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June 27, 1983

TESTIMONY BEFORE

THE SENATE COMMITTEE ON THE JUDICIARY

SUBJECT: S. J. RES. 73, A PROPOSED CONSTITUTIONAL AMENDMENT RELATING TO VOLUNTARY SCHOOL PRAYER

file

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A PROPOSED CONSTITUTIONAL AMENDMENT

RELATING TO VOLUNTARY SCHOOL PRAYER

My name is Esther Pryor. I am Chairwoman of the Capital Committee of the National Council of Jewish Women, a volunteer organization of 100,000 women and men in 200 communities in the United States. I appreciate the opportunity to offer this testimony.

NCJW strongly opposes S.J. Res. 73 which proposes an amendment to the Constitution regarding prayer in public schools.

It is a fundamental belief of the NCJW that religious liberties and separation of church and state are Constitutional principles which must be preserved in a democratic society. NCJW has consistantly opposed officially sanctioned prayer, even so-called voluntary prayer, in public schools. Permitting an essentially religious practice in secular schools by stating that "nothing in the Constitution shall be construed as prohibiting" it is a direct violation and blatant denial of the First Amendment guarantee of separation of church and state. This fundamental guarantee of freedom of religion (and from religion for those who do not wish to practice one) is a prerequisite of our great democracy. In particular, it is basic to the United States' public education system.

There seems to be an effort to promote the belief that those who oppose "voluntary" prayer in schools are against religion and, therefore, against children praying. As observers of the Jewish faith, NCJW members are

(over)

committed to the practice of religion and to the solace of prayer. We are, however, convinced that officially sanctioned prayer in the public schools would automatically place children under enormous pressure to conform to the practice, thus negating the "voluntary" aspect of the amendment that is being proposed.

It is particularly disingenuous for proponents of this Constitutional amendment to attach the phrase that "no person shall be required...to participate in prayer", as it is not this requirement that will be at issue for the school child, but the pressure to conform by participation.

NCJW believes that prayer should be conducted in the home or the appropriate religious institution and not in the schools. NCJW further believes that no prayer or style of worship is uniformly acceptable to all religious traditions. Even if it is non-denominational, prayer or silent meditation could have a religious connotation. Since individual silent meditation is already permitted and "voluntary" prayer on an individual basis is not denied, what is the purpose of altering the Constitution? Would this not put a stamp of conformity on individuals in a pluralistic society?

Let us not create a situation which divides our children by providing an atmosphere which exacerbates religious tensions. Instead it would behoove our elected representatives to concentrate more of their energy on strengthening our troubled public school systems. Improving the emphasis on quality education, rather than undermining the First Amendment to the Constitution by violating the principle of church/state separation, would

better serve the needs of America's young people.

The National Council of Jewish Women, therefore, urges Senate defeat of any proposal which would amend the Constitution to permit organized prayer or meditation of any kind in the public schools.

Thank you.

Statement of

G O R D O N O. E N G E N

Director for North America

Department of Public Affairs and Religious Liberty

General Conference of Seventh-day Adventists

Regarding

A Constitutional Amendment Proposed by

SENATOR ORRIN HATCH

Committee on the Judiciary
United States Senate
June 27, 1983

Mr. Chairman; members of the Committee. I am Gordon Engen, director of the Department of Public Affairs and Religious Liberty for the North American Division of the Seventh-day Adventist Church.

The Seventh-day Adventist Church, whose headquarters are located here in Washington, D.C., seeks to guard the vitality of religion in America. Numbering over 600,000 adult members in the United States and nearly four million world-wide, Seventh-day Adventists are anxious to defend the freedom of religious assembly and the sacred right of all to pray as conscience dictates. But we wish not only to protect the right to pray and engage in religious assembly; we are concerned equally with the quality of such activity.

The Constitution of the United States approaches religion differently from that of any other country. Our forefathers rejected the notion of a benevolent government granting religious liberty to its citizens. Instead, they insisted that these rights were God given. Therefore, to the government they said, paraphrasing: Abstain from involvement with religion, doing nothing that would establish it or restrict its practice.

Every time well meaning people tinker with this uniquely conceived document we watch with concern. When amendments are proposed with religious overtones we become alarmed. And when amendments are suggested that might alter the interpretation of the First Amendment, we jump into action. This is not to fault the amendment procedure per se, of course, although we would hope that such a procedure never entails the convening of a constitutional convention which could have

even a remote possibility of tampering with the First Amendment. The amendment procedure serves well--and may have been intended to serve--the periodic need of clarifying and correcting governmental relationships, whether between the branches of the federal government or between the federal government and the several states.

Since 1868 our courts have been directed to apply the Constitution to conflicts of everyday life all the way from enactments by city councils to the actions of the federal government. During its present term alone, the Supreme Court has been asked to review more than 40 cases involving the free exercise clause or the establishment clause of the First Amendment.

Over the years the High Court has developed through case law an interpretation and application of the First Amendment that holds government at bay from involvement in religion and that keeps religion from getting its foot into the door of government.

We see any proposed religious constitutional amendment, including the one under consideration here, as potentially upsetting to past applications of the First Amendment.

For example, could we rely on former Supreme Court decisions if tension developed between the First Amendment and a new religious amendment? For the first time in our nation's history the government would be thrust by constitutional amendment into the role of "establishing" religious practices by allowing them to become part of the function of public institutions. Any religious amendment, no matter how innocuous, would create tension to a greater or lesser degree. We do not believe our nation should take that risk.

I do not impugn the motives of those who are sponsoring this

amendment. In fact, I applaude those motives as wholesome and highminded. As a clergyman, I welcome greater participation in religious activity through silent or audible prayer, or through gatherings of those of kindred faith. Seventh-day Adventist ministers and lay workers throughout the nation are striving for these same objectives with evangelistic zeal. But this activity belongs in the churches of our communities and in the lives of private citizens as self employed or even as employees at some level of government. Religious commitment makes better workers and better public servants. But when well intentioned people place the force of the Constitution behind their zeal, we strongly object. It alarms us to contemplate religion taking an official place in public institutions, as if a <u>form</u> of godliness would please God and cure our social ills.

With the constitutional waters muddied by enactment of a religious amendment, however acceptable its content, the efforts to extend religion further into public institutions might escalate. We deduce this from what the zealots now say, things like "Make this a Christian nation," and "bring our country back to God by enacting laws regarding prayer or a national day of worship."

Let men and women of high religious moral principles become involved in government on all levels. Let them make decisions based on their high ideals and principles. But let them not seek to mix the matters of Caesar with the matters of God by making the latter a function of government.

Opposition to a religious amendment is not ka vote against God. Jesus said His kingdom was not of this world. He wishes to establish His kingdom in the hearts and lives of His followers. Legislative enactments, constitutional amendments, or pronouncements through public

resolutions of government are not God's plan.

Legislative action that is subject to judicial review is preferable in safeguarding the free exercise of religion to an amendment to the Constitution which could bring the whole matter of the First Amendment and its application through case law into question. But even here, efforts to strip the courts of jurisdiction in the area of prayer through simple-majority bills would evoke our opposition.

For the above reasons we urge you to oppose this and any other religious constitutional amendment. Do not through such means cloud the future of church-state separation.

TESTIMONY OF

LEON SHULL

NATIONAL DIRECTOR

AMERICANS FOR DEMOCRATIC ACTION

BEFORE THE

SENATE JUDICIARY COMMITTEE

ON

SCHOOL PRAYER

JUNE 27, 1983

My name is Leon Shull, I am the National Director of Americans for Democratic Action, a national public-policy organization with members in every state.

I want to thank the committee for giving me the opportunity to testify today. The question of whether prayer should be required in public schools is difficult to deal with because of the emotional atmosphere of the debate. Supporters of school prayer tend to label opponents as anti-religion or even godless. Such statements are distorted and misleading; they are also irrelevant. Religion unquestionably holds an important place in our society, but that place is clearly not in a federally-funded public school system. In writing for the first Supreme Court decision in 1962, Justice Black stated: "It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance."

The fundamental issue is constitutional. Prayer in the school -- voluntary or otherwise -- violates the First Amendment <u>by definition</u>. In at least a dozen decisions from 1947 to 1982, the United States Supreme Court banned governmental assistance to religion and specifically outlawed prayers and Bible reading in the schools. The advocates of the prayer amendment must logically reject the basic premise underlying these Supreme Court decisions; they must

attack the delicate balance which the court has constructed between the establishment and the free exercise clauses of the First Amendment. Father Robert F. Drinan, who is president of Americans for Democratic Action, a former Member of Congress, and (of particular relevance to this issue) a Catholic priest, has summed up the principles at stake: "The advocates of school prayer are in effect asking the Congress and the country to overthrow the philosophical, juridical, and constitutional synthesis which the court has evolved over a period of about two generations. The prayer amendment, in other words, is not a simple modification of the Church-State detente evolved by the Supreme Court; it is in effect a repudiation of it."

To say that the state is not promoting religion because prayer is "voluntary" or "silent meditation" is a semantical dodge. Public school teachers, principals, or school officials, who are all sanctioned by the government, are directing and conducting the prayer or the meditation. Authorizing such government-employed officials to determine what constitutes a non-denominational prayer is, in effect, giving the government authority in religious matters. The fact that all children are required by law to attend school reinforces the notion of government sponsorship of religion. This directly contravenes the Supreme Court's ruling that the government, either through its legislature or school officials, must not initiate, promote, or sponsor religious activities in the public schools. The prayer is taking place on school property, which is supported by the taxpayers. Allowing the student who does not wish to participate to leave the room is not protecting his or her freedom, but is rather excluding that individual from the classroom because of state-sanctioned religious activity; it is forcing that student into the role of outcast.

Subtle pressure, whether purposeful or not, from the teacher and from the student's peers is not in any way conducive to the free practice of religion. To speak of a 6 or 7 year old, or for that matter, a 13 or 14 year old child exercising his or her constitutional rights in such an atmosphere is absurd. There is no question that teachers, who are required to conduct the prayers, are authority figures. Their attitudes, whether positive or negative, towards the prayer will certainly affect impressionable children.

Offering to create a non-denominational prayer is not the answer. First, who would decide what that prayer will be? The government? Certainly that is an instrusion into a sphere where the government has no place. Writing for the Court, Justice Black concluded that the First Amendment "at least" means that "it is no part of the business of government to compose official prayers for any group of the American people." Second, such a prayer is offensive to those parents who do not wish to bring up their children with any religious beliefs, and it is offensive to the intensely religious practitioners for whom prayer is a sacred activity accompanied by certain practices or words. As the National Council of Churches has pointed out in previous testimony, orthodox Jews pray in a specific posture with prayer shawls and head coverings, while devout Christians would find a prayer that did not include the name of Jesus Christ unacceptable.

It is for this reason that many religious groups and leaders oppose school prayer -- they object to the secularization of prayer and the dilution of its significance.

A prayer amendment tends to assume the nature of a "quick fix" for the perceived godlessness and secularism of the public schools. But, at best, a prayer is a minute or two a day in the 30 hours of instruction per week in the average public school. Much more significant and meaningful would be the sort of courses about religion approved by the American Association of School Administrators (AASA) and by all educational and civil liberties groups. These courses would teach about various religions, such as Judaism, Christianity, Hinduism, Buddhism, instead of trying to provide ersatz spiritual leadership. The courses would seek to eradicate religious illiteracy by elevating objective knowledge about religion to a point of academic respectability. Courses of this nature do not raise any constitutional questions. Such instruction could be given for students who elect it and possibly for others. It would be infinitely more significant and substantive than a moment of prayer. And it would be legally non-controversial, academically sound, and religiously beneficial.

In the 1952 Zorach vs. Clausen decision, the Supreme Court permitted released-time religious education so long as it is conducted off the school premises. For those sincere persons who desire to integrate the secular

knowledge transmitted in the public schools more closely with the sacred, there is a way through released-time that is constitutionally permissible and organizationally feasible.

I find it ironic that an administration which is always promising to remove excessive government interference from the lives of its citizens is now trying to impose itself in one of the most sacred and personal areas of an individual's life. And it is doing so in the face of a specific constitutional prohibition and very clear and consistent Supreme Court rulings.

I hope that this committee will oppose any such efforts to weaken the Constitution and the Court, and to curtail one of our most basic rights.

# # #

TESTIMONY OF THE

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST

IN THE UNITED STATES OF AMERICA

BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE SENATE OF THE UNITED STATES

OPPOSING THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES TO PERMIT PRAYER OR MEDITATION IN PUBLIC SCHOOLS

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Presented by the Reverend Dean M. Kelley
Director for Religious and Civil Liberty
National Council of the Churches of Christ in the U.S.A.

S U M M A R Y

This testimony opposes the Administration's proposal because it is unjust, unwise, unnecessary and a throwback to the old European tradition of mere religious toleration that our forebears fled to set up a condition of full religious liberty under the federal First Amendment.

This testimony opposes the other proposal because it is unnecessary, out of all proportion to the supposed ill it is designed to remedy, and would supersede important Constitutional safeguards of individual rights and liberties and the judicial doctrines built up around them over many decades.

My name is Dean M. Kelley. I am Director for Religious and Civil Liberty for the National Council of the Churches of Christ in the U.S.A. and have held that position since 1960. I am an ordained minister of the United Methodist Church and have served local parish churches for 13 years before coming to the National Council. I have been assigned by the President and the General Secretary of the NCC to present this testimony on behalf of the NCC.

The National Council of Churches is the cooperative agency of thirty-two Protestant and Eastern Orthodox national religious bodies which have an aggregate membership of over 40,000,000. We do not presume to speak for all of those members any more than a Senator can speak for all of the people in his state. We speak for the Governing Board of the NCC, a representative body of about 300 persons chosen by the member denominations in proportion to their size and according to their own respective processes. This testimony is based on a policy statement of the NCC, "The Churches and the Public Schools," adopted in 1963 and reaffirmed by a resolution on "Prayer in Public Schools" adopted May 13, 1982. (The Greek Orthodox Archdiocese of North and South America dissented from this policy.) Copies of these are attached.

Since there are two proposed Gonstitutional amendments before the Committee, we address them in succession. Since the first proposal is virtually identical with one that was before this Committee a year ago, we offer substantially the same testimony on it that we gave here on July 29, 1982, which follows:

of minority religious groups were permitted to coexist with the majority on the condition that they conform to the dominant or established faith -- or at least make no outward show of non-conformity. But it was clear that they were accepted on sufference only; they were guests in someone else's house, to be admitted only on condition of good (religious) behavior. They were not fully citizens because they did not share the religious commitment expected of all loyal members of society. Because they did not share that religious commitment, their civil loyalty was suspect.

Toleration was a relaxed form of the arrangement that came to dominate Europe after the Protestant Reformation: cuius regio, eius religio. Under this principle of "territorialism," the religion of the ruler became the religion of his realm, and those who didn't like it were free (or sometimes required) to emigrate. (That was an improvement over the pre-Reformation situation where religious non-conformers were burned at the stake, but it still left much to be desired.)

What the proposed amendment would do would be to abandon the American experiment of the independence of the civil covenant from the religious covenant and regress to the European situation of toleration and territorialism, except that in this society the ruler is the majority of the electorate. The majority would rule in the religious forms to be instituted in public schools and other public institutions. Members of religious minorities, who are equally citizens and whose taxes equally support those institutions, would no longer be equally at home in them. They would be guests in institutions belonging more to the (religious) majority than to them, second-class citizens because of their religious non-conformity.

By whom? Not by individual children suddenly expressing the wish to pray, but by "public authorities": teachers, principals, school boards, states. This is not merely "permitting" people to pray, this is the state arranging for people to pray, and to pray prayers selected by the same authorities, even if it is only by inviting a participant to offer prayer on behalf of all.

So there is no pretense that it will be non-sectarian prayer. It will be a prayer more acceptable to some than to others, which is the meaning of "sectarian." We may hope that prayers of various faith-traditions might be used in rotation, but there is no assurance that a few Jewish pupils might not have to hear Christian prayers offered all year round in the public schools that are supposed to be as much theirs as anyone else's.

Some may say that this can surely do them no harm. But that is for them to say. Such an assurance is like a fat man leaning on a thin man and telling him it doesn't hurt! Orthodox Jewish children are taught that prayer must be made in certain postures, with prayer-shawl, head covered, etc. What would be undertaken in public schools would not be "prayer" for them, but a travesty of prayer as they understand it.

The solution for them, we are told, is to be excused. "No person shall be required by the United States or any state to participate in prayer," the amendment says, and that provision is designed to cure all ills that might arise. But what does it mean? Are there pressures and expectations that do not rise to the level of state-imposed "requirements" that still might have a strong adverse effect on impressionable children? How about the teacher's using a sarcastic or scornful tone of voice when excusing those who wish to be

with true religious liberty until 1962, and we should not be surprised if this cultural lag affects the general public for a few decades longer.

But we are told that no such problems troubled the American classroom prior to the Supreme Court's (mis?)reading of the First Amendment in 1963. All was supposedly sweetness and light when the several states, and indeed each local community, could set its own standards for religious practices in public-school classrooms. But that is -- unfortunately -- not true. The record is replete with stories of children made to suffer because they would not conform to religious practices in public schools. A Massachusetts case in 1859 involved a Roman Catholic boy of eleven, Tom Wall, who, acting on instructions of his parents and his priest, declined to confirm to a classroom religious practice. He was whipped on the hands with a rattan stick until he consented to conform.[6] In some states, litigation led to the elimination of prayer from public schools long before 1963. It was a fertile field for community strife and litigation, and courts reached diverse conclusions, sometimes upholding the practice, as in the case of Tom Wall, cited above. Thus the establishment of religion -- in this respect at least -- had come to have a different meaning from one jurisdiction to the next.

But that is not what a federal Bill of Rights should permit. How many of us wish to submit our most precious rights and liberties to local option?

I B

The proposed amendment is <u>unwise</u> because it would authorize practices in public schools that would permit government intrusion

I can pray that the United States will become Christian (as I understand and interpret my faith) with a measure of confidence and hope because of the nature of the republic and the composition of its peoples. We are encouraged freely to express and exercise our convictions while being denied the right to impose those convictions on others. The doctrine of the separation of church and state, as defined in the First Amendment of the Constitution, provides the essential safeguards. It insists that the church dare not be viewed as an arm of the state. It insists that the state dare not dominate or intimidate the church. The "wall

(This policy statement is attached.)

Many people have responded favorably to the proposal to "get the government off our backs," and particularly to keep it out of any activities that might interfere in family life and the nuture of children by their parents. It is surprising that some of the same people are now proposing to allow State and local governments, through the state instrumentalities of public schools, to introduce religious forms and practices that will be at odds with those which some parents are trying to inculcate in their children. In this most sensitive area of family life, the clumsy and untutored intrusion of governmental authorities, however well-intended, is especially unwise.

It is sometimes claimed that some children would never hear the name of God if they did not have the benefit of public-school prayers, but that is precisely the kind of intrusion that some parents, if they are intentionally bringing up their children in a non-theistic approach to life -- as is their right -- may wish to avoid. Other parents may feel that their particular devout form of faith will not benefit from perfunctory recitations of someone else's prayers in a non-ecclesiastical setting, and so oppose it because public schools prayers are not religious enough.

The National Council of Churches cannot overlook the fact that Christians are admonished by the Lord Jesus Christ in the Sermon on the Mount not to make a show of prayer in public places:

> And when you pray, you must not be like the hypocrites; for they love to stand and pray in the synagogues and at the street corners, that they may be seen by men. Truly, I say to you, they have their reward. But when you pray, go into your room and shut the door and pray to your Father who is in secret; and your Father who sees in secret will reward you.
>
> (Matthew 6: 5-6)

I C

Lastly, the proposed Constitutional amendment is unnecessary, since any person can pray to God at any time or place, and the Supreme Court cannot prevent it, nor can the Congress enable it. It is only oral, collective, unison prayer that requires "state action," and since that kind of prayer is not necessarily more efficacious than the silent, inward petition of the heart (as well as being less consonant with Christ's admonition), it is obviously being sought for symbolic reasons, to make some kind of a statement or demonstration about the nature of the public school, the state, the nation.

Indeed, that is a recurrent argument of proponents of a prayer amendment: that public schools -- and our whole society -- have deteriorated since prayer was removed from public schools, and that restoring it will rectify the accumulated ills of the past two decades: vandalism, violence, drug addiction, delinquency, sexual promiscuity, and perversion, etc. Would that restoring prayers in public schools could have such a result! But children's lives are not transformed by magical incantations but by the models set for them in the conduct of their elders. And there is no need for a Constitutional amendment to enable adults to set a moral and righteous example for their children. They can do that now. To want to press prayer into service as a device for improving the moral climate of the schools -- desirable as that would be -- is to demean it from an end in itself -- communion with God -- to a means to another -- and lesser -- end: improving the behavior of (other people's) children. That is precisely what the Lord criticized about using prayer to make a public show for ulterior reasons.

The proposed amendment is unnecessary in another respect. If it is desired to make children more fully conscious of the religious roots

II A

The other proposed amendment before the Committee is somewhat more elaborate:

> Sec. 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.
>
> Sec. 2 Nothing in this Constitution shall be construed to prohibit equal access to the use of public school facilities by all voluntary student groups.

It is preferable to the first proposed amendment in that it would authorize only "silent prayer or meditation," which makes possible a non-religious interpretation of the authorized activity for those who would prefer to understand it in that way, provided local school boards must preserve the dual option. If local school boards can themselves choose to offer only the option of "silent prayer," that advantage is lost.

The proviso "silent" also eliminates the entire issue of content, with its troublesome question of imposing one or another "sectarian" prayer on persons who do not subscribe to it, as well as the companion question of whether there is any such thing as a non-sectarian prayer, and whether it would be of any great significance.

Of course, there are sectarian forms of prayer -- even silent prayer -- as well as sectarian content. As stated earlier, Orthodox Jews believe that prayer is authentic only if offered in a certain posture, with head covered, wearing a prayer-shawl, etc. The next sentence seeks to preserve governmental neutrality with respect to the

schools), etc.? This again seems to blur the important distinction between the curricular and the extra-curricular.

More important, it may sweep aside the important concept of the "limited public forum," which formed the basis of the U.S. Supreme Court's decision in Widmar v. Vincent, [8] holding that if a state university had provided a (limited) public forum for (extracurricular) student groups with non-religious purposes, it could not ban those with religious purposes without engaging in content-based exclusions of one particular category of speech.

The University was not obliged, however, to provide any public forum for any student groups, nor to open that forum to activities that would disrupt or interfere with the primary function of the university: education. It is these considerations which make a school a limited public forum, and which should be preserved in any constitutional amendment, so that no school is under the impression that it is obliged to provide a public forum for voluntary student groups or to permit activities there to interfere with its primary function of education.

II C

There is a range of other problems generated by this proposal that can only be suggested here: what are the appropriate safeguards against the school's sponsoring or appearing to sponsor, endorsing or appearing to endorse, the religious activities or identities of voluntary student groups of a religious nature?

There is nothing in the proposed amendment to require or imply that the public school(s) may not extend an equal mantle or aegis of sponsorship or endorsement to "all voluntary student groups" to which

problems than restricted participation by faculty members responsible to the school.

5. Can any outside speakers or resource leaders be brought in by "voluntary student groups?" -- Probably not on a continuing basis, for reasons suggested above, but single appearances might be permissible if that is the school's policy with respect to non-religious extra-curricular clubs.

These questions are listed to suggest a whole range of troublesome issues on which the proposed amendment is silent, and which would have a significant bearing on whether the state is genuinely neutral with respect to religion in the undertakings sought to be authorized under the proposal. Without some idea of how they would be resolved, it is difficult to judge whether the amendment would do more good than harm.

Do existing legal canons such as "governmental neutrality," "limited public forum," and non-sponsorship, non-imprimatur, non-establishment, apply to this proposal? They are based on the existing First Amendment and its interpretation by the courts over the years. But the new proposal, if approved by two-thirds vote of both Houses of Congress and ratified by the legislatures of three-fourths of the States, would supersede any Constitutional provisions in conflict with it, and any tests or canons derived from them: "Nothing in this Constitution shall be construed to prohibit..." etc. Thus a lot of very important and hard-won protections for religious and civil liberties could be swept aside by a new Amendment.

The Judiciary Committee of the Senate is to be applauded for arranging these hearings to consider the implications of any proposal to change the wording of the U.S. Constitution. Such changes should not be

The Executive Committee of the National Council of Churches, meeting in San Francisco on May 10, 1983, has supported the general concept of the Hatfield bill (S.815), but the National Council of Churches cannot endorse the amending of the Constitution even for such commendable purposes (especially when there is good reason to think that ordinary legislation will suffice to accomplish the intended effect). Its Governing Board in 1963 resisted the suggestions for changing the wording (or effect) of the First Amendment and reaffirmed that view in 1982. They are no more receptive now to any similar proposals for tampering with the First Amendment.

A PRONOUNCEMENT

A Policy Statement of the National Council of the Churches of Christ in the United States of America

OPPOSITION TO THE CHRISTIAN AMENDMENT PROPOSAL

Adopted by the General Board

June 4, 1959

The General Board of the National Council of the Churches of Christ in the U.S.A. reaffirms its support of religious freedom for all people and, being aware of proposals currently agitated for an amendment to the Constitution of the United States intending to declare that the United States is a Christian nation, sets forth the following concerns for the consideration of the churches and the nation.

(1) A constitutional amendment of this purport confuses the nature and function of the nation-state with the nature and function of churches. It would increase the present difficulties of citizens in comprehending and in continuing healthy separation and sound relations between church and state. These reflections are set forth with full awareness that this nation and all other nations stand constantly under the judgment and the sovereign authority of God.

(2) Previous attempts to maintain "Christian states," in earlier centuries as well as in our own, have been fraught with great problems and have failed in disillusion. They have frequently denied general liberty, and religious liberty in particular, to all who did not belong to the dominant body of Christians. In the American scene of today, a constitutional sanction for Christianity would tend to weaken the rights and liberties of citizens and others who are not Christians, to lessen respect for their distinctive concerns, and to accentuate divisions within the body politic.

(3) The intended amendment would strengthen the hands of those who desire financial and other privileges for Christian churches ready and able to secure them — such as support of school and welfare institutions, extended tax privileges for property and enterprises under Christian names.

(4) The proposed amendment would embarrass our ecumenical relations and our missionary enterprises and also general international relations as viewed by Christians and by the world majority of non-Christians, through officially attaching the Christian name to military, economic, and other acts and policies of the Government of the United States.

(5) To declare the United States a Christian nation in the churchman's sense of "Christian," is to assert less of truth than of pretension. That term rightly belongs to significant religion, with biblical and theological meaning and simply is not applicable to the American nation as a whole. Moreover, the proposal in question, if given an aura of validity by incorporation in the Constitution, would tempt many unthinking church members to complacent hypocrisy in their outlook upon society, national and international. In fine, it is perilous, even sacrilegious, to turn to the political forum for practical determination of the public meaning of the great word, "Christian." The church cannot share this word, central and peculiar to its character, with the nation-state.

In the light of these considerations the National Council of Churches records its opposition to the proposal for an amendment to the Constitution of the United States intending to declare the United States to be a Christian nation.

59 FOR, 1 AGAINST, 0 ABSTENTIONS

A PRONOUNCEMENT

A Policy Statement of the National Council of the Churches of Christ in the United States of America

THE CHURCHES AND THE PUBLIC SCHOOLS

Adopted by the General Board

June 7, 1963

As Christians we acknowledge God as the ground and source and confirmer of truth, whose Spirit is ever ready to respond to men's and children's search for understanding by correcting their fumbling misapprehensions and leading them into larger and fuller truth. Teaching and learning at their highest are pursued within this recognition. As Americans we are firmly committed to the right of freedom of conscience and freedom of religion, that is, the freedom of each citizen in the determination of his religious allegiance, and the freedom of religious groups and institutions in the exercise and declaration of their beliefs.

The American tradition with respect to the relations of government and religion, often described as "separation of church and state" does not mean that the state is hostile toward, or indifferent to, religion. On the contrary, governments—national, state and local—have prevailingly acknowledged the importance as well as the autonomy of religion and have given expression to this principle in many ways.

In present-day American society, with its diversity of religious conviction and affiliations, the place of religion in public education must be worked out within this recognition of the prevailingly positive attitude of the American people as a whole toward religion and safeguarding of religious liberty.

As Christians we believe that every individual has a right to an education aimed at the full development of his capacities as a human being created by God, his character as well as his intellect. We are impelled by the love of neighbor to seek maximum educational opportunities for each individual in order that he may prepare himself for responsible participation in the common life.

CONCERN FOR THE PUBLIC SCHOOLS

We reaffirm our support of the system of public education* in the United States of America. It provides a context in which all individuals may share in an education which contributes to the full development of their capacities. It serves as a major cohesive force in our pluralistic society. We also recognize that significant value derives from the fact that this system is financed by public funds, is responsive to the community as a whole, and is open to all without distinctions as to race, creed, national origin, or economic status.

DEFINITION OF ROLES

Religious ideas, beliefs, values, and the contributions of churches are an integral part of our cultural heritage as a people. The public schools have an obligation to help individuals develop an intelligent understanding and appreciation of the role of religion in the life of the people of this nation. Teaching for religious commitment is the responsibility of the home and the community of faith (such as the church or synagogue) rather than the public schools.

We support the right of religious groups to establish and maintain schools at their own expense provided they meet prescribed educational standards.

We support also the right of parents to decide whether their children shall attend public or non-public schools. The parent who chooses to send his children to a non-public school is not excused from the responsibility of the citizen to support and seek to improve the public schools.

Neither the church nor the state should use the public school to compel acceptance of any creed or conformity to any specific religious practice.

It is an essential task of the churches to provide adequate religious instruction through every means at their disposal. These include both those activities which individual churches provide within their own walls and also various joint ventures of churches involving cooperation with the public schools. Christian nurture and the development and practice of Christian worship are inescapable obligations of the congregation and the family. We warn the churches against the all-too-human tendency to look to the state and its agencies for sup-

* In this document the terms "public education" and "public schools" are taken to mean the system of public elementary and secondary education in the United States.

RESOLUTION ON

PRAYER IN PUBLIC SCHOOLS

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.
475 Riverside Drive, New York, NY 10115

Adopted by the Governing Board
May 13, 1962

Whereas, in a Policy Statement entitled "The Churches and the Public Schools," adopted June 7, 1963, the Governing Board of the National Council of the Churches of Christ in the U.S.A. said:

"Neither the church nor the state should use the public school to compel acceptance of any creed or conformity to any specific religious practice...";

Whereas, the same Policy Statement also stated:

"The Supreme Court of the United States in the Regents' Prayer Case has ruled 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 part of a religious program carried on by the government.' We recognize the wisdom as well as the authority of this ruling...";

Whereas, the same Policy Statement continued:

"We express the conviction that the First Amendment to our Constitution in its present wording has provided the framework within which responsible citizens and our courts have been able to afford maximum protection for the religious liberty of all our citizens ...";

Whereas, the President of the United States has recently announced his intention to propose to Congress a constitutional amendment which could lead to the reinstatement of group prayer in public schools;

Whereas, the recitation of prescribed nondenominational prayer demeans true religion by denying the traditions of faith groups while imposing on some children religious practices which are offensive to them; and

Whereas, there is a danger that the rights of members of minority religions would not be adequately protected;

Therefore, be it resolved that the Governing Board of the National Council of the Churches of Christ in the U.S.A.:

Reaffirms its belief, as set forth in the Policy Statement on "The Churches and the Public Schools" that "Christian nurture and the development and practice of Christian worship are unescapable obligations of the congregation and the family"; and

Reaffirms its support of the Supreme Court language describing the First Amendment as providing no role for government in prescribing or providing for prayer in public schools.

Policy Base: *The Church and the Public Schools,* adopted by the General Board, June 7, 1963.

WASHINGTON OFFICE
OF THE EPISCOPAL CHURCH
110 Maryland Avenue, NE Washington, DC 20002
Telephone: (202) 547-7300

TESTIMONY of Sherry Stanford, Legislative Associate, Washington Office of the Episcopal Church, before the Senate Subcommittee on the Constitution, United States Senate.

June 27, 1983

My name is Sherry Stanford, Legislative Associate, Washington Office of the Episcopal Church. I am here today to respond to the proposed Hatch Amendment and to reiterate the position of the Episcopal Church regarding prayer and religious exercises in public schools.

In November 1981, the Executive Council of the Episcopal Church adopted the following resolution in response to legislation being proposed in the 97th Congress.

> *Whereas, There are proposals pending in the Congress of the United States to facilitate the establishing by governments of prayer in the public schools; and*
>
> *Whereas, It is not and should not be the business of government to establish when people shall pray or the prayers which they shall use; and*
>
> *Whereas, It is always open to any person to pray at any time whether in the public schools, at work or at play; therefore be it*
>
> *Resolved, That this Executive Council encourages the use of prayer in connection with all aspects of daily life while at the same time strongly opposing all attempts by the state to establish when or how*

people shall pray, and thus opposing all government legislation which would prescribe means or methods of prayer in public schools or which is designed to encourage local authorities to prescribe such means or methods of prayer in public schools; and be it further

Resolved, That a copy of this resolution be sent to every member of Congress.

The Hatch Amendment is unacceptable based upon the reasons set forth in the aforementioned resolution.

Nothing in this Constitution shall be construed to prohibit individual or group silent prayer or meditation in public schools . . .

There is nothing prohibiting an individual from praying silently in public schools. Group silent prayer, however, would require a leader to suggest that the group pray or meditate, and in all likelihood, it would be a governmental official, a teacher, acting upon policy formulated by the state or local school district that there be time set aside for silent prayer or meditation.

Neither the United States nor any state shall require any person to participate in such prayer or reflection . . .

While student participation would not be required, non-participating students would be forced either to leave the classroom or to sit with the group while not participating. Such would be an

embarrassing situation for the nonparticipant. In either case, the formalization of silent prayer by a governmental entity would engender some measure of coercion of the student to participate in the organized religious activity.

Nor shall they encourage any particular form of meditation or prayer . . .

A state or local governmental entity would determine that a time for silent prayer or meditation be provided during the day. The amendment would encourage some local authorities to set aside a time of prayer or meditation and it is not the business of government to establish when people shall pray.

Thank you for the opportunity to present the position of the Episcopal Church.

S T A T E M E N T

of

Samuel Rabinove

on behalf of

THE AMERICAN JEWISH COMMITTEE

on the Hatch Amendment

before the

Subcommittee on the Constitution of the

SENATE COMMITTEE ON THE JUDICIARY

June 27, 1983

American Jewish Committee
165 East 56 Street
New York, New York 10022

S T A T E M E N T

of

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June 27, 1983

On behalf of the American Jewish Committee, I very much appreciate the opportunity to testify on the Hatch Amendment, a proposed constitutional amendment which, in part, would permit individual or group silent prayer or meditation in public schools. We wish to speak in opposition to this section of the amendment (Section 1) and urge that it be rejected, essentially because it would have the effect of amending the First Amendment.

The beneficent teachings of religion have contributed immeasurably to human progress from barbarism to civilization. Our nation, in particular, settled in large measure by people who were yearning for freedom of conscience, having fled religious persecution, has been profoundly influenced by religious concepts. Every variety of denominational belief has flourished in this country, hand in hand with the American tradition of separation of church and state, which has served as a bulwark of religious liberty. The principle of separation of religion and government, as guaranteed by the First Amendment, is indeed one of the cornerstones of our freedom. It should be reinforced, not eroded.

Underlying the Establishment Clause of the First Amendment was the conviction on the part of the Founding Fathers that any union of government and religion inevitably would impair government and would degrade religion. And tax-supported, non-sectarian public schools have served as a unifying force in American life -- welcoming young people of every creed, seeking to afford equal educational opportunity to all, emphasizing our common heritage and serving as a training ground for community living in our pluralistic society.

In 1962 the U.S. Supreme Court, in Engel v. Vitale, ruled that the recital of a state-composed ostensibly non-denominational prayer by public school children at the start of each school day violated the First Amendment. And the following year, in Abington School District v. Schempp, the Court struck down a program in which passages from the Bible were required to be read and the Lord's Prayer recited. The rationale for these decisions is as compelling as ever. The Lord's Prayer, for example, is a Christian prayer. And no prayer, however neutral it may seem, can ever be truly non-denominational. In attempting to incorporate the tenets of several major religions, the meaning of prayer can only be diluted. It is simply not a proper function of our government to compose or to sponsor prayers for American children to recite. In the words of conservative libertarian columnist James J. Kilpatrick, writing in the Washington Post of December 10, 1981: "The state simply has no business in the religion business.... The best solution is to leave a child's religious instruction where it belongs, in the home, in the church, in the temple, in his mind and heart."

It should be stressed, however, that nothing in the Supreme Court rulings prevents any public school pupil from praying, either silently or aloud, whenever the spirit moves him or her to do so, provided only that the school program is

not disrupted thereby. There are public school children today who have stated that they have engaged in serious prayer during school hours (before examinations, for example), and, to the best of our knowledge, nobody has ever interfered or denied their right to do so. It would seem, therefore, that there is no need whatever for a constitutional amendment to permit individual silent prayer or meditation in public schools. (When I was a child, I personally and privately prayed in public school. I would feel equally free to do so today.)

Group silent prayer or meditation in public schools, however, may be another matter entirely. While there could be a situation where children may wish to come together, of their own volition, for group silent prayer or meditation, that is hardly a frequent occurrence. It is far more likely, in our view, that Section 1 of this proposed amendment would be seized upon by those in government, who are determined to restore organized, officially sanctioned prayer in public schools, to use the machinery of the public schools to require that time be allotted for group silent prayer or meditation. This, we believe, would open the door to serious abuses and would surely violate the spirit of the Establishment Clause of the First Amendment.

It is important to note that the practices which would be permitted by the proposed amendment would not take place in a social vacuum. In hundreds of public school districts throughout the country (for example, Bristol, Virginia and Reidsville, North Carolina) organized spoken prayer, Bible reading and religious proselytization are taking place today on a regular basis, in outright defiance of the Supreme Court decision in Schempp. Citizens who dare to challenge such practices frequently are threatened, insulted and ostracized, as are their children in the public schools. If this amendment were to be adopted, these violations could be expected to proliferate.

One may wonder why there exists this apparent preoccupation with the need to intrude group prayer or meditation into our public schools. With some, it seems almost an obsession. We do indeed face a crisis in public education. We all have a vital interest in upgrading the quality of the education now being received and experienced by American children, in the sciences and in mathematics in particular. But the controversy over prayer and meditation has nothing whatever to do with this. In fact, it is a "smokescreen" and a distraction from what ought to concern us all. If we are truly serious about what is going on -- and what is not going on -- in our public schools, what is urgently needed is to restore the Federal funds that have been slashed from educational assistance programs.

It is indeed the task of the public schools to reflect and to help inculcate the highest moral and ethical values of our society, as well as to develop character and responsible citizenship. But if this is the main concern of the sponsors of Section 1 of the proposed amendment, it must be said that permitting group silent prayer or meditation would hardly suffice to serve this purpose. What does belong in public schools, however, is the teaching of common core values -- honesty, decency, compassion, patriotism, fairness, respect for the rights of others -- that are broadly shared by people of all denominations and none. Nor is there anything in U.S. Supreme Court decisions to preclude such instruction, provided it is not couched in religious terms. These values can be taught far more effectively by adult example and by the day-to-day behavior of parents, school principals, administrators and teachers than by group silent prayer or meditation.

In sum, we believe not only that there is no need for Section 1 of the proposed amendment, but also that it carries within it the seed of great potential for mischief. We question its wisdom. Clearly, it tampers with the First Amendment, the centerpiece of the Bill of Rights, which has stood Americans in good stead since its adoption in 1791 and which should remain inviolate. To paraphrase a current popular expression, it is not broke and does not need to be fixed. We urge, therefore, that Section 1 be rejected.

Respectfully submitted,

Samuel Rabinove
Legal Director

TESTIMONY

OF

RUTI TEITEL

ASSISTANT DIRECTOR
LEGAL AFFAIRS DEPARTMENT

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

ON

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO VOLUNTARY SILENT PRAYER OR MEDITATION

BEFORE THE

COMMITTEE ON THE JUDICIARY

SENATE

JUNE 28, 1983

Mr. Chairman and members of the Committee:

My name is Ruti G. Teitel. I am the Assistant Director of the Legal Affairs Department of the Anti-Defamation League. During my tenure with the ADL, I have written and lectured on the subject of church-state relations, as well as co-authored various amicus briefs in the federal courts and the United States Supreme Court in civil liberties matters, including May v. Cooperman concerning the New Jersey "moment of silence" statute and Donnelly v. Lynch concerning the constitutionality of a nativity scene in Pawtucket, Rhode Island.

Two decades ago, the Supreme Court of the United States held that prayer and Bible readings in the schools are unconstitutional. Today, by this proposed amendment which relates to permitting voluntary prayer and meditation in the public schools, this body seeks to overturn those decisions. Moreover, it seeks sub silentio to repeal the Establishment Clause of the First Amendment.

The Anti-Defamation League, on whose behalf I appear today, opposes this amendment. Since 1913, when it was founded, the Anti-Defamation League has been committed to protecting religious freedoms in this country, just as did our Founding Fathers, by maintaining a wall of separation between church and state. We have evidenced this continuing concern by our amicus curiae participation in such seminal Supreme Court cases as Abington v. Schempp, 374 U.S. 203 (1963) which disallowed as unconstitutional, Bible reading and prayer recitation in public schools; Lemon v. Kurtzman, 403 U.S. 602 (1971) which held unconstitutional state aid to private religious schools; and by testimony before the Congress and state legislative committees.

The instant proposal, we submit, threatens our protected religious liberties. The amendment before us today seeks to make equal what is not equal. In the name of "equal access," it proposes to allow prayer and meditation in our public schools and to treat clubs devoted to religious worship, just as those

devoted to stamp collecting, classical literature, lacrosse or hockey. There is something disingenuous in all of this.

Religion in America's political system has never been treated equally with secular activities. It is precisely because of the special nature of religion that the Founding Fathers distinguished religion, by making particular provisions for religion in the Constitution through the First Amendment's Establishment and Free Exercise Clauses. These provisions stating that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," are concerned with demarcating the place of religion and government in our society -- a chief concern of the founders of this country, because of the historical alignment of government with religion in Europe which resulted in persecution of minorities and in the resettlement in the New World. The central purpose, then, of the Establishment Clause providing that Congress shall make no law respecting an establishment of religion, as noted by the Supreme Court in 1962, "rested on the belief that a union of government and religion tends to destroy government and to degrade religion." Engel v. Vitale, 370 U.S. 421, 431 (1962). It is because of the more than equal, first class status of religion in our system that we have these special constitutional protections. As Madison wrote, it is because "religion is too personal, too sacred, too holy." Memorial and Remonstrances against Religious Assessments, II Writings of Madison, at 187.

When the Supreme Court of the United States interpreted the Establishment Clause to bar prayer in the schools, the Court specifically addressed the discrimination or inequality argument raised by this committee today. As to those who "argue[d] that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer," the Court declared: "[n]othing, of course, could be more wrong." Engel v. Vitale, 370 U.S. 421,

433-434 (1962). "It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance." Engel v. Vitale, 370 U.S. 421, 435 (1962).

This thought -- that something so personal and sacred as religion should not be in the public schools but rather at home or in places of worship -- is labelled by some proponents of this amendment as hostile to religion and as "Soviet" in nature.

This notion is misbegotten. It ignores the purposes of the First Amendment protections -- grounded not in hostility but in respect for religion. The premise of these First Amendment protections, as the Supreme Court held in 1948, is that "both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." McCollum v. Board of Education, 333 U.S. 203, 212 (1948).

Today, this purpose can best be understood by subjecting the proposed amendment to the Supreme Court's tripartite Establishment Clause test. What will become evident are the inevitable dangers of intertwining religion and government (or public) run schools -- dangers which impermissibly violate the Establishment Clause as it has been read for close to 40 years.

Today's legislation contravenes all three prongs of the Establishment Clause test: it does not reflect a clearly secular legislative purpose, its primary effect is to advance religion and it excessively entangles the government with religion.

First and foremost, the purpose of this proposed amendment is concededly religious and, thus, unconstitutional. The first section of this amendment specifically provides for allowing silent prayer or meditation either individually

or in groups in the public schools. The second section, couched in secular terms such as "equal access" open forum policy, has a clear religious purpose. As Secretary of Education Terrell H. Bell stated in his testimony before the Subcommittee on the Constitution on behalf of the Administration's proposed constitutional amendment on voluntary prayer:

> the 'Equal Access' concept would serve to restore voluntary religious activity to an equal status with other extracurricular activities permitted on public school premises.

This testimony makes clear the religious purpose of "equal access" policy; it is not an equal protection clause for extracurricular activities. Under the "equal access" section of the proposed amendment, all types of religious activity would be permitted -- beyond the silent prayer or meditation of section 1 of the amendment, including a variety of religious activities such as singing hymns, liturgy, Bible readings and proselytization.

Thus, this amendment openly seeks to bring prayer and Bible instruction into the public schools. Since 1948, this objective has been ruled unconstitutional. In McCollum v. Board of Education, the Supreme Court considered a voluntary religious instruction program -- which offered study of all faiths in the public schools. In that case the Court found that "a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects. . . ." 333 U.S. at 211. For almost forty years since that decision, the Supreme Court has steadfastly found that prayers or Bible instruction in the public schools reflect a religious purpose and, thus, violate the Establishment Clause.

Second, the effect of this amendment would be to impermissibly advance religion. Prayers and Bible readings in public schools confer the imprimatur of state approval on religious practices. As the Supreme Court noted in Widmar v. Vincent, 454 U.S. 263 (1981), a recent case concerning Bible clubs on university

campuses, in contrast to university students, the youth and impressionability of public school students prevents them from appreciating the supposed neutrality of a school's open forum policy. Widmar v. Vincent, 454 U.S. at 276. For public school students, the mere presence of prayers and religious activities in government-run schools shows government approval of religious exercises. Therefore, because the public school setting combines a captive impressionable audience with a government-controlled environment, review of religious practices in the public schools must be stringent. Due to this special concern for the religious neutrality of the school system, many religious activities occuring in educational facilities during school hours have been found unconstitutional. These unlawful practices include the posting of the Ten Commandments in public school classrooms, Stone v. Graham, 449 U.S. 39 (1980); religious instruction in public school facilities, McCollum v. Board of Education, 333 U.S. 203 (1948) and recitation of student led prayer, Karen B. v. Treen, 653 F. 2d 897 (5th Cir., 1981), aff'd, 455 U.S. 913 (1982). In all of these cases, the presence of religious activities in the public school setting had the effect of promoting religion.

Moreover, the fact that the silent prayer or Bible clubs allowed by the proposed amendment would be voluntary is of no significance. The voluntariness of prayer recitation and excusal provisions from Bible study clubs have not cured their unconstitutionality under the Establishment Clause. Decision after decision show the irrelevance of student voluntariness as concerns religious practices in the public schools. Whether the activity concerned voluntary student attendance at religious instruction classes geared to all faiths, McCollum v. Board of Education, 333 U.S. 203 (1948) the voluntary reading of Bible verses by students, Abington v. Schempp, 374 U.S. 203 (1963) or voluntary student-initiated prayer at the beginning of the school day, Karen B. v. Treen, 653 F. 2d 897 (5th

Cir., 1981), aff'd, 455 U.S. 913 (1982), all have been found to unconstitutionally advance religion, in the public schools, despite the voluntary nature of the activity. The voluntariness of student participation fails to diminish the effect of the appearance of government sponsorship of these religious activities when they take place in the public schools. Moreover, it is an abstraction to speak of voluntariness at the public school level. What are students to do if they do not wish to participate in these exercises? Should the burden of distinguishing his or herself as nonreligious fall upon a student attending a government school?

Further indication of this proposed amendment's unconstitutionality is the excessive entanglement it would require of government in religion.

Here the state is entangled because the prayers and other religious activities will occur in public school facilities. As found by the Supreme Court in McCollum v. Illinois, the state is entangled simply through the use of tax-supported public school buildings. When religious exercises take place in state run school buildings, they are considered to be under the authority of local school officials.

The state is further entangled through use of the state's compulsory public school machinery. 333 U.S. at 212. Under state law, children are obliged to be in school. When religious activities take place in school, it is state law which mandates students to be in that religious environment. More entanglement occurs through the inevitable participation of school teachers and other state officials in these exercises. At a minimum, the state has a duty to supervise its students while on school premises. Thus, school officials must take attendance at the voluntary religious activities and supervise them to make sure students are safe. See Lubbock v. Lubbock, 669 F. 2d 1038 (5th Cir. 1982), cert. denied, 51 U.S.L.W. 3533 (Jan. 17, 1983) (unconstitutionality of school policy permitting

students to gather before or after regular school hours for religious purposes); Brandon v. Board of Education, 635 F. 2d 971 (2d Cir. 1980), cert. denied, 454 U.S. 1123 (1981) (voluntary school prayer meeting on high school grounds held unconstitutional). As noted by the Supreme Court in its consideration of aid to religious schools in Lemon v. Kurtzman, the very restriction and surveillance necessary to assure that teachers play a neutral role in these activities gives rise to entanglements between church and state. 403 U.S. 602, 620-621 (1971). Here, however, there is even more potential for entanglement because teachers and school officials need not play a neutral role in their supervision of these religious activities. Because section 1 of this proposed amendment does not restrict itself to student silent prayer or meditation but speaks, rather, of "persons," under this amendment, teachers and school officials too, would have rights to worship during the school day. Thus, under this amendment, during the school day the entire school, including all teachers and the principal, could pray together in unison and this would be deemed constitutional. This involvement of state employees in religious activities constitutes fatal entanglement under the Establishment Clause. Teacher supervision of or participation in religious activities is entirely different than such supervision of or participation in an athletic event. Athletics are not a matter of faith -- thus, school authority participation in such clubs does not provide a stamp of government approval. In contrast, as recognized in the Establishment Clause, government support of religion produces a different, impermissible result.

Thus, this proposed amendment unconstitutionally creates an establishment of religion. The compelling government interest in preventing such an establishment vitiates any so-called free speech interests here. Unlike the situations in Widmar v. Vincent, 454 U.S. 263 (1981) or Tinker v. Des Moines, 393 U.S. 503 (1969) where there were free speech concerns and no establishment concern was

found, here we have a clear countervailing Establishment Clause interest, a fatal defect of this proposed amendment.

As to the Free Exercise claim, concerning this proposed amendment, which maintains that failure to pass this amendment permitting voluntary prayer or meditation would constitute prohibition of the free exercise of religion, it is clear that this claim is a specious one. The Free Exercise Clause in no way mandates the proposed amendment at issue today. Under the First Amendment's Free Exercise Clause, a school is obliged to provide religious facilities only if its failure to do so would effectively foreclose a person's practice of religion. Here, there is no problem with students being foreclosed from practicing religion. Students attend school several hours a day, five days a week, nine months out of the year. All the remaining time is available to students for their participation in religious activities at places other than state supported schools. See Lubbock v. Lubbock, 669 F. 2d 1038, 1048 (5th Cir. 1982), cert. denied, 51 U.S.L.W. 3533 (Jan. 17, 1983).

As to those who would distinguish the meditation or silent prayer permitted by this proposed amendment from other forms of prayer, it is clear that this distinction is a hollow one and that meditation and silent prayer constitute religious worship. A fixed period of silence, always at the same time with a teacher presiding bears the hallmark of a religious ritual. The only other instance one can point to where a group of children would be standing or sitting in silence at a fixed time with a leader would be in their respective churches or synagogues. Indeed, for various religions such as the Quakers, a "moment of silence" is the major component of their religious exercises. For virtually all religions, including Judaism, a "moment of silence" is at least a significant portion of the prescribed liturgy. The fact that this exercise occurs in the public schools

during school hours constitutes an unconstitutional establishment of religious activity in our public schools.

For these reasons, as a matter of constitutional law, this amendment which provides for religious worship in the schools cannot stand. Notions of "equal access," while appealing superficially, gloss over the special concern of our Founding Fathers with religous freedom — unencumbered by government approval or disapproval. This special treatment of religion in the eyes of the law is no act of discrimination, it is an indication of an historic national priority.

In the words of Justice Frankfurter:

> The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the state is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.

McCollum v. Board of Education, 333 U.S. 203, 231 (1948).

Thank you. I will be happy to answer any questions.

People For The American Way

STATEMENT OF

JOHN H. BUCHANAN, JR.

ON BEHALF OF

PEOPLE FOR THE AMERICAN WAY

BEFORE THE SENATE JUDICIARY COMMITTEE

ON PROPOSED SCHOOL PRAYER AMENDMENTS

June 27, 1983

Mr. Chairman and Members of the Committee:

My name is John Buchanan and I am here today on behalf of People For the American Way, a nonprofit, nonpartisan, educational project formed in the fall of 1980 to protect and promote Americans' constitutional freedoms, especially those contained in the First Amendment. I am pleased to appear today on behalf of PEOPLE FOR to present our views on the proposed amendments on school prayer.

We are opposed to this and any other attempt to amend the First Amendment, but we welcome the opportunity to participate in this debate. It is a sign of the health of this society that once more we are arguing over the meaning of the First Amendment as it relates to religion. British Ambassador James Bryce observed about Americans one hundred years ago that Americans have no two identical opinions, only a favorable one, on the principle of religious freedom, voluntary religious life, and a distancing between church and state. Each time Americans engage in this debate, we are reminded of the rich diversity of religious faiths in the United States and of our Founders' wisdom in drafting the First Amendment that has so well protected our rich diversity.

However, it is somewhat troubling that we are today talking about amending the very constitutional amendment that allows me to sit here and petition my government. The awesomeness of tampering with any part of the First Amendment should give us all pause.

When we talk about amending the Bill of Rights, it seems to me that a very heavy burden of proof should be required of those advocating the change. The proponents of the school prayer amendments have failed to make their case primarily because they misstate what the law is today and what their amendments would do, if passed.

There may be some sociological principle that the higher the emotional content of an issue, the greater the number of misrepresentations and misstatements about the issue. If there is not

such a principle, then we should invent one for the school prayer debate. The misstatements are legion. I will discuss five.

(1) President Reagan says that the Supreme Court "has effectively removed prayer from our classrooms"—

BUT — it is only government-prescribed, institutionalized prayer that the court has proscribed.

(2) The President has maintained that his amendment will restore the right to pray—

BUT — on this very day students can if they wish, pray either singularly or in groups in public schools or other public buildings without violating the Constitution, subject only to a very few limitations:

- religious exercises cannot interfere with the school's other activities;

- the prayer cannot be sponsored by, or appear to be sponsored by, the governing body; and

- the prayer must be truly voluntary.

(3) Prayer amendment proponents claim that they want to restore a widespread practice in public schools—

BUT — most children in the West and Midwest never engaged in prayer before the Supreme Court's decision in 1962. [See attached L.A. Times article of 8/27/82]

(4) Some prayer advocates even go so far as to blame the decline in our schools on the Supreme Court decisions of 1962 and 1963—

BUT — this cause and effect logic is best dealt with in humor. As Martin Marty has reasoned:

> Why did everything go wrong when everything went wrong? I think that the divorce rate rose shortly after the invention of the Electronic Church. Check the coincidence of the dates. When born-again celebrities started writing born-again autobiographies, teen-age pregnancies increased; and when fundamentalists started writing sex manuals, the Vietnam War accelerated. Didn't you notice the cause-and-effect relation?

(5) Proponents claim the amendment is needed because the Supreme Court has banned all religion from public schools—

BUT — the only practices prohibited are mandatory religious exercises. Not the study of religion or religious materials. For example, students may and do study the Bible for its ethical, literary, and historical qualities; they can and do study comparative religion; they can and do recite officially approved anthems with declarations of faith in a Deity.

Neither the Bible nor moral instruction has been banned from the schools. Nor is there a ban on students meeting voluntarily for religious reasons. In the recent 7-2 decision of Widmar vs. Vincent, the Supreme Court said that religious activities are permissible on public school property.

The amendment we all testified against last year and which was resubmitted this year as S.J. Res. 73 has been effectively dissected and discarded. The latest version proposed by Senator Hatch should be viewed in one of two ways. Either it is basically the same as the President's amendment, as some who wanted to testify were told, and therefore is subject to the pitfalls outlined above, OR it is totally meaningless. Meaningless because equal access is already to be found in the Constitution and periods of silent meditation in public schools have never been found to be unconstitutional.

What I find disturbing is the lack of appreciation of the genius of the founders in crafting the First Amendment, especially in light of the way it has worked for the past 200 years. Let us recognize that the United States has avoided the secular strife of the Northern Irelands, the Irans, the Indias and the Pakistans, thanks in large part to the tradition of the First Amendment. There were times in the not so distant past when the government tracked down people who believed as I do as a Southern Baptist. It was not too long ago that Baptist ministers were beaten, imprisoned and run out of town in the

Colony of Virginia for preaching doctrine at variance with that of the established church. Government can be benevolent, but government can also be bigoted. Some forces behind this amendment could take us back to the day when one person's religion would be imposed on another.

Too often recently have I heard school prayer proponents make statements not unlike that of Deputy Attorney General Edward Schmults: "We must teach minorities to respect the right of the majority." How frightening that statement is and how antithetical to our history. And who knows who will be in the majority or minority tomorrow.

I am also very concerned about what the passage of this amendment might mean for our schools -- already so overburdened. With today's problems, the last thing administrators, teachers, and students need is to be thrust into sectarian strife. A recent editorial in USA Today (5/18/83) said it well:

> It is a shame for Americans to waste so much passion when so many more important battles need to be fought. The real peril facing education has nothing to do with Bible teaching but, as a national commission recently pointed out, mediocrity in the schools.
>
> When schools become a battleground for adult passions and prejudices, children are the inevitable casualties. It is their parents who need to learn one of the more elementary Bible lessons: Love thy neighbor.

Once again, I find myself in agreement with John F. Kennedy. In a news conference two days after the 1962 Supreme Court decision on prayer, President Kennedy said that the "easy remedy" for Americans

against the edict was to "pray a good deal more at home and attend our churches with a good deal more fidelity."

Mr. Chairman, the religious instruction of children is the responsibility of parents and their churches. It is clearly neither the responsibility nor the constitutional right of government or the public schools. Protecting the constitutional rights of American citizens is the solemn responsibility of the courts and the Congress.

We at People For the American Way prayerfully hope that the Congress will take no action to dilute the First Amendment, so hard won by our Founders, so protective of our sacred rights and so much more important to the welfare of our children and of their children's children than government-sponsored prayers in school could ever be to anyone's child.

Mr. Chairman, we urge that the Committee not report and the Senate not pass S.J. Res. 73.

Resurrected Survey Belies Call for the Return' of School Prayers

By JOHN DART, *Times Religion Wri*

Contrary to the Reagan Administration's claims that its proposed school prayer amendment would restore a widespread practice in public schools, most children in the West and Midwest never uttered an amen in class before the Supreme Court's 1962 ban.

A seldom-cited survey taken 22 years ago has resurfaced recently to dispute a central rationale for legalizing "voluntary" prayer in public schools.

The study indicated that homeroom devotionals were a common practice only in the Northeast and the South. But more than 91% of the school systems in the West and

Research assistance for this story was provided by Lois Ward.

74% in the Midwest said none of their schools conducted prayers in class, according to the survey by Richard B. Dierenfield of Macalester College in St. Paul, Minn.

His study, based on a 50% return of 4,000 questionnaires, was published in 1962, the year that the U.S. Supreme Court first ruled against state-sponsored prayers for devotional purposes. The court reaffirmed its ruling in 1963.

Frequent Legislative Attempts

Legislative attempts have been made frequently since then to permit prayer in some form in public schools. The argument usually turns on whether the First Amendment stricture against government "establishment" of religion would

e violated, as the Supreme Court aid previous practices did.

President Reagan fulfilled a campaign promise last May by presenting a proposed constitutional mendment to permit voluntary chool prayer.

A White House background paer said school prayers had been "a idespread practice for 170 years" nd Reagan's message to Congress aid the proposed amendment ould "allow prayer back in the chools."

A similar motive was mentioned y U.S. Deputy Atty. Gen. Edward . Schmults in testimony before the enate Judiciary Committee on ug. 18.

Administration Disputed

An opponent of the amendment, the Americans United for Separation of Church and State, cited the Dierenfield study in disputing the Administration's view of the past, said Albert Menendez, research director for the organization.

But Menendez said he has heard few other participants in the school prayer testimony and public debates cite figures on how prevalent prayer had been in schools. In some states, including California, religious devotions had been barred by educational codes well before 1962.

Attorney Leo Pfeffer, a longtime Jewish spokesman for principles of church-state separation, has usually said prayers were being said in one-third to one-half of the nation's public schools before 1962. Menendez said that estimate matches the Dierenfield findings that 33% of U.S. school systems had prayer, 17% had some schools using prayer and 50% had none.

Chances Called Slim

The proposed amendment's chances for congressional approval this year are slim, analysts say, because of the lack of time left before an expected early October adjournment in this election year.

While some Senate activity is expected after Labor Day, the chances of the amendment getting out of committee to the House of Representatives floor are "nil," according to Forest Montgomery, counsel for the National Assn. of Evangelicals public affairs office in Washington.

Many of the same arguments for and against prayer in schools are sure to be recited again before the 98th Congress, if the measure fails this year.

More accurate arguments and some fine-tuning of terminology are in order, participants indicate.

Amendment Quoted

The NAE's Montgomery said that his organization, which backs a prayer amendment, uses the word "restore" but meaning "to restore a better balance between the establishment and free exercise of religion clauses in the First Amendment."

The amendment proposed by Reagan reads: "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."

James C. Corman, a former congressman from the San Fernando Valley and now a Washington attorney, insisted to the Senate Judiciary Committee on Aug. 18 that "no child has ever been prohibited from praying in the public schools."

In other words, a child may say an inaudible prayer in class. But that is unsatisfactory to prayer backers. "How is such a policy superior to that of an atheistic state like the USSR?" asked one evangelical newsletter.

Television evangelist Pat Robertson echoed many proponents by pointing to polls which show most Americans favor a prayer amendment. Church officals who have opposed it "do not speak for the rank and file of the American people," Robertson asserted.

Teen-agers' View Differs

Recent Gallup Polls show that of Americans familiar with the proposed constitutional amendment 79% are in favor and 16% oppose. That ratio differed from that of teen-agers, asked by Gallup pollsters if they would favor regular time set aside for prayer in their public schools; 45% were opposed and 42% in favor.

That same Gallup Associated Press Youth Survey discovered that 68% of teens who attend public schools say prayers are said at a regular time—despite court rulings.

A frequently cited objection to allowing school prayers is that no meaningful prayer could be found to satisfy the parents of children wishing to participate because of the religious diversity in America.

Gallup has found, however, that relatively few Americans look to the schools, and progressively less to the church, for spiritual development of their children.

A "meaningful" prayer in the schools thus appeared unimportant to most respondents, who tended to say they saw no reason to deny schools and communities the opportunity to conduct devotional exercises.

LA Times
8/27/82

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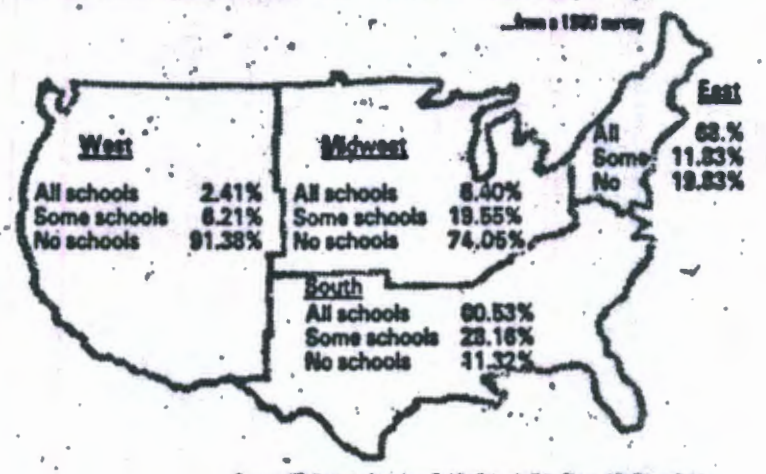
Are homeroom devotional services held in the schools of your system?

...from a 1960 survey



Source: "Religion in American Public Schools," by Richard B. Cloverfield

(2 of 2)

LUTHERAN COUNCIL IN THE USA

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TESTIMONY OF THE

LUTHERAN COUNCIL IN THE USA

BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE SENATE

OF THE UNITED STATES

OPPOSING THE PUBLIC SCHOOL PRAYER AMENDMENTS

A. SUBMITTED BY PRESIDENT RONALD REAGAN (S.J. Res. 73)

B. SUBMITTED BY SENATOR ORRIN HATCH

JULY 27, 1983

Presented by the Reverend Charles V. Bergstrom
Executive Director
Office for Governmental Affairs

Statement of Charles V. Bergstrom
Lutheran Council in the USA
To the Judiciary Committee of the U.S. Senate on
Constitutional Amendments on Prayer
A. Submitted by President Ronald Reagan (S.J. Res. 73)
B. Submitted by Senator Orrin Hatch

My name is Charles V. Bergstrom. I serve as Executive Director of the Office for Governmental Affairs, the Lutheran Council in the U.S.A. On behalf of the Council, I express appreciation to the Senate Judiciary Committee for the opportunity to testify in support of the Supreme Court decision favoring the voluntary and personal nature of prayer. I speak in strong opposition to the proposed amendments to the U.S. Constitution dealing with prayer in public schools. I am speaking on behalf of three church bodies of the Lutheran Council:

> The American Lutheran Church, headquartered in Minneapolis, Minnesota, composed of 4,900 congregations having approximately 2.4 million U.S. members;
>
> The Lutheran Church in America, headquartered in New York New York, composed of 5,800 congregations having approximately 2.9 million members in the U.S.; and
>
> The Association of Evangelical Lutheran Churches, headquartered in St. Louis, Missouri, composed of 275 congregations having approximately 110,000 U.S. members.

These Lutheran church bodies continue to maintain that the proposed constitutional amendments are unnecessary from a religious point of view and unwise from a public policy perspective.

The Lutheran church bodies I represent are aware of the serious theological and public policy difficulties which arise when government mandates religious exercises in public schools. Since the landmark decisions of the Supreme Court in 1962 and 1963 (Engel and Schempp cases, 370 U.S. 421 and 374 U.S. 203), these churches have consistently resisted legislative attempts to circumvent the court's actions or to enact a prayer amendment to the U.S. Constitution. This activity has been undertaken carefully and deliberately. Within these church bodies, consideration has been given to the school prayer issue by lay persons and members of the clergy, by individuals within our congregations and staff of regional and national church conventions at which congregational representatives gather, and subsequent implementation has taken place according to the churches' constitutions and bylaws. It represents the end result of an organized and democratic process which is acknowledged as legitimate by members of these church bodies.*

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*This testimony is based on statements of the Lutheran churches on prayer in public schools, two of which date back to 1964: "Prayer and Bible Reading in the Public Schools" (Lutheran Church in America) and "Prayer in Public Schools" (The American Lutheran Church). Since that time, the position articulated in these statements has been repeatedly reaffirmed by the Executive/Church Councils of these bodies and by their biennial conventions.

INAPPROPRIATE RELIGIOUS PRACTICE. Our position on school prayer reflects our theological and biblical conviction that not only are prayers in public schools not essential to the cultivation of religion in our youth, but in fact such religious practice can be harmful, especially when offered by an atheist or imposed on a person of different faith. The church bodies I represent maintain that the nurture of religious faith belongs in the home and in the church, not in the public schools. The families, not the school boards, have overriding responsibility for their children's religious education. Lutheran churches share a deep concern for the families that it's religious life be centered at home and in church. We would make the following assertions:

1. We object theologically to "non-denominational prayers" which may uncritically mix nationalism and religion. As the Lutheran Church in America statement cited above says so clearly, "The more we attempt as Christians or Americans to insist on common denominator religious exercise or instruction in public schools, the greater the risk we run of diluting our faith and contributing to a vague religiosity which defines religion with patriotism and becomes a national folk religion."

2. We believe that the purpose of prayer is to praise and petition God, not to serve the secular purpose of creating a moral or ethical atmosphere for public school children. Prayer is communication with God which should change the person who prays--but it is not a tool to be used to "christianize" or "moralize" public education. Thus, the intent in sponsoring public school prayer is vitally important, and the Lutheran churches I represent resist any attempt by legislators or by school authorities to inject religion into the public classroom in an effort to create a wholesome milieu for public school learning or to overcome immorality, as some independent preachers claim it should. Biblical teaching is clear and Christ's example is ultimate. Lutherans are offended by untheological calls to "put God back in school," or claims that such efforts are "evangelical." They are political. They represent a terrible misunderstanding of prayer and ask members of Congress to act on a religious matter that divides people. Prayer can be manipulative and used as a tool for trying to "convert" unbelievers and making this a "Christian Nation"-to "Christianize America." That is a shameful affront and an embarrassment to the church. The Bible invites Christians to pray alone and in the congregation, not as a public or educational interlude.

3. We perceive no need to "put God back into education." He is there. As Lutherans in the U.S., we affirm the principle of "institutional separation and functional interaction" between church and government and recognize the distinctive calling and sphere of activity of each institution. We believe that God is active and powerful in all human affairs and operates through human institutions which maintain peace, establish justice, protect and advance human rights, and educate children--all proper concerns of the government. God's involvement in the good things of His creation, including education, is dependent on His love for us, not on government-sponsored prayer in public schools or other public buildings. One does not become more moral or evangelical by pushing for prayer in public school. Quite the opposite can be true.

4. We are concerned about the quality of public school education and understand it to be inadequate when it is premised either on indifference or antagonism to the religious elements in history, in community life or in the lives of individuals. While the Supreme Court has ruled state-mandated prayer unconstitutional, it has not ruled out the study of religion in public schools. In this area, Lutherans see a positive challenge to interact with public school educators in order to develop programs which acknowledge the religious and moral dimensions of life while also respecting the larger religious neutrality mandated by the Constitution. As a parish pastor and in my present position I have supported public education and

worked with school authorities.

The Lutheran church bodies I represent point out that the historical situation in the United States has changed since the early days of the Republic when underlying religious beliefs were often assumed. The influx of immigrants, with varying traditions and creeds, and a range of other historical circumstances have contributed to a society which is thoroughly pluralistic. The Lutheran churches view this situation as a challenge and not a threat--an opportunity to articulate clearly the tenents of our faith in this pluralistic culture. The "Founding Fathers" made clear the difference between reference to God and establishing Christianity as the one religion. Promotors of homogenized prayers exagerate the previous practice of prayer in our schools. Macalester College had a study showing that in the Far West 91 percent of the schools had no prayers. In the Midwest, 74 percent had no prayers. The court decisions did not unleash immorality, as some claim. We were always as we are now. Many in a religious minority can describe for us the unfair pressure on children to pray "like everyone else."

QUESTIONABLE PUBLIC POLICY. The Lutheran churches I represent also recognize the public policy difficulties prayer in public school create in terms of the religious rights of the individual and the welfare of the community as a whole. As Lutherans in the U.S., we cherish the guarantees of religious liberty which were written into the Constitution. We affirm the fact that the government safe-guards the rights of all persons and groups in our society to the free exercise of their religious beliefs and makes no decisions regarding the validity or orthodoxy of any doctrine. These religious freedoms are guaranteed to all, to members of traditional religious groups, nonconformists and non-believers. We recognize that, given our pluralistic culture, religious exercises in public schools infringe on the rights of some individuals and groups in society and invite sectarian divisiveness in the community. There is nothing holy or helpful in efforts to make this a "Christian" nation by school prayer. It is indeed questionable that this can do anything but harm religious faith. Our constitution is to protect the individual child who is different from the majority, not to give the religious majority power to bring their practices into the realm of education.

The changes mandated by the 1962/63 Supreme Court decisions should be understood in a positive rather than a negative light by those concerned about religious freedoms. A 1971 statement of the Church Council of the American Lutheran Church affirming these decisions expresses this sentiment and focuses on the freedoms protected by the Court rather than the restrictions posed:

> We are free to pray in our own words to our own God. We are free to read the Bible in the version we prefer. We are protected against having to join in devotional exercises decreed by governmental authorities. We are free to pray in public and to read the Bible in public places. We cannot, however, force others to join us in such expressions of our religious faith.

The folowing Lutheran Church in America statement, reaffirmed in July 1980 by representatives of the congregations gathered in convention in Seattle, Washington, discusses the public policy implications of prayer in public schools:

> A due regard for all religious faiths and also for non-believers and nonconformists of all kinds makes it imperative that the public schools abstain from practices that run the risk of intrusion of sectarian elements and divisiveness. The public schools serve a

unique and valued place in helping to build a civic unity despite the diversities of our pluralistic culture. It should be noted that when the state deeply involves itself in a religious practice in the public schools, it is thereby not only appropriating a function properly served by the church and the family, but subjecting the freedom of believers and unbelievers alike to the restraint that accompanies the use of governmental power and public facilities in the promotion of religious ends.

The Supreme Court has not prohibited voluntary prayer in schools--indeed, there is no way it could ban personal communication between an individual and God. What has not stood up to judicial scrutiny are "religious" sessions mandated by law or organized by school officials. Contrary to the statement of President Reagan, children can be harmed by classroom prayer or the need to leave a classroom because of prayer.

The question of just what comprises voluntary prayer is central to this issue. The Lutheran churches, like the courts, do not believe that any school-organized prayer sessions can be completely "voluntary." Children attending public schools are there under compulsion of public law. Public school facilities are used, and the teachers--symbols of authority in the classroom--may supervise the exercise. These factors combine to operate with coercive force on young and impressionable children, inducing them to take part in these exercises, despite freedom to be excused from participation. That cannot be compared with adult prayer in Congress or reference to God on coins. Persons with a genuine regard for prayer and the Bible object to having their children engage in these exercises when they are mandated by the compulsion of law. Prayers of one religious body are very different from another. Our fundamental question is, "Whose prayers are to be offered?" This question has been too easily ignored in in the promotion of these amendments.

Those promoting constitutional amendments already differ among themselves as to what type of "voluntary prayer" would be acceptable. Some would find inter-denominational prayer acceptable, while others would insist on non-denominational prayer; yet others ask for silence. To deal with these religious differences, several have suggested that "community standards" be the means for determining actual practice in the public schools. However, the "community standard" argument ignores the reality and the depth of these religious differences, especially as they regard religious minority groups. Religious differences, even among advocates of school prayer, will surely find expression in diverse practices offensive to some and leading to harmful and bitter contentions. The town of Bristol, Virginia's divided community in 1983 shows the results of bringing religious practice into public school under the unrealistic promises of: "bringing God back into school" or "no person shall be required to participate." (in prayer)

The Lutheran churches' belief in God and the variety of channels through which He works is biblical and personal. We believe we are carrying out God's work through the church's evangelical ministry of salvation. Yet another facet of our response to God's Word is working with government to establish justice in the world for all groups and for all individuals--those who believe in God and those who do not. However, these two ministries of Lutheran churches are not to be uncritically confused; different means are appropriate to achieve the goals of our different ministries. Prayer is a personal communication with God, to be used because of our faith in God; it is not an appropriate public policy tool. Conversely, in our historical situation, the public schools are not an appropriate channel for evangelization. Our understanding of both of these ministries of the church leads us to strongly oppose the proposed constitutional amendments on prayer in public schools.

AMERICAN ASSOCIATION
OF SCHOOL ADMINISTRATORS

TESTIMONY OFFERED TO THE SENATE SUBCOMMITTEE ON SCHOOL PRAYER

by

Ira J. Singer
Superintendent of Schools
Herricks Public Schools
New Hyde Park, New York

on behalf of

American Association of School Administrators

6/27/83

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1801 North Moore Street • Arlington, Virginia 22209

Mr. Chairman. Committee Members. I am here today representing the American Association of School Administrators, the professional association of local school superintendents and other school administrators.

It is my honor and privilege to address Senators of the Congress of the United States and discuss the proposed constitutional amendments on school prayer.

To come directly to the point, AASA opposes both Joint Resolution 73 and the alternative proposed by the Constitution Subcommittee of this Committee for silent meditation and equal access to school facilities. More specifically AASA opposes putting such matters in the constitution where they become law for all citizens throughout the nation.

The AASA Committee on Federal Policy and Legislation opposes Senate JT Resolution 73 because we believe it to be contrary to the principles upon which this country was founded.

In school we teach the history of our nation through the beliefs and views of our Founding Fathers, views which were not consonant with the substance or intent of Resolution 73 or the subcommittee alternative.

For example, Thomas Jefferson was a staunch advocate of civil rights and, in the 1st Amendment, fought for the protection of the rights of everyman <u>from</u> religion not <u>for</u> religion. He was terribly concerned about the government recog-

nizing a one and only righteous way to heaven. He abhorred such talk. He was " . . . sworn against tyranny of the minds of man." That famous quote was uttered about the tyranny of religion, not patriotism, as it is so often taught in our schools. To zealous Calvinists who denounced him as an atheist, Jefferson charged that " . . . the effect of religous coercion would be to make one-half the world fools and the other half hypocrites."

In Orlando last March, President Reagan stated, "When our Founding Fathers passed the 1st Amendment they sought to protect churches from government interference . . . " To the contrary, the 1st Amendment, was written to protect the individual citizen, not the church, from religious coercion of any form. This was Jefferson's theme.

In commenting upon religious freedom in the Virginia Acts, Jefferson wrote that "diversity is the law of nature." He attacked those who would force religious dogma on others charging them with an " . . . impious presumption to assume domain over the freedom of others depriving them of their liberty." He stated that " . . . our civil rights have no dependence upon our religious beliefs . . ."; and that " . . . no man shall be compelled to frequent or support any religious ministry whatsoever." Jefferson was a highly moral man who held that the opinions of atheists should have equal value to those who professed religious beliefs. For these and other statements, he was denounced by the Colonist clergy in New England as an atheist. Jefferson's retort was that " . . . no mind beyond mediocrity bothered to improve itself in New England."

In fact, revisionist interpretations have gone so far as to lead one federal district judge to proclaim that, in the Engel vs Vitale Case, the Supreme Court " . . . erred in its reading of history . . ." and that the constitutional wall of separation between church and state is a " . . .myth." A state senator, in praising this judge's opinion, held that the framers of the constitution ". . . did not believe in the separation of church and state . . . " and one nationally prominent clergyman has said that school prayer was "... in the intent and mind of the 1st Amendment framers." What would Jefferson say to that?

These may be fond wishes, but they are not facts. In 1785-86, Madison and Jefferson, in obtaining the Virginia Bill for Religious Liberty " . . .opposed all religious establishments by law on gounds of principle." When in 1784, the religious conservatives of Virginia tried to revive the idea of multiple church establishment in a tax bill designed to support "Teachers of the Christian Religion", James Madison was the chief opponent, arguing with all his being that an assessment on all citizens to pay teachers of religion was clearly tantamount to " . . . an establishment of religion" and therefore indefensible.

My testimony here is particularly fitting since I am the Superintendent of Schools of the Herricks Public Schools in New Hyde Park, New York, the site of the landmark Engel vs Vitale School Prayer Decision by the Supreme Court in 1962. That prayer was voluntary and non-demoninational to be recited as part of opening day exercises. It was composed by state officials and authorized and recommended by the State Board of Regents. The Supreme Court found it to be unconstitutional.

Liberally quoting from the teachings and writings of our Founding Fathers, Justice Black, writing the majority opinion, stated, "The inclusion of a classroom prayer composed by state officials in a daily program for public schools violates the prohibition of the First Amendment, operative against the states by virtue of the Fourteenth Amendment, against the making of a law 'respecting an establishment of religion,' even though the prayer is denominationally neutral and its observance on the part of the students is voluntary." Justice Black also stated, "... neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary, served to free it from the limitations of the Establishment Clause."

Aside from the court's opinion, the practical implications of a constitutional amendment requiring voluntary prayer in the classroom are nightmarish. How is a child excused from class if that child does not wish to participate in this voluntary activity? Conformity is a powerful force among children of all ages. In some places, a child would have to be truly heroic to ask to leave the room. And the teacher who does not believe in this practice must now police it. Will his or her attitude become more powerful than the compulsion to pray or be excused? How will teacher-parent relations be affected when they are in disagreement over the product and the process of the proposed amendment? The prospects of disruption, litigation, non-compliance and ridicule are, to say the least, disquieting.

Since 1962, the Court ruling on voluntary prayer has withstood the test of time through a variety of assualts and circumventions. Black did not err in his reading

of history but testified for our Founding Fathers in restating the Jeffersonian principle of a wall of separation.

Besides, Resolution 73 fails to recognize the contemporary reality of the American school house where Christians, Jews, Muslims, Hindus, Taoists, and other children of disparate religions, as well as those who profess no religious affiliation, coexist in the same classroom. Collective or unison prayer, voluntary or otherwise, would trample on the beliefs of many students and result in an atmosphere of stress and dissension.

As for the formal adoption of a period of silent prayer, AASA is opposed to a constitutional mandate for such practice. The courts, for the most part, have found the period of silent prayer or meditation to be in violation of the Establishment Clause of the 1st Amendment. It is true that individual school districts can be found where such practice is tolerated. However, in Alabama, periods of silent prayers were recently overturned. In New Mexico, a federal judge ruled in February that a New Mexico law allowing a minute of silence in the schools is a violation of the Establishment Clause. In his decision, the judge wrote ". . . The illness lies in the public perception of the moment of silence as a devotional exercise. If the public perceives the state to have approved a daily devotional exercise in public school classes, the effect of such action is the advancement of religion."

In Massachusetts, the legislature was told by its state supreme court that silent meditations as opposed to prayer would not change the unconstitutionality of the act since the law contemplates that, at least in some instances, prayers

would be orally recited. The court stated that when prayers are to be heard in the classrooms of the public schools of the commonwealth, " . . . it is more than a strain to argue that religion is not being advanced in the sense of the Constitution." In other words, during the moment of silence, individuals will pray aloud and make religious gestures. The teacher must either allow such actions or stop them — an untenable and inappropriate responsibility either way.

Finally, AASA opposes a constitutional amendment requiring public schools to grant equal access to school facilities to religious groups throughout the nation.

This is a comparatively new effort to merge church and school. In Bristol, Virginia, bible study classes are held in the school house immediately before and immediately after classes. Students volunteer for the classes. Those who do not are required to go elsewhere in the building during these classes. Court action on this program is pending.

Recently the Supreme Court declined to hear a case involving the right of the Lubbock, Texas schools to hold voluntary prayer meetings in school facilities before or after school hours. Earlier, the U.S. Court of Appeals had ruled against the practice as a violation of the 1st and 14th Amendments. Specifically the Court ruled against a Board of Education policy which permitted students to gather at the school before or after school hours to meet for any " . . . educational, moral, religious, or ethical purposes . . . " so long as the meetings were voluntary. The Court of Appeals found the directive a constitutional violation since it specifically related to "religion in the schools."

The courts appear to be rejecting the concept as constitutionally unacceptable, not out of hostility, but rather a true concern over our heading down a new road of religious establishment.

Aside from the opinion of the court, the AASA recognizes that various school districts throughout the country have, at their own risk, entered into contractual arrangements with religious groups for the temporary use of school facilities, usually for emergency purposes. A constitutional amendment would complicate such voluntary decisions and require all school boards, whether they wished to or not, to grant access to all groups in a way that would surely interfere with school activities. For example, church related activities, following immediately upon student dismissal, would be perceived as an integral part of the school's extra and co-curricular programs. While attendance would be voluntary, it would be apparent to all students in the school that certain religious activity was authorized and, fairly judged or not, established by the Board of Education.

Schools could easily become magnets for all religious groups seeking a new home or additional space. Schools could easily become school-churches. Equipment, materials, and supplies would be in jeopardy and the smooth flow of instruction from day to day would be disrupted. Given the random nature of the groups who would demand access, security would have to be increased and screening would become a full time job.

In effect, the attention, energy, and time of students, teachers, and school administrators could easily be diverted from their primary mission of public education, impeded by such distractions as multiple religious groups competing for the use of public school houses.

In summary, the AASA feels that prayer is a very personal experience and religion an individual matter. Mixing education and religion in the public schools of our diverse society is not wise. Nor is it sound practice to employ the Constitution as a handy remedy to appease those who have been frustrated by court decisions. The Constitution, after all, is the foundation of our national wisdom. The balance of powers provide recourse through the courts to those who feel that their rights have been violated by legislative acts. The interplay of the judicial and legislative branches of government has protected the civil rights of American citizens and sustained this nation's integrity as a democratic society through more than a century of history. That process should be preserved and the proposed constitutional amendments rejected.