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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
~~A. note~~	~~Steve Galebach to Blackwell re attached letter~~, 2p. incl. notes on back	~~n.d.~~	P5/
B. letter	Daniel ~~Oliver~~ to Rex Lee re *Lubbock Civil Liberties Union v. Lubbock Independent School District*, 4p	10/8/82	P5/B1/2005 GR

THE WHITE HOUSE
WASHINGTON

Invocations?

do not want state to put its nose

In appropriate + encourt.

reverse longstanding trend

leave

Point by Point

Invocations

Chaplains - pledge of allegiance

In God we trust

Corporate or Tuition tax credit

THE WHITE HOUSE
WASHINGTON

Cannot be made
made voluntary

There is ~~no~~ need

I am prohibited →

Students →

while in session

violation

1st Amendment prohibits

concealed → Marxist
atheist

THE WHITE HOUSE
WASHINGTON

Text

children ~~the~~ grace

Voluntary prayer
Groups Lee

Flouts const tradition

May not [illegible] in their
program

Never start

Baptist Joint Committee
Religion

Nothing to prevent
const

THE WHITE HOUSE
WASHINGTON

Banned
responsible – Marxist

conceded he would allow
Marxist ~~atheist~~
student groups which
have militant atheist doctrine

founding fathers
would laugh

clergyman have
some forbidden status
~~of~~ on school
groups

put on program

Just Not So

Bruce Holmquist Dick Pomeranz
Supreme Court

Matthews ~~Stark~~ Stark Hart

Livermore fire arms
drugs

Proscribed class —
Drug pushers + Clergy

Poll Data

Chaplaincy — 1982 Nebraska
Legislature

Supreme Court
Prayers

Oaths of office

What rights greater ~~st~~
than Soviet Union

Jefferson

Powell — Cultural Lag
Nat. Council of Churches

Walter Polovchak — send back
Teenage girls to have abortions
w/o notifying parents

4:55 6/22
SENT COPY TO
McBLACKWELL

THE WHITE HOUSE

WASHINGTON

June 20, 1983

Dee + Norton
Please work on this, especially Southern Senators
Thanks
F.

MEMORANDUM TO: FAITH WHITTLESEY

FROM: KEN DUBERSTEIN KD

SUBJECT: School Prayer Activities on behalf of S.J. Res. 73, the President's School Prayer Amendment

As you know, the Senate Judiciary Subcommittee on the Constitution has reported out both the President's school prayer amendment, S.J. Res. 73 and Senator Hatch's silent prayer/equal access amendment. An additional day of hearings is scheduled before the full Senate Judiciary Committee for June 28 to hear testimony on the Hatch amendment. The full Judiciary Committee is expected to mark-up the school prayer issue on Thursday, June 30.

Senator Hatch apparently is urging all Republican members of the Judiciary Committee to vote in favor of both school prayer amendments. In order for the President's amendment to be reported favorably from the Committee, it must receive 10 favorable votes. Of the 10 Committee Republicans, neither Senators Mathias (R-Maryland) nor Specter (R-Pennsylvania) are expected to favor either constitutional amendments; consequently, we must pick up two Democratic votes. Of the Committee Democrats, Senators Robert Byrd (D-West Virginia), Dennis DeConcini (D-Arizona) and Howell Heflin (D-Alabama) are the most likely candidates.

File
MMB
6/27

The school prayer coalition should begin immediately to talk directly to all Committee Republicans. Your working on Specter would be especially helpful. In addition, the coalition should focus on Senators Byrd, DeConcini and Heflin on the Democratic side. I am aware that the Moral Majority has done a substantial mailgram campaign to selected states, urging support for the President's amendment. In addition, the coalition will need to organization delegations from each state to talk directly to these Senators on behalf of S.J. Res. 73.

We're working, as well, on the Senators but the coalition's efforts are crucial. Many thanks.

cc: Jim Baker
Ed Meese

May 6, 1982

BACKGROUND PAPER ON VOLUNTARY SCHOOL PRAYER

At the National Day of Prayer observance in the Rose Garden today, President Reagan announced that the Administration "will soon submit to the United States Congress a proposal to amend our Constitution to allow our children to pray in school."

The President added that he has directed the Department of Justice to have the precise language of a proposed constitutional amendment prepared by the end of next week.

BACKGROUND

- The President seeks only a return to the situation before 1962 when voluntary prayer wasn't thought to conflict with the First Amendment.

- The proposed amendment would provide two simple guarantees:

  -- The federal government and the Constitution will not prohibit individual or group prayer in public schools or other public institutions;

  -- the rights of those who choose not to participate in school prayer will be guaranteed and no one will be required to participate.

- The Founding Fathers did not intend the First Amendment to protect people from religion. They intended that it protect religious values from government dictate or interference.

- The purpose of the First Amendment was to enhance, not restrict, the opportunities of Americans to make religious observances in the course of their daily lives.

- The Founders certainly never meant the First Amendment to preclude prayer in public schools. It was, in fact, a widespread pratice for 170 years before the 1962 Supreme Court decision prohibited it.

- This is a nation under God. We proclaim it in our Pledge of Allegiance. We engrave it on our coins. The Congress and the Supreme Court acknowledge it at the opening of every session.

- President Reagan is only seeking to allow children who wish to, to make similar acknowledgement in their classrooms.

NOTE: The language of the proposed amendment, and detailed briefing materials will be available by the end of next week. Questions relating to the legal and Constitutional history of this issue should be directed to the Office of Legal Policy at the Department of Justice (633-3824).

Susan Udelson →

THE WHITE HOUSE

WASHINGTON

June 6, 1983

Dear Strom:

I want to thank you for your leadership on behalf of the school prayer issue. Your involvement in this important issue has spanned a period of several years. I appreciate the extensive hearings held by the Senate Judiciary Committee, both on the constitutional amendment I transmitted to Congress and which you so kindly introduced, S.J. Res. 73, and on the equal access statutory approach.

I am aware of the discussion among advocates of school prayer over the best means to restore freedom of religious expression to the schools. Above all else, I believe we all share a strong desire to do something effective to reverse the trend of excluding all religious forms of speech from the public schools.

S.J. Res. 73 is intended to reverse the Supreme Court's school prayer decisions of the early 1960's. I am persuaded that this approach carries with it broad support both from many religious groups and the general population. I remain supportive of S.J. Res. 73.

The Committee hearings have also called public attention to the need for a bill to guarantee non-discrimination toward religious student groups in federally assisted public schools. A bill along the general lines of those already introduced by Senators Denton and Hatfield could go far to end such discrimination.

I hope that both the school prayer amendment and an equal access bill can be voted quickly out of committee, and that a floor vote in the Senate can be held as soon as possible after Labor Day, giving ample time for public discussion and expression of citizens' views to their representatives, before a decision is made in the U.S. Senate on this most important matter.

Thank you for your commitment and assistance in helping to restore voluntary religious expression to our public schools.

Sincerely,

Ronald Reagan

The Honorable Strom Thurmond
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 31, 1983

REMARKS OF THE PRESIDENT
AT THE
ANNUAL CONVENTION OF NATIONAL RELIGIOUS BROADCASTERS

Sheraton Washington Hotel
Washington, D.C.

January 31, 1983

2:07 P.M. EST

THE PRESIDENT: Thank you very much. (Applause.) Thank you. (Applause.) Thank you very much. Please. You did that. (Applause.) Thank you.

Thank you all very much, and thank you Brandt Gustavson. Ladies and gentlemen, distinguised guests, thank you all very much.

I had a little problem last night myself with regard to my name. (Laughter.) I thought about a week ago that maybe I would persuade someone to change his name from Riggins to Reagan. (Laughter.) But after yesterday afternoon, I thought maybe I ought to change my name to his. (Laughter.)

You all have an expression among you that, first of all, you confess to being poor audiences for others. I haven't found it so. But you also have an expression about preaching to the choir. I don't know just exactly what my address, how that fits under that today. But what a wonderful sight you are.

In a few days I'll be celebrating another birthday which, according to some in the press, puts me on a par with Moses. (Laughter.) That doesn't really bother me because every year when I come here, when I look out at your warm and caring faces, I get a very special feeling, like being born again. (Applause.)

There is something else I've been noticing. In a time when recession has gripped our land, your industry, religious broadcasting, has enjoyed phenomenal growth. Now, there may be some who are frightened by your success, but I'm not one of them. (Applause.) As far as I'm concerned, the growth of religious broadcasting is one of the most heartening signs in America today.

When we realize that every penny of that growth is being funded voluntarily by citizens of every stripe, we see an important truth. It's something that I have been speaking of for quite some time -- that the American people are hungry for your message because they are hungry for a spiritual revival in this country. (Applause.) When Americans reach out for values of faith, family and caring for the needy, they're saying, "We want the Word of God. We want to face the future with the Bible."

Facing the future with the Bible -- that's a perfect theme for your convention. You might be happy to hear that I have some "good news" of my own. Thursday morning, at the National Prayer Breakfast, I will sign a proclamation making 1983 the Year of the Bible. (Applause.)

MORE

We're blessed to have its words of strength, comfort and truth. I'm accused of being simplistic at times with some of the problems that confront us. I've often wondered, within the covers of that single Book are all the answers to all the problems that face us today if we'd only look there. (Applause.) "The grass withereth, the flower fadeth: but the word of our God shall stand forever." I hope Americans will read and study the Bible in 1983. It's my firm belief that the enduring values, as I say, presented in its pages have a great meaning for each of us and for our nation. The Bible can touch our hearts, order our minds, refresh our souls.

Now, I realize it's fashionable, in some circles, to believe that no one in government should order or encourage others to read the Bible. Encourage -- I shouldn't have said order. We're told that will violate the constitutional separation of church and State established by the Founding Fathers in the First Amendment.

Well, it might interest those critics to know that, none other than the Father of our Country, George Washington, kissed the Bible at his inauguration. And he also said words to the effect that there could be no real morality in a society without religion.

John Adams called it "the best book in the world." And Ben Franklin said: " . . . the longer I lived, the more convincing proofs I see of this truth, that God governs in the affairs of men . . . without His concurring aid, we shall succeed in this political building no better than the builders of Babel; we shall be divided by our little, partial, local interests, our projects will be confounded, and we ourselves shall become a reproach, a bye-word down to future ages."

So, when I hear the First Amendment used as a reason to keep the traditional moral values away from policymaking, I'm shocked. The First Amendment was not written to protect people and their laws from religious values. It was written to protect those values from government tyranny. (Applause.)

I've always believed that this blessed land was set apart in a special way, that some divine plan placed this great continent here between the two oceans to be found by people from every corner of the earth -- people who had a special love for freedom and the courage to uproot themselves, leave their homeland and friends to come to a strange land and, when coming here, they created something new in all the history of mankind: a country where man is not beholden to government, government is beholden to man. (Applause.)

I happen to believe that one way to promote, indeed to preserve, those traditional values we share is by permitting our children to begin their days the same way the Members of the United States Congress do -- with prayer. (Applause.) The public expression of our faith in God through prayer is fundamental -- as a part of our American heritage and a privilege which should not be excluded from our schools.

No one must be forced or pressured to take part in any religious exercise. But neither should the freest country on earth ever have permitted God to be expelled from the classroom. (Applause.) When the Supreme Court ruled that school prayer was unconstitutional almost 21 years ago, I believe it ruled wrong. And when a lower court recently stopped Lubbock, Texas, high school students from even holding voluntary prayer meetings on the campus before or after class, it ruled wrong, too. (Applause.)

Our only hope for tomorrow is in the faces of our children. And we know Jesus said: "Suffer the little children to come unto me, and forbid them not for such is the kingdom of God." Last year, we tried to pass an amendment that would allow communities to determine for themselves whether voluntary prayer should be permitted in their public schools. And we failed. But I want you to know something: I am determined to bring that amendment back again, and again, and again, and again until -- (applause) -- We were frustrated on two other fronts last year. There are five million American children attending private schools today because of emphasis on religious values and educational standards. Their families, most of whom earn less than $25,000 a year, pay private tuition and they also pay their full share of taxes to fund the public schools. We think they're entitled to relief. So, I want you to know that shortly, we'll be sending legislation back up to the Hill and we will begin the struggle all over again to secure tuition tax credits for deserving families. (Applause.)

There is another struggle we must wage to redress a great, national wrong. We must go forward with unity of purpose and will. And let us come together, Christians and Jews, let us pray together, march, lobby and mobilize every force we have, so that we can end the tragic taking of unborn children's lives. (Applause.) Who among us can imagine the excruciating pain the unborn must feel as their lives are snuffed away? And we know medically they do feel pain.

I'm glad that a Respect Human Life bill has already been introduced in Congress by Representative Henry Hyde. Not only does this bill strengthen and expand restrictions on abortions financed by tax dollars, it also addresses the problem of infanticide. It makes clear the right of all children, including those who are born handicapped, to food and appropriate medical treatment after birth and it has the full support of this administration.

I know that many well-intentioned, sincerely-motivated people believe that government intervention

violates a woman's right of choice. And they would be right if there were any proof that the unborn are not living human beings. Medical evidence indicates to the contrary and, if that were not enough, how do we explain the survival of babies who are born prematurely, some very prematurely?

We once believed that the heart didn't start beating until the fifth month. But as medical instrumentation has improved, we've learned the heart was beating long before that.

Doesn't the constitutional protection of life, liberty and the pursuit of happiness extend to the unborn unless it can be proven beyond a shadow of a doubt that life does not exist in the unborn? (Applause.)

And I believe the burden of proof is on those who would make that point.

I read in he Washington Post about a young woman named Victoria. She's with child, and she said: "In this society we save whales, we save timber wolves and bald eagles and Coke bottles. Yet everyone wanted me to throw away my baby." Well, Victoria's story has a happy ending. Her baby will be born.

Victoria has received assistance from a Christian couple, and from Sav-A-Life, a new Dallas group run by Jim McKee, a concerned citizen who thinks it's important to provide constructive alternatives to abortion. There's hope for America; she remains powerful and a powerful force for good; and it's thanks to the conviction and commitment of people like those who are helping Victoria. They're living the meaning of the two great commandments: "...thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy might;" and "thy shalt love thy neighbor as thyself."

Each year, government bureaucracies spend bills* for problems related to drugs and alcoholism and disease. Has anyone stopped to consider that we might come closer to balancing the budget if all of us simply tried to live up to the Ten Commandments and the Golden Rule? (Applause.)

That's what's happening with CBN and the 700 Club's "Operation Blessing." They've given nearly $2.5 million to more than 8,500 churches and this money is then matched by the local churches. The result has been fantastic: More than 100,000 needy families helped, either through direct or in-kind contributions ranging from food and clothing to education, dental care and housework.

The PTL TV network is carrying out "A Master Plan for People that Love," opening centers all across the country to provide food, clothing, furniture and job bank centers at no cost. Don't listen to those cynics -- some of them here in the capital -- who would run our country down. America's heart is strong, and its heart is good.

You know, I mentioned drugs a moment ago. And I hope you'll forgive me if I digress just long enough -- because I don't often get the chance to say this publicly -- how proud I am of Nancy, and the job she's doing helping to fight drug addiction. (Applause.)

*billions

I do that every day for her. (Laughter.)

I know that each of you is contributing, in your own way, to rebuilding America, and I thank you. As broadcasters, you have unique opportunities. And all of us, as Protestants, Catholics and Jews, have a special responsibility to remember our fellow believers who are being persecuted in other lands. We're all children of Abraham. We're children of the same God.

You might be interested to know about a few of the changes that we're making at the Voice of America. Our transmissions of Christian and Jewish broadcasts are being expanded and improved. This year, for the first time in history, the Voice of America broadcast a religious service worldwide, Christmas Eve at the National Presbyterian Church in Washington, D.C.

Now, these broadcasts are not popular with governments of totalitarian powers. But make no mistake, we have a duty to broadcast. Alexander Herzen, the Russian writer, warned, "To shrink from saying a word in defense of the oppressed is as bad as any crime." Well, I pledge to you that America will stand up, speak out and defend the values we share. To those who would crush religious freedom, our message is plain. You may jail your believers. You may close their churches, confiscate their Bibles and harrass their rabbis and priests, but you will never destroy the love of God and freedom that burns in their hearts. They will triumph over you. (Applause.)

Malcolm Muggeridge, the brilliant English commentator, has written, "The most important happening in the world today is the resurgence of Christianity in the Soviet Union, demonstrating that the whole effort sustained over 60 years to brainwash the Russian people into accepting materialism has been a fiasco."

Think of it -- the most awesome, military machine in history, but it is no match for that one, single man, hero, strong yet tender, Prince of Peace. His name alone, Jesus, can lift our hearts, soothe our sorrows, heal our wounds and drive away our fears. (Applause.) He gave us love and forgiveness. He taught us truth and left us hope. In the Book of John is the promise that we all go by, tells us that "For God so loved the world that He gave His only begotten Son, that whosoever believeth in Him should not perish, but have everlasting life." (Applause.)

With His message, with your conviction and commitment, we can still move mountains. We can work to reach our dreams and to make America a shining city on a hill. Before I say goodbye, I wanted to leave with you these words from an old Netherlands folk song, because they made me think of our meeting here today. "We gather together to ask the Lord's blessing./ We all do extol Thee, Thou leader triumphant/ And pray that Thou still our defender wilt be./ Let Thy congregation escape tribulation./ Thy name be ever praised! O Lord, make us free!" To which I would only add a line from another song, "America, America, God shed His grace on thee."

Thank you again. (Applause).

END 2:28 P.M. EST

THE WHITE HOUSE
WASHINGTON

Morton:

FYI - this is Dan Oliver's letter suggesting the U.S. file an amicus brief urging the Supreme Court to hear the Lubbock school prayer case.

Steve Galebach

Copy to Ken Cribb

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

OCT 8 1982

file

The Honorable Rex E. Lee
Solicitor General
United States Department of Justice
Suite 5143
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F.2d 1038, rehearing and rehearing en banc denied, 680 F.2d 424 (5th Cir. 1982).

Case

My Dear Mr. Solicitor General:

I write to you on behalf of the Secretary of Education concerning the referenced case, which we expect to be the subject of a petition for certiorari in the United States Supreme Court no later than mid-November, 1982. On behalf of the Secretary, I request that you file briefs for the United States as amicus curiae in support of the school district's expected petition for certiorari, and (assuming the Court grants certiorari) in support of the school district's case on the merits.

In the Lubbock case, the United States Court of Appeals for the Fifth Circuit held that a local school district's policy of permitting religious student groups to gather voluntarily at school outside school hours on the same basis as non-religious student groups was an unconstitutional establishment of religion under the First Amendment. Such a holding appears inconsistent with the Supreme Court's decision in Widmar v. Vincent, 102 S. Ct. 269 (1981). In Widmar the Court held that a state university that made its facilities generally available for the activities of registered student groups could not constitutionally prohibit the use of those facilities by a particular registered student group solely because of that group's desire to use the facilities for religious instruction and worship. According to the Court, the university's exclusionary policy "violate[d] the fundamental principle that a state regulation of speech should be content-neutral." 102 S. Ct at 278.

There are at least two reasons why the Supreme Court should reverse the Lubbock decision. First, Lubbock would inappropriately limit public school students' constitutionally guaranteed freedom of speech whenever the content of their speech happened to be religious. Indeed, Lubbock would require local school authorities to take a position that appears hostile, rather than neutral, toward religion. Such a position appears to violate Widmar's "content-neutral" standard, as well as Widmar's requirement that a governmental policy should have the primary effect of neither advancing nor inhibiting religion. See 102 S. Ct. at 275; 680 F.2d at 426 (Reavley, J., dissenting).

Second, as noted in Judge Reavley's dissent to the denial of rehearing and rehearing en banc (680 F.2d at 425-426), Lubbock's obscure rationale offers little guidance to local school authorities, students, or parents on what circumstances, if any, might render student-initiated meetings permissible on school property.

Of course, Lubbock is factually distinct from Widmar insofar as Lubbock involves the First Amendment rights of elementary and secondary school students rather than university students. The Fifth Circuit in Lubbock expressed concern that the school district's policy might imply state approval of religion to impressionable secondary and primary age school children. 699 F.2d at 1045. By contrast, the Widmar Court observed in a footnote that, since university students are "less impressionable" than younger students, they should be able to appreciate the neutrality of a policy permitting religious as well as secular groups to meet in university facilities. 102 S. Ct. at 276 n.14. Nevertheless, that observation was not determinative in Widmar, and it does not suffice to distinguish Lubbock from Widmar. As in Widmar, creating an open forum in a public school building does not confer the state's imprimatur on the activities occurring in that forum. Moreover, the facts in Lubbock indicate that the school district could reasonably believe that elementary and secondary students would not infer state support for religion: the meetings must take place before or after regular school hours. 669 F.2d at 1046. Further, where student groups are generally permitted to meet outside school hours in a school building, public school students may infer state hostility toward religion from the refusal to allow religious groups to meet on the same basis as secular groups. A policy leading to such an inference would violate the First Amendment. See 102 S. Ct. at 275; 680 F.2d at 426 (Reavley, J., dissenting).

Government participation in the Lubbock case is advisable because it will further substantial Federal interests. First, the Government has a substantial interest, not only in protecting the fundamental First Amendment rights of public school students, but also in rendering more comprehensible the Supreme Court's fragmented decisions concerning the Establishment Clause. Clarifying the Court's rulings on the parameters of permissible state action under the Establishment Clause would better enable both Federal and State Governments to avoid overstepping the First Amendment's bounds, thereby preserving the proper sphere of governmental action in situations touching upon religion.

The answer to the question of how far a state may go in accommodating the exercise of religion on state property also could affect the development of case law under Title VII of the Civil Rights Act of 1964, as amended. That statute and the regulations promulgated thereunder require the Federal Government reasonably to accommodate the religious practices of its employees. 42 U.S.C. §§ 2000e(j), 2000e-16; 29 C.F.R. § 1605.2. Indeed, one of the religious practices the Equal Employment Opportunity Commission has specified as warranting accommodation is the need for a prayer break during working hours. See 29 C.F.R., Appendix A to §§ 1605.2 and 1605.3. If the ultimate decision in Lubbock forbids religious meetings on school property outside school hours, the decision might pose a serious constitutional obstacle to the Federal Government's accommodation of religion under Title VII. The Government therefore has a substantial interest in attempting to prevent such a conflict between Title VII and the First Amendment.

Furthermore, consistent with the law, the Federal Government's participation in the Supreme Court's review of Lubbock would promote the Administration's "New Federalism" policy of encouraging state flexibility and discretion in areas of local concern. And finally, this Department is particularly interested in participating in the case because such participation would promote the Department's Federal statutory purposes of ensuring equal educational opportunities for every individual regardless of creed, and of complementing the efforts of local school systems, parents, and students to improve the quality of education. 20 U.S.C. §§ 3401(2), 3402(1) and (2).

Filing an amicus brief at the certiorari stage offers the advantage of increasing the chances that the Supreme Court will grant certiorari in this important case. By contrast, failure to file an amicus brief in support of the petition for certiorari risks the denial of certiorari and the resulting loss of opportunity to present the Federal Government's views on the significant Federal issues involved.

For the foregoing reasons, the Department of Education urges you to file a brief as amicus curiae in support of the Lubbock Independent School District's petition for certiorari, as well as a brief as amicus curiae in support of the school district's case on the merits (assuming the Court grants certiorari).

Should you wish to discuss the matter, please feel free to call me.

Sincerely,

b/ by MRD

Daniel Oliver

cc: Wm. Bradford Reynolds

# # #

ISSUE UPDATE

SCHOOL PRAYER - CONSTITUTIONAL AMENDMENT

On May 17, 1982, the President sent to the Congress his proposed amendment to the Constitution which would restore the freedom of our citizens to offer prayer in our public schools and institutions. This paper, prepared by the White House Office of Policy Information, examines the policy considerations behind the proposal.

The President's Goal

The President's goal is to remove the prohibition against school prayer perceived by the Supreme Court to be part of the Constitution. The President believes that communities should determine for themselves whether prayer should be permitted in their public schools and that such individuals should be allowed to decide for themselves whether to participate in such prayers.

Our Nation's History

The President's proposed school prayer amendment is not a radical departure from our history but rather a reaffirmation of the religious heritage of our nation. Since the birth of the United States, public prayer and the acknowledgment of a Supreme Being have been a foundation of American life.

In his Farewell Address, President Washington urged, "Let us with caution indulge the supposition, that morality can be maintained without religion . . . ." The nation over the years has taken his advice. We have imprinted "In God We Trust" on our coins since 1864, and in 1956 that phrase was made the national motto. In 1954 the words "under God" were added to the Pledge of Allegiance in order to acknowledge our religious heritage. Most recently, the House of Representatives adopted by a unanimous vote a resolution reaffirming its practice of retaining a chaplain to begin its sessions with prayer. As the Supreme Court

once said, in an earlier day, "We are a religious people whose institutions presuppose a Supreme Being."

Not only are we a religious people but, more specifically, we have a long tradition of including some form of prayer in the public schools, a practice stretching back to the inception of such schools. As early as 1789, for example, the Boston school committee required schoolmasters to begin the day with prayer and a reading from the Bible. The commission which established the New York public school system in 1812 reported to the state legislature that "morality and religion are the foundation of all that is truly great and good. . . ." It was not until 1962 and 1963, more than 170 years after the adoption of the United States Constitution, that the Supreme Court suddenly located a prohibition against school prayer in the interstices of the Constitution.

Judicial Rulings Restricting School Prayer

Although the major Supreme Court cases in 1962 and 1963 which prohibited school prayer have received the most attention, few Americans realize the extent to which the federal courts have attempted to remove the practice of all religion from our nation's schools.

In one case, for example, a school principal's order forbidding kindergarten students from saying grace on their own initiative before meals was upheld. Recently, the Supreme Court affirmed a lower court decision striking down a school board policy of permitting students, upon request and with their parents' consent, to participate in a one-minute prayer or meditation at the start of the school day.

The principles established in the 1962 and 1963 cases have been extended to forbid the accomodation or even toleration of students' desire to pray on school property even outside regular class hours. In one case, a court held that a school system's decision to permit students to conduct voluntary meetings for "educational, religious, moral, or ethical purposes" on school property before or after class hours violated the Establishment Clause of the Constitution. Likewise, a state court forbade the reading of prayers from the Congressional Record in a high school gymnasium before the beginning of school.

The President, along with millions of other Americans, has been troubled by these decisions which seem to have as their common theme, if unintentionally, a hostility to the expression of religious belief. The constitutional amendment proposed by the President is intended to correct this judicial drift away from the nation's religious moorings.

Why We Need An Amendment

A constitutional amendment allowing school prayer would more accurately reflect the original intent of the First Amendment than do the current judicial interpretations. For rather than safeguarding religious freedoms, the current mandatory exclusion of prayer from the daily routine of students casts an unjustified stigma on the right to pray, in effect converting this right, and thereby the free exercise of one's religion, into a "second-class freedom", to be indulged only at certain times and places. The proposed constitutional amendment, by contrast, would recognize the fundamental importance to our citizenry of the freedom to pray by affording it the highest constitutional protection, while simultaneously preserving the freedom not to pray, and thus fulfilling the proscriptions of the Establishment Clause.

The amendment would, in addition, restore decision-making on school prayer issues to the proper levels of government by permitting educational and religious decisions of essentially local concern to be made by the states and localities rather than the federal judiciary. For more than 170 years, this is the path we followed: school prayer issues were resolved at the state and local levels by the residents of the affected communities; their choices regarding school prayer reflected, as they should have, the desires and beliefs of the parents and children who were directly and substantially affected. This is a far more appropriate formula than having decisions of uniform and nationwide application being made, often with little regard for differing local conditions, at the federal level.

One unfortunate and unpopular result of the changes mandated by the Supreme Court's anti-prayer decision is the negative implication inevitably given to school children.

The great majority of American children in their formative years from six to 18 go to public schools. There they cannot fail to get the strong implication that prayerful expression of religious faith is somehow illicit, somehow unacceptable, somehow illegal. This is not neutrality. Surely the framers of our Constitution did not intend such a result.

It is true that in some public schools across our country aspects of free exercise of religion survive. Some public school authorities wink at students saying grace before meals and even at student prayer groups meeting before, between, or after classes on the school grounds. Many school districts still permit prayers to be said at school on special occasions such as graduation ceremonies. But these surviving remnants of voluntary prayer in schools are under systematic and successful attack in the courts by militants determined to stamp out all vestiges of school prayer.

Children are compelled by law to be in school. Voluntary prayer should not have the same status for students as pornography, liquor, or smoking: something illicit which the state must vigilantly protect them against. The many public opinion polls on this subject offer convincing proof that the American people believe court rulings have gone overboard in restricting the free exercise of religion by school children.

Sponsors of a constitutional amendment to remove the court-imposed prohibition on voluntary school prayer often suggest that voluntary prayer is available to students at any time during the school day. In fact, the right American public school children now have is similar to the right Soviet school children have. They can pray as long as they are not caught at it. Surely public expressions of prayer should have more legitimacy in our country than in an officially atheistic country.

Finally, the amendment process would make certain the protections of school prayer in a way that other methods could not. In particular, legislation re-establishing the right to prayer ~~could easily~~ be interpreted by the Supreme Court contrary to the original legislative intent, or even ruled unconstitutional. Only a clearly-worded constitutional amendment would guarantee the preservation of this right to pray.

Analysis of the Proposed Amendment

The proposed amendment the President has sent to Congress (See Appendix A) provides that "nothing in this Constitution shall be construed to prohibit individual or group prayer. . . ." This language is intended to make clear that the Establishment Clause of the First Amendment cannot be construed to prohibit the government's facilitation of individual or group prayer in public schools.

In addition, the amendment implicitly prevents construction of the Free Exercise Clause of the First Amendment to forbid group prayer by rejecting the theory advanced by the court that any group prayer by consenting students has a coercive effect upon dissenting students in violation of their free exercise of religion.

The proposed amendment does not require school authorities to conduct or lead prayer, but permits them to do so if they desire. Group prayers could be led by teachers or students. Alternatively, if the school authorities decided not to conduct a group prayer, they would still be free to accomodatee prayer at appropriate nondisruptive times, such as brief prayers at the start of class or grace before meals.

If school authorities choose to lead a group prayer, the selection of the particular prayer -- subject, of course, to the rights of those not wishing to participate -- would be left to the judgment of local communities based on a consideration of such factors as the desires of parents, students and teachers and other community interests consistent with applicable state law. The amendment does not limit the types of prayers that are constitutionally permissible.

In particular, the amendment is not limited to "nondenominational prayer". Such a limitation might be construed by the federal courts to rule out virtually any prayer except one practically devoid of religious content. Given current court decisions, any reference to God or a Supreme Being could be viewed as "denominational". The President wants to avoid that outcome.

The determination of the appropriate type of prayer is a decision which should properly be made by state and local authorities. This has been the practice throughout most of this nation's history. The proposed amendment is not intended to establish a uniform national rule on prayer, but to allow the diversity of state and local approaches to govern, free of federal constitutional constraints.

No person would be required, by any state or the federal government, to participate in prayer. Those persons who do not wish to participate could sit quietly, occupy themselves with other matters, or leave the room. Reasonable accomodation of this right not to participate in prayer would have to be made by the school or other public authorities. The exercise of the right to refrain from participating in the prayer could not be penalized or burdened.

The second sentence of the proposed amendment assures that students and others will never have to make a coerced vow to religious beliefs they do not hold.

However, the existence of one or more students who do not wish to participate in prayer should not be permitted to deny the remainder of the students the ability to pray. The freedom to pray -- even in public places -- is one of America's most cherished liberties. Where there is no constitutionally overriding harm from the exercise of this particular freedom -- and there clearly is not in this case -- the freedom of prayer must not be infringed.

Opposition to the Amendment

The principal argument advanced against the President's proposed constitutional amendment is that school authorities will impose "government-sponsored prayers".

Past experience makes it totally unwarranted to conclude that most school authorities will draft prayers or that government-sponsored prayers will be universal or even very widespread. Here are more likely decisions local authorities could make:

1. Permit a brief period of silent prayer at the start of the school day.

2. Permit students around a school lunch table to join in asking God's blessing on their meal.

3. Permit students to organize voluntary prayer groups which could meet at school before or after classes or during recess.

4. Permit individual students to alternate each morning, leading those who wish to participate in a short prayer or reading from the Bible or other religious or inspirational work chosen by the individual.

All of these are voluntary activities which a growing majority of school authorities now forbid as a result of the Supreme Court decisions.

It is true that some local authorities might draft prayers, as some did before the 1962 Supreme Court decision, but the proposed amendment prohibits anyone being required to participate in any prayer. Many Americans might urge their school authorities not to draft prayers. Very similarly, many Americans have strong preferences about sex education, foreign language instruction, science curriculum, phonics, proper school discipline, etc. Local decisions on these matters are in the American tradition and greatly preferable to national mandates by the federal courts.

Summary

President Reagan is committed to the passage of this constitutional amendment. In his May 17 letter to Congress, the President said, "Just as Benjamin Franklin believed it was beneficial for the Constitutional Convention to begin each day's work with a prayer, I believe that it would be beneficial for our children to have an opportunity to begin each school day in the same manner. Since the law has been construed to prohibit this, I believe that the law should be changed. It is time for the people, through their Congress and the State legislatures, to act, using the means afforded them by the Constitution."

White House Office of Policy Information

ISSUE UPDATE

Washington, D.C. July 22, 1982

On May 17, 1982 the President sent to Congress a proposed amendment to the Constitution which would restore the freedom of our citizens to pray in public schools. This paper, prepared by the White House Office of Policy Information, explains the fundamental policy considerations behind the proposal.

Constitutional Amendment to Restore School Prayer

The President's goal

The President wants to restore Americans' right to participate in voluntary school prayer, a right which is now prohibited by Supreme Court interpretations of the U.S. Constitution. He believes that individuals should be allowed to decide for themselves whether to join in such prayers.

As the President has stated, "The First Amendment was written not to protect the people and their laws from religious values but to protect those values from government tyranny."

Judicial rulings restricting prayer,

The Supreme Court did not see it this way. Its 1962 and 1963 rulings have prohibited prayer in our nation's public schools for nearly two decades on the premise that allowing such prayer violates the Constitutional separation between Church and State.

In writing the Constitution, the Founding Fathers were anxious to ensure that freedom of religion would be guaranteed, thus avoiding the religious persecution that had led a large number of American colonists to leave their European homelands. At the same time they sought to prevent the establishment of a "State religion" -- as existed in many European countries during the 1700s -- which could compel non-adherents to worship or contribute to a religion not of their own choosing.

For a century and three-quarters, the American judicial system maintained this careful balance between "freedom to worship" and "freedom from (compulsory) worship." However,

the 1962 and 1963 Supreme Court rulings tilted sharply toward concerns about "freedom from," going well beyond the Founding Fathers' intent to protect citizens from establishment of a State religion.

In the process, the Supreme Court severely restricted Americans' freedom to worship by denying public school students the right to join in prayer. The Court reasoned that even voluntary prayer in the public schools subjected students who did not wish to pray to intolerable peer pressure, and thus constituted government compulsion to pray.

Subsequently, judicial rulings based on these principles removed virtually all forms of voluntary worship from our nation's public schools. In one case, for example, the courts went so far as to uphold a school principal's order forbidding kindergarten students from saying grace -- on their own initiative -- before meals. The Supreme Court also approved a lower court decision which barred students -- from participating -- upon their own request and with their parents' consent, in a one-minute prayer meditation at the start of the school day.

The courts further forbade the accommodation of students' desire to join in prayer or religious study on school property even outside regular class hours. For instance, one court held that permitting students to conduct voluntary meetings for "educational, religious, moral or ethical purposes" under these conditions violated the Constitution. Likewise, a State court prohibited the reading of prayers from the Congressional Record in a high school gymnasium before the beginning of school.

Despite these and other decisions, some vestiges of the right to pray do survive in scattered public school systems throughout the nation, but these remnants of voluntary prayer continue to be under systematic and successful attack in the courts.

The trend thus established by these decisions directly contradicts the intent of the framers of the First Amendment, and places a discriminatory restriction on students in the exercise of their religious beliefs. For as long as the government requires its citizens to attend school, then schools should not be prohibited from accommodating those citizens' freedom to worship as they please. The President's proposed amendment would affirm and guarantee State and local authorities' ability to honor the place of prayer in people's lives.

Our nation's history

Freedom of expression is a cherished American tradition, and religious expression has especially deep roots in America's heritage. Since the birth of the United States, public prayer and the acknowledgement of a Supreme Being have been an important part of American life.

Numerous examples demonstrate the religious nature of the American people. Our Declaration of Independence states that "all men...are endowed by their Creator with certain unalienable rights..." Our national pledge of allegiance proclaims us as "one nation, under God." Our coins are inscribed with the words "In God We Trust." In fact, even the Supreme Court, in an earlier day, observed that "We are a religious people whose institutions presuppose a Supreme Being."

Prayer also remains an integral part of many government functions and institutions. Sessions of Congress and many of the State legislatures open with prayer. Each of the branches of the U.S. military retains chaplains, and maintains chapels and hymnbooks for use by servicemen and women. The President, as well as governors and mayors of many of our States and cities, preside over annual prayer breakfasts. The President-elect takes the oath of office with his hand upon the Bible. The standard form for oaths for sworn testimony in U.S. courts contains the phrase "so help me God." And each new session of the Supreme Court opens with the declaration "God save the United States and this honorable Court."

By banning school prayer, the government is thus not only inconsistent with American religious heritage and practices, but is actually promoting a new orthodoxy contrary to the nation's history by tilting in favor of an "official line" that voluntary expression of religious belief is somehow unacceptable and illegal. The government thereby places school prayer on the same level as drinking, smoking or using illicit drugs on public school grounds -- all forbidden activities.

In the end, however, the historical case for the school prayer amendment transcends even these religious issues, for prayer is but one of many forms of public expression. In singling out public school prayer for prohibition, the Court rulings of 1962 and 1963 departed from America's tradition of making no distinctions on the basis of the content of its citizens' speech. Moreover, the ban on school prayer is a glaring contradiction in a society which allows freedom of expression in political and philosophical discussion in public schools, but not in its religious forms.

Why we need an amendment

Under these circumstances, a constitutional amendment is needed to reaffirm America's heritage of allowing those who wish to worship to be able to do so, while simultaneously preserving the freedom of those who do not wish to pray. In contrast to the current ban on voluntary school prayer, which relegates the right to pray to the status of a "second-class freedom," not to be countenanced

in public institutions, the proposed constitutional amendment would afford voluntary school prayer the highest constitutional legitimacy.

As in any case where constitutional changes are contemplated, legislative remedies would be the preferred solution. But since legislation intended to re-establish the right to pray in public schools has been consistently struck down by the courts as unconstitutional, it is now apparent that only a clearly-worded constitutional amendment will unquestionably restore the right to pray.

A second requirement for protecting this right is to return decision-making on school prayer issues, as the amendment would do, to the States and localities. For more than 170 years the public decisions regarding school prayer reflected, as they should have, the desires and beliefs of the parents and children who were directly affected. This is far more appropriate than having rules imposed on a nationwide basis with little regard for differing local desires.

Analysis of the proposed amendment

The President's proposed constitutional amendment states that:

> "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."

This language makes clear that the First Amendment cannot be construed to permit the courts to ban individual or group prayer in public schools. Thus, school authorities would be allowed to accommodate individual or group prayer at appropriate times, such as prior to class or before meals.

Furthermore, while the amendment does not require school authorities to conduct or lead prayer, it permits them to choose. Moreover, the selection of the particular circumstances for prayer would be left to the judgment of local communities based on a consideration of such factors as the preferences of parents, students, teachers, as well as other community interests.

The amendment does not limit the types of prayers that are constitutionally permissible. In particular, the amendment is not limited to "non-denominational prayer." Such a limitation might be construed by the Federal courts to rule out virtually any prayer except one practically devoid of religious content. Given current court decisions, any reference to God or a Supreme Being could be viewed as "denominational." The President wants to avoid that possibility.

The amendment would also prevent the establishment of a uniform national rule on the conduct of voluntary prayer. It would instead allow State and local authorities to decide the appropriate manner in which school prayer should be conducted.

The second sentence of the proposed amendment assures that no one need make any expression of religious beliefs which he or she does not hold, and that no person would be required, by any State or the Federal government, to participate in prayer. The right not to pray is thus protected as well.

At the same time, the presence of one or more students who do not wish to participate in prayer would no longer deny the remainder of the students the right to pray. The freedom to pray -- even in public places -- is one of America's most essential and revered liberties. Where there is no constitutionally overriding harm from the exercise of this particular freedom -- as there clearly is not in this case -- the freedom to pray must not be categorically forbidden.

Concerns about the amendment

Opponents to a constitutional amendment allowing voluntary school prayer often claim that voluntary prayer is available to students at any time during the school day. But these critics fail to recognize that many of the world's great religions consider prayer at times a communal activity. To exercise their religion fully, many persons believe they should join in prayer. Opposing this right is itself a form of intolerance, relegating children to surreptitious private expressions of faith instead of accomodating their legitimate religious interest in joining together in prayer.

What these critics are really saying is that voluntary school prayer must be hidden and in silence. But this right to prayer, which American school children now have, is similar to the freedom Soviet school children have: They can pray as long as they are not caught at it. Surely public expressions of prayer should have more legitimacy in the United States than that which exists in an officially atheistic and totalitarian country.

Opponents also claim that the amendment will impose "government-sponsored prayers," but past experience has shown that this claim is unwarranted. Local school authorities are far more likely to allow one or more of the following expressions of prayer: Permitting a brief period of silent prayer at the start of the school day; permitting students to say their prayers before lunch; or allowing students to organize prayer groups which could meet at school before or after classes or during recess.

All of these activities are voluntary, and in no way infringe upon the rights of those who do not wish to participate; yet each of these activities has been forbidden as a result of the Supreme Court decisions.

Although it is true that some local authorities might draft prayers, as some did before the 1962 Supreme Court decision, such action would not violate the rights of others, because the proposed amendment protects all persons from being required to participate in prayer.

The status of the amendment

In order to become part of the Constitution, the amendment must first go to the House and Senate Judiciary Committees, and then be approved by two thirds of the members of both houses.

The two Senate sponsors of the amendment (S.J. Res. 199) are Strom Thurmond, chairman of the Senate Judiciary Committee, and Orrin Hatch, a member of that committee. Hearings before the committee are scheduled for the last week in July, with mark-up and a final vote tentatively planned for August. If that schedule is adhered to, it is possible that the amendment could come to a vote in the full Senate by this fall.

In the House, the prime sponsor of the amendment (H.J. Res. 493) is Rep. Tom Kindness, who has secured 35 co-sponsors for the amendment. The chairman of the House Judiciary Committee -- Rep. Peter Rodino -- has failed to schedule any hearings or mark-ups, and apparently intends to block the amendment from even coming to a vote in the Committee.

The only way to circumvent the House Judiciary Committee is to secure 218 signatures of House members on what is called a "discharge petition" which Rep. Kindness plans to file. If successful, the petition would bring the amendment to the House floor, where a vote could then be taken.

The final stage in the ratification process is for three-quarters of the State legislatures to approve the amendment, at which time it would become part of the Constitution.

Unlike other legislation, constitutional amendments, once passed by Congress, do not come to the President for his signature. However, President Reagan wants the Congress to approve the amendment expeditiously.

Conclusion

In the President's May 17 letter to Congress introducing the school prayer amendment, the President said: "The amendment will allow...individuals to decide for themselves whether they wish to participate in prayer."

Thus, the fundamental issue is whether or not a free people, under their Constitution, will be entitled to exercise the freedom to express their religious faith in the form of prayer. This long cherished liberty -- so deeply imbedded in the history and traditions of the United States -- is one which the President is committed to restoring.

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THE WALL STREET JOURNAL, THURSDAY, JULY 22, 1982, EDITORIAL PAGE

Defending the School Prayer Amendment . . .

By Grover Rees III

Recently I attended a state college graduation ceremony that began with an invocation by a rabbi and ended with a benediction by a Catholic priest. On the way home I heard a radio commentator denounce President Reagan's proposed constitutional amendment on school prayer. The amendment, the man said, is a radical assault on one of our oldest and most fundamental constitutional principles, the "wall of separation" between government and religion.

The wall of separation is a myth. The record of the debate in Congress on the First Amendment ban against "establishment of religion" clearly indicates that its framers intended only to prohibit the *federal* government from designating a *particular* church to which all citizens must give their allegiance and their financial support. For 200 years the participants in the American constitutional consensus have understood the difference between establishing a church and saying a prayer.

They have invoked the aid of God in their legislative sessions, on their coins, in their national anthem, in their courts and—from the very beginning—in their public schools.

In 1962 six justices of the Supreme Court reversed the settled understanding of the meaning of the First Amendment, holding that it was unconstitutional for a school district to permit students to join in a brief nondenominational morning prayer. The Reagan amendment would simply reverse that decision and its progeny. The amendment would not require that prayers be said in public schools, but the decision would be made (as the framers of the Constitution intended it to be made) in local communities rather than in federal courts.

Will Choice Offend People?

The arguments advanced by critics of the amendment are the same arguments that convinced the justices in 1962. They tend to show not that school prayer violates the constitution, but that it might be a bad idea.

The central problem with saying prayers in school is that somebody must choose the prayer. If the choice is left to local school authorities, they are free to choose prayers that could offend people. Christian prayers may offend Jewish students; Protestant prayers may offend Catholics, indeed, any prayer directed to a "personal" God may offend a student who believes that the Supreme Being is a "life-force," or that there is no God.

Alternatively, school boards may take it upon themselves to write their own prayers in an effort to avoid offending anyone. Such bureaucratic productions might be bland affirmations of reliance upon a lowest-common-denominator sort of God, a God with no attributes. To parents who wish their children to grow up loving and respecting a real God who is not at all boring, a meaningless prayer or an ugly prayer might be worse than no prayer at all.

Nor do critics of the amendment believe that school prayer will be truly voluntary. Although the Reagan amendment provides that no student may be forced to participate in any prayer to which he objects for any reason, they fear that students will be subliminally coerced into praying, or that they will be forced to listen to prayers with which they do not agree.

In the 200 years during which prayers were said in our public schools, they were not typically used as instruments of sectarian oppression.

To decide whether there ought to be a constitutional rule against prayer in the schools, however, one should consider not only the worst that might happen if prayer is permitted, but also the possible consequences of its prohibition. I am not sure that it is ever possible for an institution to be neutral about a question of fact or value. When the institution is a school and the question is what attitude students will have toward God, it is not at all clear that neutrality is achieved by never mentioning God except in discussions of speculative philosophy and medieval history.

It is frequently observed that schools neither are nor should be merely places where facts are disseminated. Rather, a good school shapes the whole person; it prepares him for life in the world. Between the ages of six and 18—the years in which most of us develop attitudes about religion that will form the matrix for all future experiences and observations—our lives are built around the schools we attend. These schools treat Julius Caesar, Shakespeare, Nietzsche, Washington, Reagan and Brezhnev as real persons whose ideas and actions matter; only God is hypothetical and contingent. Among the values that are fundamental to our civilization, the public schools attempt more or less successfully to inculcate in their students the love of freedom, of equality and of their fellow human beings. The love of God is conspicuous in its absence.

Neutrality toward God, in other words, is another myth. I know because I've tried it. I have doubts about God, and my doubts sometimes rise (or descend) to the level of disbelief. But I know that if God exists He is the most important thing in the universe and in my life. When I try to conduct any part of my life without regard to God I am not standing still but turning away.

God is also too important to be left out of the institution that seeks to prepare my child for life in the world. Like most Americans, I cannot afford private schools. The public schools will present my child with a set of facts and values that either includes or excludes God. I believe neither option to be neutral, so I hope his school day will include prayer, which is the affirmation of the love of God.

School is not, of course, the only influence in the lives of our children. Parents can teach their children how to pray. Parents can also teach their children patriotism and sex education. There is at least as good a chance that a child will be adversely affected by a teacher with idiosyncratic ideas about sex as by one who says the wrong prayer, but even the most fervent opponents of sex education seek only to persuade their school boards to omit it from the curriculum. Nobody thinks that the Supreme Court should declare it unconstitutional.

The observation that the Reagan amendment would not mandate school prayer but merely take power over the decision away from courts and give it back to school boards, goes a long way toward answering the horror stories advanced by opponents of the amendment. Any power is subject to abuse, but the possibility of abuse is seldom a sufficient argument against a power that can also be wielded beneficially.

The American political tradition is one of respect for minority opinions: In the 200 years during which prayers were said in our public schools, they were not typically used as instruments of sectarian oppression, and there is no reason to believe that Americans would use prayer as a way to offend their friends and neighbors after the passage of the amendment.

Some people would be offended. Some people are offended by the Christmas tree across from the White House, and some people were probably offended by the rabbi and the priest at the graduation I attended. Some people take religious objection to the Pledge of Allegiance to the flag, and the Supreme Court has held that their children need not participate in the pledge. The Reagan amendment provides the same guarantee with regard to prayer.

Government Is Not Being Neutral

I hope that school boards can find prayers that offend as few people as possible. Though my child is a Catholic, there are many beautiful prayers in the legacy of King David and of King James that would enhance his faith and brighten his days. In some communities it may be more appropriate for children of various faiths to compose their own prayers, or to engage in a minute of silent prayer or meditation. Other communities would almost certainly choose to have no prayer at all. But the communities should decide.

Against the hypothetical abuses of school prayer by local authorities if the Reagan amendment passes should be arrayed the absurd lengths to which the federal courts have carried their constitutional rule against prayer. The courts have banned not only "official" prayers but also Bible reading, posting of the Ten Commandments on classroom walls, prayer meetings voluntarily initiated by students after class at times when other student groups were allowed to meet and school policies that allowed students to engage in a minute of silent meditation. One court even upheld a school principal's order forbidding kindergarten students to say grace before meals.

The continued enforcement of a nationwide rule against school prayer, and the erection by judges of higher and wider walls of separation between school children and God, is no way for the government to be neutral about religion. Ratification of the voluntary school prayer amendment would restore the spirit of the First Amendment, whose framers intended it to guarantee freedom *of* religion, not to impose a regime of freedom *from* religion in community life.

Mr. Rees is a law professor at the University of Texas.

The Conservative Caucus, Inc.

National Headquarters 450 Maple Avenue East, Vienna, Virginia 22180 (703) 893-1550

DEFUND THE LEFT

Martin Blackwell

August 6, 1982

Forest D. Montgomery, Counsel
National Association of Evangelicals
Office of Public Affairs
1430 K Street, N.W.
Washington, D.C. 20005

file

Dear Forest:

Many thanks for your August 5 letter and the copy of Bob Dugan's testimony, which I found instructive and informative.

I am not persuaded, at this point, that Bob's proposed modification of the prayer amendment is one I would prefer, not because I believe in established orthodoxies, but because I believe that, with respect to the states, the Federal government ought to stay out of the way.

I will think about this some more during the weeks ahead.

Many thanks for caring about my opinion.

With personal best wishes, I am

Sincerely,

Howard Phillips
National Director

HP:kas

AUG - 6 1982

NATIONAL ASSOCIATION OF EVANGELICALS

OFFICE OF PUBLIC AFFAIRS/1430 K STREET NW/WASHINGTON DC 20005/(202) 628-7911

August 5, 1982

Mr. Howard Phillips
National Director
The Conservative Caucus
450 Maple Avenue East
Vienna, Virginia 22180

Dear Howie:

I thought you might be interested in Bob Dugan's testimony on the President's proposed Voluntary School Prayer Amendment to the Constitution. We have suggested a change to prohibit the states from influencing the form or content of prayer or religious activity in the public schools.

Morton Blackwell is unhappy about our suggestion, but that's what makes horse races. Note that our suggested change is consistent with p. 8 of your 1981 Annual Report which states, in effect, that The Conservative Caucus is opposed to any officially established religious orthodoxy. That is precisely what the President's amendment in its present form would permit, and needlessly gives the opposition a compelling argument to use against our attempts to restore meaningful religious expression to our public schools.

Faithfully yours,

Forest

Forest D. Montgomery
Counsel

RDM:jdk

Enclosure

NATIONAL ASSOCIATION OF
EVANGELICALS
OFFICE OF PUBLIC AFFAIRS/1430 K STREET NW/WASHINGTON DC 20005/(202) 628-7911

July 29, 1982 Testimony Presented by
ROBERT P. DUGAN, JR.
Director, Office of Public Affairs
to the
SENATE JUDICIARY COMMITTEE
re:
S.J. Res. 199
Proposing an amendment to the Constitution of the United States.

The National Association of Evangelicals appreciates this opportunity to testify in support of S.J. Res. 199. NAE is an association of some 36,000 churches included within forty member denominations and an additional thirty-five nonmember denominations. We serve a constituency of 10-15 million people through our commissions and affiliates, such as World Relief and National Religious Broadcasters.

On behalf of the National Association of Evangelicals, I want to applaud the President for initiating the effort to restore religious freedoms which have been eroded by the courts. My testimony will (1) focus on the need for a constitutional amendment to return to the original meaning of the First Amendment by restoring a balance between the Establishment and Free Exercise Clauses, (2) support the basic concept of S.J. Res. 199, and (3) offer for the consideration of this Committee a suggested change in language to strengthen the proposed amendment. Before proceeding to the body of my testimony, I would like to associate my remarks with the excellent legal analysis of the amendment prepared by the Justice Department's Office of Legal Policy dated May 14, 1982.

I

Americans are generally united on the subject of school prayer. By majorities of 75% and more, they endorse the concept of voluntary group prayer in the nation's public schools. Why?

In Engel v. Vitale, 370 U.S. 421 (1962) and Abington School District v. Schempp, 374 U.S. 203 (1963), the Supreme Court banned from public schools as unconstitutional both government-sponsored prayers and the devotional reading of the Bible. If interpreted narrowly, those decisions would not necessarily have proven harmful, but in practice the lower courts and school administrators have carried the spirit of those decisions further than was warranted. Those who categorically oppose prayer in schools have been successful in virtually eradicating any kind of religious reference in many public schools.

Let me cite just a few examples. In Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F. 2d 1038 (5th Cir. 1982), the court held that a school system's permission for students to conduct voluntary meetings for educational, religious, moral, or ethical purposes on school property before or after regular class hours violated the Establishment Clause. See also Brandon v. Board of Education, 635 F.2d 971 (2d Cir. 1980), cert. denied, 102 S. Ct. 970 (1981). In another case, a school district's decision to allow student initiated prayer at voluntary school assemblies unsupervised by teachers was struck down on Establishment Clause grounds. Collins v. Chandler Unified School District, 644 F.2d 759 (9th Cir.), cert. denied, 102 S. Ct. 322 (1981). And in Stein v. Oshinsky, 348 F.2d 999 (2d Cir.), cert. denied, 382 U.S. 957 (1965), a school principal's order forbidding kindergarten students from saying grace before meals on their own initiative was upheld.

These cases, as well as a host of others, reveal a propensity of the courts to view every form of religious activity solely in Establishment Clause terms. The President's proposed amendment recognizes the urgent need to return to the original meaning of the First Amendment by restoring more of a balance between the Establishment and Free Exercise Clauses.

Opponents of the President's initiative have been quick to observe that the responsibility for religious training rests with the home and the church. We couldn't agree more. But their truncated analysis fails to address the problem of millions of school-age young people who, for lack of any meaningful acknowledgment of God in the public schools, are left to conclude that the state recognizes no power higher than its own. Creation of such an impression is not in keeping with the religious heritage bequeathed us by our Founding Fathers, with longstanding national tradition, and with the desire of the great majority of our citizens today.

This Committee faces a grave responsibility to respond to the wishes of the American people, who in their inherent wisdom realize the need for change.

II

S.J. Res. 199 would constructively amend the Constitution by adding an Article reading as follows:

> 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.

This amendment steers a wise course by not conferring an affirmative right to prayer in the public schools. It would simply remove any constitutional obstacle to voluntary prayer. In doing so it would meet the problem we have indicated — the need to shift the focus from the Establishment Clause to the Free Exercise Clause in order that the public schools be permitted to accommodate the free exercise of religion.

In an effort to live up to the severe constraints of court-imposed "neutrality," our public schools have avoided even acknowledging the existence of God. This public school environment, which in effect makes God irrelevant, is weighted with unspoken values. It subtly makes man the measure of all things — the very definition of secular humanism. The distressing irony is that the Supreme Court has

recognized Secular Humanism as one of the nontheistic religions. Torcaso v. Watkins, 367 U.S. 488, 495 (1961). If we are to avoid establishing humanism in the public schools, there has to be some opportunity for opposing views to be heard. Today government "neutrality" is a myth.

Justice Stewart has proven to be a prophet. As he said in his powerful dissent in Abington School District v. Schempp, 374 U.S. at 313:

> [A] compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, ***.

Opponents of the proposed amendment, in asserting that religion belongs only in the home and church, overlook this reality. The proposed amendment would redress the present lack of neutrality by permitting voluntary prayer in our public schools.

III

While endorsing the proposed amendment, we would like to submit for the Committee's consideration some language we believe would strengthen it. The substance of the changes we suggest is indicated by underscoring in the following version of the amendment:

> Nothing in this Constitution shall be construed to prohibit prayer or other religious activity in public schools or other public institutions. Neither the United States nor any State shall require any person to participate in prayer or other religious activity, or influence the form or content of any prayer or other religious activity.

This version of the proposed amendment would expand its scope by permitting a variety of voluntary religious activity -- prayer, Bible reading, religious clubs, religious instruction, and so forth. But it would restrict the potential operation of the President's amendment by prohibiting government influence on the form or content of any prayer or other religious activity.

Let me elaborate on our reasons for these changes.

The 22 word prayer struck down as a violation of the Establishment Clause in Engle v. Vitale, 370 U.S. 421, 422 (1962), reads as follows: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

That kind of prayer, routinely repeated every school day, is far removed from the kind of meaningful religious expression that should be permitted in the public schools. Hence our expansion in the proposed amendment to include "other religious activity."

Our version of the amendment would (1) treat persons of every belief or unbelief equally by prohibiting the government from influencing the form or content of the religious activity, and (2) overrule McCollum v. Board of Education, 333 U.S. 203 (1948), to the extent that case was based on the physical location of the program of released time religious instruction in the public schools.

I would like to expand on these two points in terms of Zorach v. Clauson, 343 U.S. 306 (1952) and the McCollum case, supra.

In Zorach, released time programs of religious instruction off the school premises were held constitutional. The only factual difference of any consequence between Zorach and McCollum, which struck down a released time program of religious instruction in the public schools, is the physical location of the religious instruction. The location of such activity should not be the conclusive determinant of constitutionality. Yet, as interpreted by the Supreme Court, that is the law of the land. It needs to be changed.

The mere physical use of a public school building is not the functional equivalent of state sponsorship or entanglement. (Many public schools are presently being used as meeting places for churches or synagogues on weekends.) Physical proximity does not automatically make church and state one. The use of public school buildings for religious activity should be permitted as an accommodation to the free exercise of religion.

The First Amendment does not bar cooperation between church and state. Of course the state must do no more than cooperate in making its physical facilities available for the religious activity on the same basis as it would for any other activity, including any arrangement for financial reimbursement. Such a lack of entanglement would be constitutionally guaranteed by the language that we suggest be added to the proposed amendment, for it would prohibit the states from influencing the form or content of any prayer or other religious activity.

We have used the word "influence," rather than "prescribe," in order to make it clear that the state cannot, directly or indirectly, have anything to do with the form or content of the religious activity. This would not preclude school authorities from scheduling the school day as they see fit and from assuring that such matters as fire regulations are observed. However, it would permit our public schools, at the discretion of the school authorities, to cooperate with the people of the community in making the school building available for religious activity.

What we propose here today is nothing less than a new birth of freedom in this religiously pluralistic society. Our proposal would assure persons of every faith — as well as those who do not believe — the opportunity to participate in a variety of activity using the facilities of the public schools. There could be Bible study, prayer, religious instruction, panel presentations, or debates, according to the wishes of the local community.

Students would be free to attend whatever activity they wished. They could go to meetings of their own faith, or attend with friends at sessions of another faith. The appeal of the program, not the influence of the state, would dictate

attendance. This is what religious freedom — in truth, academic freedom — is all about. Our approach, to a great extent, reflects the free speech rational of the Supreme Court in Widmar v. Vincent, 102 S. Ct. 269 (1981), which held that religious speech is entitled to the same constitutional protection as any other form of speech on a state university campus.

Far from being divisive, such a free and diverse program would promote understanding and tolerance of others' beliefs. That to us would be a far healthier situation than the present state of affairs in the public schools where there is often intolerance of religious belief.

We are encouraged by the potential of a constitutional amendment which would restore a balance between the Establishment Clause and the Free Exercise Clause. We see no good reason why the states, if they choose, should not be permitted to cooperate with the people in allowing religious expression — uninfluenced by the state — in our public schools. It is time that our public schools cease to be the only public institution where a meaningful acknowledgment of God is forbidden.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY UNDER SECRETARY FOR PLANNING, BUDGET AND EVALUATION

December 3, 1982

NOTE TO MORTON BLACKWELL

Morton, thought you might be interested in the enclosed letter I submitted to The Washington Post and which they ran on November 27, 1982.

Gary

Gary L. Bauer
Deputy Under Secretary for
Planning, Budget and Evaluation

Enclosure

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

Prayer Will Be Good For the Schools

I was profoundly struck by the lack of logic in the article "Government Control of Religion?" [Outlook, Nov. 7]. This provocative question was answered with the ludicrous claim in the subheading that "Reagan's prayer amendment would give us just that."

Most Post readers probably remember that, until the Supreme Court's school prayer decision of 1962, prayer was permitted in public schools. They also remember that government did not control religion prior to that time. Why, then, the extremist reaction to the administration's efforts to restore a freedom American schoolchildren enjoyed until just 20 years ago?

President Reagan's proposed amendment contains only 37 words: "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." Beautifully uncomplicated, the amendment would protect both the right of those desiring to pray in school as well as the right of those who might choose not to participate.

There is no basis for the claim that the prayer amendment would repeal a portion of the First Amendment, or that it would lead to a government-mandated theology, or that "Congress would restrict federal aid only to states and school districts that provide for uniform religious exercises, in keeping with the regulations of the appropriate federal agency."

The prayer amendment would simply restore a freedom of choice that our local schools enjoyed for almost 200 years. Are we less able to make our own decisions today than we were 20 years ago? Has the moral climate improved in our schools over the past 20 years? Do we find the moral fiber of students strengthened by the absence of prayer in schools? I think not.

Since the Supreme Court ruled that prayer in public schools is unconstitutional, lower federal courts have ruled against a moment of silence in public schools, against voluntary grace by individuals before eating lunch in school, and against the use of classrooms by Christian clubs after school hours.

Parents used to believe education and the formation of character were somewhat intertwined—not that teachers were entirely responsible for the personal development of their students, but parents did believe that the educational process reinforced a respect for those things universally recognized as being good.

The words "Let us bow our heads" invoke a feeling of reverence for man's belief in sacred values. We need to restore that sense of reverence to the classroom. I believe a return to the freedom of voluntary prayer time—even a moment of recognized silence—far from offending anyone would, rather, have a beneficial effect on the public school environment.

—Gary L. Bauer

The writer is deputy undersecretary of education.

THE WHITE HOUSE

WASHINGTON

October 5, 1982

Dr Leslie J. Fryans, PhD.
President
Market Studies, Ltd.
1638 South McArthur Blvd.
Springfield, Illinois 62704

Dear Dr. Fryans,

Thank you for your kind letter of September 3 concerning the President's speeches.

The Office of Public Liaison is not equipped to maintain mailing lists of individuals around the country. Our role is to deal with the heads of organisations rather than the thousands of individuals who make up these organisations. This explains your uncle's presence on the list and his receipt of the speeches.

I am deeply sorry that we cannot accommodate your request.

Cordially,

Morton C. Blackwell

Morton C. Blackwell
Special Assistant to the President
for Public Liaison.

MARKET STUDIES, LTD.
1638 SOUTH MacARTHUR BLVD.
SPRINGFIELD, ILLINOIS 62704
(217) 544-7400

LESLIE J. FYANS, JR., PH.D.
MARTIN L. MAEHR, PH.D.

KENNEDY T. HILL, PH.D.
KIRAN A. DESAI, M.B.A.
THOMAS C. BERGIN, A.C.S.W.

Mr. Morton C. Blackwell Sept. 3, 1982
Special Assistant to the President for Public Liasion
The White House
Washington, D.C.

Dear Mr. Blackwell,

Recently, I had the opportunity to visit with my uncle J. Thomas Fyans who is a General Authority of the Church of Jesus Christ of Latter Day Saints. My uncle is apparently serving in some capacity on a Presidential commission studying the productivity of American industry in the economy. In that capacity he was able to share with me a document dated June, 1982 which contained various speeches that President Ronald Reagan had given to the members of Parliament on June 8, 1982 before the Bundestag in West Germany on June 9, 1982, and a speech to the people of Berlin on June 11, 1982. As well as an address to the United Nations on June 17, 1982. My uncle indicated to me that he received these materials on a regular basis. I sincerely enjoyed reading the President's speeches and especially the content thereof. It would be my greatest pleasure to have my name placed upon this same dissemination/mailing list that my uncle's name is on such that I may also receive these important materials on a regular basis from your office. I would be most grateful if you could facilitate this for me. I remain eager to read of President Reagan's speeches or addresses and/or other materials which could be provided on this mailing.

Draft nice note that this office do not maintain mailing lists for general distribution. We are limited to communications to heads of organizations.

Cordially,

Leslie J. Fyans, PhD.
President
Market Studies, LtD.

Proclamation Of Support For Constitutional Amendment On Prayer

We, the undersigned representatives of various Judeo-Christian groups and organizations in these United States, hereby proudly proclaim our heartfelt gratitude and support for the proposed Constitutional Amendment announced by President Ronald Reagan on May 6, 1982.

The concept of praying to Almighty God to enlist His divine guidance for our nation, as well as on our individual behalf, is a long-standing tradition of the American people and is the source of the freedoms and liberties enjoyed by our nation. Our founding fathers invoked this Supreme Guidance while drafting the Constitution in 1787. The need for national submission to God's hand in our daily affairs has not changed nor lessened with the passing of these 195 years.

God's textbook of principles, the Bible, that governs in the affairs of men is as true and applicable today for our affairs as it was at the start of our nation. When we submit ourselves in prayer to the wondrous work of God's almighty hand, he is able to move on our behalf. Therefore, recognizing the present need for Godly guidance in our nation, we proudly support this amendment to re-establish prayer as the vital backbone of our strong and mighty nation in order that we might truly return to our destiny of "One nation under God, indivisable, with liberty and justice for all."

For these purposes, we hereby execute this proclamation on this 27th day of May, 1982;

PRAYER COALITION DINNER — MAY 27, 1982 — Home of Karen & Cullen Davis

Name & Address	Organization or Affiliation
Rex & Maude Aimee Humbard 568 N. Portage Path Akron, OH 44303	Rex Humbard Ministries
Bob & Marte Tilton 5411 Bent Trec Drive Dallas, TX 75248	Worldof Faith World Outreach 7,000 membership; radio & TV programs
James & Betty Robison P.O. Box 18489 Fort Worth, TX 76118	James Robison Evangelistic Association
Rev. & Mrs. R.W. Schambach Rt. 4 Box 159X Tyler, Texas 74145	Schambach Revivals - 300,000 on mailing list
Bro. Lester Roloff P.O. Box 1177 Corpus Christi, TX 78403	People's Baptist Church & the Rebekah Home; 150,000 on mailing list
Steve Bowersox P.O. Box 6643 Fort Worth, TX 76115	Representing Kenneth Copeland Ministries - 590,000 on mailing list
Jim Moore 2419 S. 91st E. Ave. Tulsa, OK 74063	Representing Oral Roberts Evangelistic Association
John D. Beckett Box 1289 Elyria, OH	Intercessors for America
Lowell Lundstrom East Hwy. 10 Sissleton, S.D. 57262	Lundstrom Ministries - 80,000
Dr. Elizabeth Vaughan 3710 Marquis Garland, TX 75042	International American (IAM) Broadcasting
Vicki Jamison P.O. Box 300 Dallas, TX 75221	Vicki Jamison Ministries - 40,000 on mailing list. TV Ministry
Mrs. Freda Lindsay Box 24910 Dallas, TX 75224	President of Christ for the Nations Institute
Banker & Caroline Hunt 4508 Lakeside Drive Dallas, TX	Hunt Industries

Name & Address	Organization or Affiliation
Fred Minton & Bill Landers P.O. Box 3000 Oklahoma City, OK 73113	Richard Hogue Ministries - TV Ministry - 20,000
Don & Kathy Stewart Box 2960 Phoenix, AZ 85062	Don Stewart Evangelistic Assoc. 250,000 on mailing list
Reggie & Geri Vinson P.O. Box 33008 Tulsa, OK 74135	Tell the World International Outreach
Dr. Vinson Synan 7412 N. Ann Arbor Oklahoma City, OK 73132	Assistant General Superintendent of the Pentecostal Holiness Church (nation-wide)
Nicky Cruz P.O. Box 1330 Colorado Springs, CO 80901	Nicky Cruz Ministries
Rev. & Mrs. Nathaniel Urshan 8855 Dunn Road Hazelwood, MO 63042	Superintendent of Pentecostal Church (nation-wide)
Rev. & Mrs. James Kilgore 1309 Potomac Pasadena, TX 77502	Pastor of large Pentecostal church inHouston, Texas
Rev. John Wilkerson 1600 Azteca Drive Fort Worth, TX 76112	Pastor of Bethel Temple in Fort Worth - active leader in Assembly of God denomination, on board of 150,000 member church in Seoul, Korea
Mr. Ed McAteer 1500 Wilson Blvd. Arlington, VA 2209	President of The Roundtable
Denny & DeAnza Duron 7505 Pines Road Shreveport, LA 71129	Denny Duron Ministries
Dr. & Mrs. Dwight Gailey 1722 Stonegate Denton, TX 76201	Denton, TX city councilman & veterinarian
Mrs. Don Spear c 7224 Canongate Drive Dallas, TX 75248	Husband is a national director of Full Gospel Business Men's International Fellowship

Name & Address	Organization or Affiliation
William J. Murray 1201 Castlewood Friendswood, TX	lecturer - son of Madeline Murray O'Hara
Jim & Jeanne Rogers 512 Holder Drive Hurst, TX 76053	Vice-President of James Robison Evangelistic Association
Stephen Sumrall 61300 Ironwood Road South Bend, IN 46414	Sumrall Ministries - son of Lester Sumrall
Mr. & Mrs. Glen Roachelle 3304 Bob White Bedford, TX 76021	Metroplex Covenant Churches
Larry W. Jones Box 36 Oklahoma City, OK 73101	Larry Jones Ministries
Linda & Norman Young 1307 Box Creek Drive Duncanville, TX 75116	Executive - Christ for the Nations Institute
Cindy Beeney 1120 W. Dahlea Drive Phoenix, AZ	Executive - Don Stewart Evangelistic Association
Hubert Godby 1222 Bryant Fort Worth, TX 76126	Principal of Christian School in Fort Worth
Mrs. Bonnie Sims 10514 Creektree Houston, TX 77070	Lawyer in Houston
Charles Simpson New Wine Magazine Mobile, Alabama	New Wine Magazine, Evangelist, Founder of Covenant Churbhes
Gene Ewing 6334 Arizona Los Angeles, CA	Businessman - expertise in Direct Mail
Judd & Diana Jackson 4205 High Star Dallas, TX 75252	Consultant - working with Word of Faith World Outreach; instrumental in putting this event together
Don Stephens m/v Anastasis San Pedro, CA 90733	Youth With A Mission

ODE TO A LOST INNOCENCE

Think about the day when you were just a child.
When your thoughts were pure and your heart was undefiled.
You always stood for what was best, no matter what the test.
And everybody knew that you were different from the rest.
Remember when the truth you knew was still aflame.
And your simple honesty gave you a name.
But something happened deep inside to swell you up with pride.
The day you left your sovereign Guide was the day your conscience died.
So return, return to the innocence of your youth.
And recall, recall the purity of truth.
Revive, revive the freedoms you knew then.
And put your trust in God again ------AMERICA!!

You used to fight to bring all evil to an end.
But then you let the enemy become your closest friend.
If you would open up your eyes, you would realize,
The pleasure that you idolize is a traitor in disguise.
So return, return to the innocence of your youth.
Then recall, recall the purity of truth.
So revive, revive the freedoms you knew then.
And put your trust in God again ------AMERICA!!

Ex. Dir. Curtis y. young. 422 C St. N.E. Wash DC. 20002
Phone - 638-5441 My phone - 301-259-4569
Mrs Bennett H. Miller

Action Line

Christian Action Council Newsletter

Volume VI, No. 6 July 29, 1982

BAKER PROMISES VOTE ON HELMS BILL

Senate Majority Leader Howard Baker (R-Tenn.) has at last scheduled Senate debate on antiabortion legislation--and, ironically, drawn fire from some prolife quarters in the process.

Baker agreed last month to permit a bill sponsored by Sen. Jesse Helms (R-N.C.) to be offered as an amendment to the debt limit bill, which is expected to come before the Senate sometime in August. The Helms bill (S. 2148) would restrict federal funding of abortion and precipitate Supreme Court reconsideration of the Roe v. Wade abortion on demand decision.

Significant Concession

Helms, along with Roger Jepsen (R-Ia.) and Jeremiah Denton (R-Ala.), won this concession from Baker in a dramatic exchange on the Senate floor. The three agreed to abandon their efforts to attach "social issues" amendments to the Voting Rights Act and, in return, received from Baker a pledge to permit their riders to be offered to the debt limit bill.

"I respect their right to offer these things," Baker said, "and I will provide an opportunity for them to offer them... as amendments to some other piece of legislation. I make no exceptions as to what that might be. The debt limit is coming up and if it is offered to that I will not stand on the floor and urge that it not be offered."

Baker's concession is significant. For months he has promised an abortion debate but has scheduled nothing. His most recent line is that the Senate will have a free-standing debate on the abortion issue "sometime during the summer weeks." Prolife legislators know they can't rely on such vague promises. They also know that a free-standing debate on abortion at this point--even if it were to result in Senate passage of an antiabortion measure--will avail nothing. There simply is no time to move legislation through the House. The only hope is to append a prolife measure to a bill which Congress must enact.

Senator Helms originally selected the Voting Rights Act for this purpose. But several Senators, fearing that this would be perceived as an effort to obstruct civil rights legislation, objected to Helms' strategy. Helms, in conjunction with Senators Jepsen and Denton, therefore pursued an agreement with Baker to permit prolife amendments to another "must pass" bill--the debt limit act.

Rockets and Bubble Gum

That measure, which allows the government to continue spending despite the deficit, is an excellent vehicle. There is no identifiable lobby for it since no one supports it. For Congress, the debt limit bill is one of life's unpleasant necessities. It must be enacted or the federal government will shut down.

That makes it a prime target for amendments of every sort. As one lobbyist told the Wall Street Journal, amending the debt limit is "like throwing bubble gum at a rocket. If your amendment sticks, it's gone."

Baker's decision to make the Debt Limit Bill the vehicle for the Senate's long-anticipated abortion debate nevertheless has some prolife groups miffed. Although a free-standing debate on abortion would guarantee that no antiabortion measure would clear Congress,

As one lobbyist told the Wall Street Journal, amending the debt limit is "like throwing bubble gum at a rocket. If your amendment sticks, it's gone."

these groups are clamoring for such a debate since it is the only way to bring a constitutional amendment on abortion sponsored by Utah Republican Orrin Hatch (S.J. Res. 110) to a vote. Constitutional amendments can only be considered in free-standing debate. They cannot be offered as riders to unrelated bills.

Some supporters of the Hatch amendment--a measure which, according to the Senate Judiciary Committee, would allow legislatures to "totally prohibit abortion or totally maintain the status quo of abortion on demand"--have charged Baker with trying to "consign the Hatch amendment to oblivion."

Odds Against Passage

Others have gone further, warning President Reagan of "an absolutely disastrous effect on the administration's support from our movement in November" if the Senate does not take up the Hatch amendment.

But the reason the Hatch amendment has not been scheduled has little to do with Baker or Reagan. The Majority Leader has, after all, committed himself to an abortion debate, one which at least has a chance of effecting a new public policy on the issue. The President, of course, does not set the Senate's schedule and should not be expected to. His proper--and most effective--role is to ask Republican Senators to vote for the prolife measure that has been slated for debate: the Helms bill.

The real reason the Hatch amendment has not been scheduled is that its sponsor knows it can't pass.

"My amendment doesn't mean there are going to be fewer abortions. My amendment just says there is going to be a debate on it...and either side can win...Give me credit for trying to moderate the situation."

—Orrin Hatch

In a four-part series on Senator Hatch which appeared early this month in the Provo (UT) Herald, the Utah Republican conceded that "the odds are probably against" passage of his amendment.

"Political Error"

An aide to Senator Hatch disclosed just how steep the odds are. "The last time I counted we had 50 Senators," the aide told The Wanderer, a national Catholic weekly, "but you know we need 67."

With just weeks remaining in the legislative session, the Majority Leader cannot be expected to use the Senate's time on a measure so obviously headed for defeat; nor can the President be asked to expend political capital on an amendment that's headed nowhere.

Even key supporters of the Hatch amendment are publicly admitting doubts about its prospects. Archbishop John Roach, President of the National Conference of Catholic Bishops (NCCB)--an organization which was among the first to support the Hatch proposal--last fall said that the Hatch strategy "has the great merit of being an achievable solution to the present situation of abortion on demand."

In a recent interview with the Catholic News Service, however, the NCCB head expressed an apparently different sentiment. While retaining "some optimism" regarding the Hatch amendment's chances, he acknowledged that, by endorsing the measure, the NCCB "may have made a political error, but I will go to my death believing we made the right moral judgment."

Where did the political judgment of Hatch supporters go awry? Senator Hatch's comments in the Provo Herald suggest that he initially believed that his amendment, because it would not directly limit abortion, would appeal to partisans on both sides of the issue.

"My amendment doesn't mean there are going to be fewer abortions," Hatch told the Herald. "My amendment just says there is going to be a debate on it...and either side can win."

Rape, Incest, Deformity, Etc.

If his amendment were to pass, Hatch said, most states would allow abortions "to save the life of the mother, (in cases of) rape, incest, deformity and maybe other reasons."

"I thought it would bring everybody (pro- and anti-abortionists alike) together," Hatch said. "Give me credit for trying to moderate the situation."

But there is something fundamentally immoderate about proposing an amendment to permit legislative debate on abortion. Although an amend-

ment engraving the right to life into the Constitution is ultimately necessary, an amendment granting Congress permission to debate abortion is not. Congress already has authority to engage in such a debate and to urge the Court to overturn Roe v. Wade.

That is what the Helms bill is all about. It represents a break in the contemporary trend toward using constitutional amendments to deal with politically volatile issues, a trend that Dr. Gary McDowell, author of Taking the Constitution Seriously, has termed "disturbing."

"Pass the Bottle"

"Those with grievances against judicial interpretations of the Constitution should look to the political process for redress rather than the amendment process," McDowell wrote in a recent op-ed piece.

Why has the constitutional amendment route become the preferred means of dealing with controversial subjects? Because it is the most effective device politicians have for appearing to do something about a problem while in fact doing nothing.

Even proposed amendments with reasonably bright Congressional prospects--the balanced budget amendment, for example--have a hollow, symbolic air about them. The member of Congress who votes to increase the national debt beyond the trillion dollar mark one week and for a constitutional amendment to require balanced budgets the next is all too reminiscent of the unfortunate soul who says, "Pass the bottle, I'll sober up in the morning."

Payraise Amendment?

Congress may soon apply this reasoning to yet another nettlesome issue: the Congressional payraise. Members of Congress have used procedural sleight of hand to make payraises for themselves an annual event. This has aroused constituent outrage and evoked a predictable Congressional response: a proposed constitutional amendment.

"In the near future," Howard Baker wrote in his most recent newsletter to Tennesseeans, "I plan to introduce a constitutional amendment to allow the Supreme Court to determine the level of pay and allowances for members of Congress." The amendment appears designed to give Baker's colleagues the opportunity to posture against giving themselves raises, while continuing to increase their own salaries.

School prayer advocates have been the biggest losers in this game of constitutional copout. Three years ago, the Senate passed legislation which would have removed the school prayer issue from the federal courts, thus making state and local judges--who generally must stand for election--the final arbiters of school prayer cases.

A small coterie of Administration officials steered the school prayer advocates onto a futile path—and made the White House look like evangelical champions in the bargain.

Though their efforts to bring the legislation to the House floor were frustrated, school prayer backers were given new life in November 1980. Those elections gave them beefed-up majorities in the Senate and House and--perhaps most importantly of all--a solid supporter in the White House. But they had no friends where it counted--in the Justice Department and in the highest White House staff levels.

In fact, though they didn't know it, they had quite a formidable enemy: Assistant Attorney General for Legal Counsel Theodore Olson. Olson, who has circulated a document within the Justice Department casting constitutional aspersions on tuition tax credits legislation, last summer held a briefing for senior White House staff on court-stripping legislation.

Olson: Prayer Unconstitutional

Olson told the small gathering in the Roosevelt Room that proposals to limit Supreme Court jurisdiction over such matters as voluntary prayer in public schools were unconstitutional. While admitting that such legislation conformed to the Constitution's literal meaning, Olson contended the proposals ran afoul of the document's spirit.

One of those present at the meeting, Cabinet Council on Legislative Affairs staff director Michael Uhlmann, became Olson's chief White House ally against school prayer legislation. Uhlmann's role was pivotal because of his close relationship with presidential advisor Ed Meese.

When members of Congress learned of the meeting, they contacted Attorney General William French Smith. Smith denied that court-stripping legislation was being studied by the Justice Department.

Early this year high-ranking officials in the West Wing of the White House apparently decided that it was time to play constitutional cop-out on the school prayer issue. First, they secured a vote analysis on the subject which showed that the school prayer bill would pass the Senate and House, but that a constitutional amendment would not. Next, the White House set out to produce a constitutional amendment to permit voluntary prayer in public schools.

The Administration's school prayer amendment was unveiled with much fanfare in a widely-publicized Rose Garden ceremony. But a less celebrated development, which occurred just hours before the Rose Garden event, may have been more significant: the release of Olson's report asserting that the school prayer bill was unconstitutional.

A small coterie of Administration officials thus had steered school prayer advocates onto a futile path--and made the White House look like evangelical champions in the bargain.

Because it has continued to press for Senate consideration of the Helms bill, the prolife movement has not been victimized by the constitutional cop-out If Baker holds to his promise of an abortion debate on the debt limit bill, the 97th Congress could see meaningful progress in the fight against abortion--and infanticide.

John Erlenborn's (R-Ill.) Handicapped Infants Protection Act (H.R. 6492) continues to attract broad support in the House. At this writing, the Erlenborn bill, which would provide legal means to save babies who are being deprived food and necessary medical care, has nearly 60 co-sponsors. The House Education and Labor Subcommittee on Special Education is expected to hold hearings on the measure later in the session.

The mere introduction of the bill has done much to draw attention to the widespread problem of infanticide. The Southern Baptist Convention expressed its own heightened sense of urgency by adopting a revised version of its anti-abortion resolution. The 13.5 million member denomination first took an unequivocal stand in behalf of the unborn two years ago when it adopted a resolution to "support and...work for appropriate legislation and/or constitutional amendment which will prohibit abortion except to save the physical life of the mother." This year, the convention once again overwhelmingly adopted this language, but added, "We also support and will work for legislation which will prohibit the practice of infanticide."

In the view of Southern Baptist leaders, the issues of abortion and infanticide are inexorably related. There is much to commend this view.

Essayist Joseph Sobran, writing in the Summer, 1982 issue of the Human Life Review, put it this way: "Infanticide is merely a natural extrapolation from abortion. If it can't be seriously wrong to kill a tiny bit of protoplasm,...then it can't be so very wrong to kill a somewhat bigger bit, and what real difference does it make whether it's inside the womb or out?"

Such deadly logic need not prevail. Congress must see to it that the lives of all children are given full protection.

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