Short run - issue will be completed

② Potus complaining -

"character devil" he's invested lot of
NY Time Mag had an article &
mention us

Potus said why are we significant

③ work / welfare etc issues & get elevated to consciousness

④ WH Conf or Character Devil

Flotus

+ Bill Bennett speaking

Gore - conf in summer

Jim
call
Calista

ask Angel
if Potus saw
Rel men

Not org by us:
we are having 1 meeting
sat & a multi-day
Communication Network
(GWH)

Suzanne

→ hundreds of role
schools, clubs, groups

↓ voice, role of family, etc

most of
GW
(Fri)

one other event

On 23rd he will do
a press conf w/ Catholic

press -
Tues, 25th

other poss = detailed
open statement