

Crime- J.J. Letter/Education

PHOTOCOPY
PRESERVATION



STEIN ERIKSEN
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Qill Letter 62640

② 920 AM

Leanne - priv. unit bill

Letter →

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Bill Easton

CRIME -
~~EDUCATION~~
Internet filter
J.J. letter/
Education

 Leanne A. Shimabukuro 08/23/99 03:27:14 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc: Anna Richter/OPD/EOP@EOP
Subject: re-draft proposal

----- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 08/23/99 03:26 PM -----

 Leanne A. Shimabukuro 08/23/99 02:22:25 PM

Record Type: Record

To: Jim Kohlenberger/OVP@OVP
cc:
Subject: re-draft proposal

Eric suggested that I take a crack at some compromise language before we get on the phone with Education again. I'm going to set up a call for about 4:00pm. I'll call you with more info but please take a look at the language below-- and let me know if you have any other suggestions.

Keep first paragraph.

Replace second paragraph with the following:

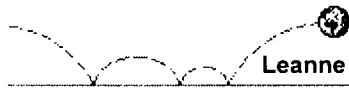
then I strongly support the goal of protecting children from inappropriate material on the Internet. ~~While I support protecting our children,~~ I do not, however, believe that the House provisions are drafted in a manner which would best support this goal. *A* As written, the House provisions ~~could~~ result in the blocking of material that may be appropriate for educational and other uses-- raising constitutional concerns -- and would place a disproportionate burden on our poorest and most rural schools.

1545 Appropriately crafted legislation will empower schools to protect children from unsuitable material while also protecting First Amendment values. Accordingly, I support a provision that would require every school and library that receives assistance from the Universal Service Fund to certify that it has developed and implemented a plan to protect ~~school~~ children from inappropriate material on the Internet. These plans should be developed in consultation with parents and other interested parties so that schools and libraries can adopt local approaches which best meet the the needs of their students and communities. *or to close*

→ Leanne

secondary schools and libraries receiving universal service assistance to select, install, and use filters that block access to child pornographic materials and obscene materials on all computers with Internet access. Make no mistake, I strongly support the goal of protecting children from inappropriate material on the Internet while also protecting the First Amendment we all hold dear. However, mandating one type of solution for all E-rate recipients -- a technology solution that experts recognize may not thoroughly protect children from inappropriate material -- is not realistic, workable or sufficient. Ultimately, teachers need to be responsible for what are on their student's computer screens. Instead of mandating a requirement based solely on technology, I believe we need to encourage local communities to develop the strongest possible efforts that are consistent with the local communities values, the school's needs and the classroom's technologies. To that end, I believe that E-rate applicants should be required to certify that they have a plan in place for protecting children from inappropriate material on the Internet. Our administration has encouraged the FCC, which oversees the E-rate program, to adopt such a requirement. I would note that the FCC, already has a proceeding under way for just such a proposal. This is something that the FCC can achieve without the legislative language contained in the bill.

Leanne A. Shimabukuro@EOP



Leanne A. Shimabukuro@EOP 08/12/99 11:32:32 AM

Record Type: Record

To: Jim Kohlenberger/OVP@OVP

cc:

Subject: Education Letter to Conferees on Juvenile Justice Bills (S. 254/H.R. 1501)

----- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 08/12/99 11:32 AM -----

From: Ronald E. Jones on 08/11/99 01:09:17 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

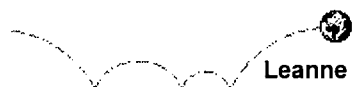
Subject: Education Letter to Conferees on Juvenile Justice Bills (S. 254/H.R. 1501)

Attached is a redline/strikeout version of the Education letter showing changes proposed by DPC, and to a lesser extent, OVP and the Justice Department. The intent is for this letter to be sent to the Hill right after the Justice letter is transmitted.

Unless I hear otherwise by 5 PM today, I will assume you have no objection to the

Internet Filtering. The House bill contains an amendment that would require elementary and secondary schools and libraries receiving universal-service assistance to select, install, and use filters that block access to child pornographic and obscene materials, as well as materials deemed harmful to minors, on computers with Internet access and to certify to the Federal Communications Commission that they have done so. A school or library that fails to meet these requirements would be Aliable to repay immediately the full amount of all universal service assistance≡ it received after the date of its failure to comply.

I strongly support the goal of protecting children from inappropriate material on the Internet. However, not only would the House Bill raise important constitutional questions and disproportionately burden our poorest and most rural schools, we should not force our schools and libraries to employ Federally-mandated technological solutions that may not be effective, failing to block access to material that is inappropriate while, at the same time, blocking material that may be entirely appropriate for educational or other uses. Just as schools must develop technology plans to participate in our Technology Literacy Challenge Fund program, I believe that schools and libraries that benefit from universal-service assistance should be required to develop, in consultation with parents and other interested parties, and implement a plan to protect children from inappropriate material on the Internet--and that we should allow schools and libraries to adopt the approach that they determine best meets the needs of their students and communities. Such an alternative approach might include signed responsible use Acompacts≡ between schools and libraries, on the one hand, and students and their parents, on the other, that are integrated into broader lessons about personal and civic responsibility. Accordingly, I support a provision that would require every school and library that receives assistance from the Universal Service Fund to certify that it has developed a plan to protect schoolchildren from inappropriate material on the Internet.



Leanne A. Shimabukuro

08/12/99 01:00:10 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP
cc: Courtney O. Gregoire/OPD/EOP@EOP, Cathy R. Mays/OPD/EOP@EOP
Subject: Internet filtering -- revised email

I accidentally sent this email before I was finished with it -- proving that it's a good thing that I don't work on technology issues. My message below is now complete. LS

----- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 08/12/99 12:46 PM -----



Leanne A. Shimabukuro

08/12/99 12:44:46 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP
cc: Courtney O. Gregoire/OPD/EOP@EOP, Cathy R. Mays/OPD/EOP@EOP
Subject: Internet filtering

I spoke with Jim Kohlenberger this morning about the Internet filtering language. He said the Education letter language takes a stronger position than we've taken to date on requiring filtering. In a SAP we sent last year on a bill that would essentially mandate filtering, we remained silent on the mandate and simply stated that we strongly supported legislation to require schools and libraries receiving the E rate to develop plans to protect kids from inappropriate Internet material. Jim revised the language below to reiterate our support for this alternative and to strengthen the language on protecting kids.

I think this is better, but is our position still too weak?

----- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 08/12/99 12:29 PM -----

JIM KOHLENBERGER@OVP

08/12/99 12:02:51 PM

Record Type: Record

To: Leanne A. Shimabukuro/OPD/EOP@EOP
cc:
bcc:
Subject: Re: Education Letter to Conferees on Juvenile Justice Bills (S. 254/H.R. 1501)

How about something more like this

Internet Filtering. The House bill contains an amendment that would require elementary and

I've finished reviewing all of the juvie conference materials and am now forwarding my edits to you and DOJ. In general, the letter and detailed comments are much improved from this weekend, and -- with the exception of our objection to DOJ's concerns with the charitable choice provision -- I don't see any reason why we shouldn't be able to bring this to a close today. Here are the issues as I see them:

1. DOJ cover letter. Leanne should have sent you my edits last night. I don't think any of them should be objectionable to the agencies; they are mostly technical. However, we -- DPC, Leg. Affairs, Counsel, OMB -- should probably all take one last look before we finalize.

2. Education Letter. We have more serious concerns w/the Education letter. Overall, it's much more negative than it needs to be, especially on the religious and internet filtering provisions. I think the current language is inconsistent with the President's record and rhetoric on religious expression in schools/workplace and its support for the Communications Decency Act. My edits try to tone it down some. We also have two objections on the substance:

(1) Drugs. We do not think the Administration should oppose requiring the expulsion of kids who bring felonious quantities of drugs to school. This is consistent with our support for zero tolerance for guns, as well as for cutting of student loans to kids who commit drug crimes. Moreover, Education studies show that the overwhelming majority of schools already have similar policies in place.

(2) Metal Detectors and Security Equipment. Even though we don't have to support schools using **all** of their funds for security measures, we should support at least a marginal increase in the current cap of 20%. I've recommended 30%, and believe this is consistent with recommendations previously made by Barbara Chow...not to mention the President.

3. DOJ/Treasury's detailed review of juvie bill. My only major concern here is the inclusion in two parts (pgs. 34 and 87) of language that we believe undermines our previous support for the so-called charitable choice provision of the welfare law. To the extent that these 2 sections of the bill expand the charitable choice to include certain juvenile crime prevention programs, we should simply support them. The President supports charitable choice, and the VP has specifically proposed expanding it to juvenile crime prevention programs, so the Department's long-winded and hypothetical concerns should be dropped. I have mentioned this to Counsel, and will follow-up with them and VP to make sure we're all in agreement. In brief, some of my other suggestions include:

- dropping our objection to the restricting violent juveniles from being placed in community-based facilities (p. 13);
- dropping the paragraph highlighting that the Sentencing Commission is not operable, or at least changing it to simply recommend that no time limit be placed on the Commission (p. 14);
- adding a sentence to the section expressing concerns about Aimee's Law saying that we'd be happy to work with the conferees to try and develop a more workable alternative (p. 74);
- adding a sentence to the section requiring state and local authorities to intervene with certain children saying we'd be happy to work with the conference on a suitable alternative (p. 83);
- dropping the specific references in the section on "2 strikes" for child sex offenders to what crimes we believe don't deserve a life sentence...but keeping the language saying we support a target provision that specifically targets...etc (p. 90);

- changing our opposition to the specific sentencing directive in Matthew's Law to a preference that Congress allow the Commission the flexibility coordinate this with other important enhancements (p. 98); and

- changing the section on the Greenwood provisions on hate crimes to say that, "We **strongly** oppose this provision as unnecessary and of ambiguous intent...." or something to that effect.

Thanks,
Jose'

Message Copied To:

Bruce N. Reed/OPD/EOP@EOP
Eric P. Liu/OPD/EOP@EOP
Leanne A. Shimabukuro/OPD/EOP@EOP
Broderick Johnson/WHO/EOP@EOP
Caroline R. Fredrickson/WHO/EOP@EOP
Michael Deich/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Barbara Chow/OMB/EOP@EOP
Leslie S. Mustain/OMB/EOP@EOP

Education
Question and Answers
August 12, 1999

Q: What is the Administration's position on the Kansas Board of Education's decision not to teach evolution in schools?

A: While the federal government has a significant role to play in ensuring that all our children have access to the high-quality education they deserve, curriculum decisions are appropriately made on a state and local level.

Q: Has the President asked the Department of Education to examine the issue of teaching evolution?

The Department of Education is prohibited by law from mandating curriculum. (We are checking on the exact prohibition)

Q: Does the President support the inclusion of evolution in state science standards?

A: *and voluntarily*
(The President respects the opinion of scientists who are more well-equipped than he is to determine the validity of scientific theories.) In 1996, the National Academy of Science, who are advisors to the nation on science, engineering and medicine, issued a set of widely respected national science education standards which included the teaching of evolution. National Academy President Bruce Albert has said, "Scientists hold the theory of evolution as one of science's most robust theories. It is supported by a wealth of observational evidence and has successfully survived rigorous testing by scientific methods."

Q: What is the President's opinion on the decision?

A: The President believes, as he did when he was a governor, that states and localities have primary responsibility for education and must have the flexibility to decide what to teach and how to teach it. ~~If he were a citizen of Kansas, the President would probably be concerned that~~ all students benefit from the knowledge gained by science about the role that evolution has played in our history, while ensuring proper respect for religious and spiritual beliefs and doctrines. He feels strongly that it is essential that all of our children be offered the knowledge they will need to succeed in the 21st Century.

Q: Do the Administration's "Guidelines for Religious Freedom" address this issue?

A: The issue decided by the Kansas Board is one of science curriculum, not one of religious freedom or expression.



Jose Cerda III

08/11/99 03:19:19 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc:
Subject: Juvenile Crime Letter

Also, meant to cc you on this...jc3

----- Forwarded by Jose Cerda III/OPD/EOP on 08/11/99 03:19 PM -----



Jose Cerda III

08/11/99 02:56:49 PM

Record Type: Record

To: Ron Klain/OVP@OVP
cc: Bruce N. Reed/OPD/EOP@EOP, Leanne A. Shimabukuro/OPD/EOP@EOP
Subject: Juvenile Crime Letter

Ron:

Sent the following comments to OMB to try and finalize our juvie views letter for the Hill. Doesn't compare to your work of art w/the '94 Act -- twice as long, half as substantive -- but we'll always have the memories.

Want to bring an important OVP issue to your attention though. DOJ/OLC is insisting, as always, that we express constitutional concerns about and opposition to the welfare law's charitable choice provision being applied to 2 new streams of juvenile crime money. We'd like to support, but would be happy with their opposition being dropped. Since the VP's on the record supporting such an expansion, we'd appreciate you and your folks registering the same opinion w/OMB and Counsel's office. I'm speaking to the worker bees, but you may want to mention it to Jack, Cheryl, or others.

Jose'

----- Forwarded by Jose Cerda III/OPD/EOP on 08/11/99 02:46 PM -----



Jose Cerda III

08/11/99 01:43:24 PM

Record Type: Record

To: Ronald E. Jones/OMB/EOP@EOP, Richard E. Green/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Juvenile Crime Letter

Ron/Richard:

*Chambers -
Juvenile Justice Bill*

DRAFT – August 11, 1999 (5:19PM)

Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

[Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515]

[Honorable William F. Goodling
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515]

Dear Chairman Hatch:
[Dear Chairman Hyde:]
[Dear Chairman Goodling:]

I am writing to provide you and the other conferees with the Administration's views regarding various provisions of S. 254 and H.R. 1501. As our children begin returning to school later this month, the conference should seize the opportunity to make our schools and communities safer by taking common-sense steps to keep guns out of the wrong hands, prevent youth violence, and steer young people away from crime. We look forward to working with you to reconcile the two bills and produce a balanced and bipartisan juvenile crime bill – with the Senate-passed gun provisions – that effectively addresses juvenile crime including the devastating impact of gun violence on our young people.

As the Administration's past juvenile crime proposals have demonstrated, we believe that juvenile justice requires a balanced approach – one that couples tough sanctions that hold juveniles accountable for their conduct with effective delinquency prevention and early intervention measures. We must not lose sight of the fact that the overwhelming majority of our Nation's young people do not engage in crime or delinquency. Most of them are wonderful, hopeful children who not only want to succeed, but also to live in and support safe and livable communities. Indeed, it is critical to remember that in the approximately 20 years since this

Honorable Orrin G. Hatch
[Honorable Henry J. Hyde]
[Honorable William F. Goodling]
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Nation began collecting the relevant data, the percentage of America's youth aged 10-17 arrested for a violent crime has never exceeded one-half of one percent. Therefore, we need to punish appropriately that small portion of violent offenders, some of whom may require federal intervention. At the same time, we must help communities and families provide effective, comprehensive support for the many millions of young Americans who may be at risk for delinquency, but who can be helped to become productive and law-abiding citizens.

Just last week, the Centers for Disease Control and Prevention (CDC) reported that violent activity by America's teens dropped significantly between 1991 and 1997. The percentage of teens who reported carrying guns and other weapons fell from 26 percent to 21 percent, while the percentage of teens who reported fighting fell from 43 percent to 37 percent. Even more dramatic is the significant drop in juvenile arrest rates for violent crimes. The arrest rate in 1997 was a full 23 percent lower than in the peak year of 1994.

Among the reasons for these dramatic declines in youth violence is the infusion of community police officers into cities and towns across the nation – law enforcement personnel who have worked in close partnership with prosecutors, parents, school officials, and youth workers, as well as with concerned government officials, practitioners, and citizen volunteers – to help America's communities get their young people back on track. The 106th Congress can promote continued declines in youth crime by embracing a comprehensive approach to community safety that includes support for law enforcement and for America's youth.

We stand at a pivotal moment in our ongoing effort to reduce gun-related crime and violence, especially as they affect our children. Although the number of violent crimes committed with firearms has fallen by 27 percent since 1992, 13 young people in America die every day due to gun violence. In fact, the firearm homicide rate for children under 15 years of age is 12 times higher in the United States than in 25 other industrialized countries combined. The Columbine High School murders, the workplace shooting in Atlanta, and this week's shooting spree at the North Valley Jewish Community Center in Los Angeles underscore this shocking statistic and provide a grim reminder of how much more we must do to reduce firearms violence. We can – indeed we must – build upon the successes of existing state and federal laws to provide greater protections for our children and all of our citizens, and make it more difficult for young people and criminals to get their hands on guns in the first place.

Our specific views, detailed in the accompanying document, reflect our overall approach to protecting public safety by strengthening law enforcement efforts, enhancing support for children through effective prevention measures, and keeping guns out of the hands of criminals and children. It will take common-sense measures like the Senate gun provisions to make our

Honorable Orrin G. Hatch
[Honorable Henry J. Hyde]
[Honorable William F. Goodling]

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strategy a reality.

First, the federal government must support the comprehensive efforts of state and local governments that handle the vast majority of issues concerning children, families, and communities, including the crime and delinquency that can result when any of those begin to falter. Consequently, the Administration believes it is a critical federal responsibility to provide adequate funds to states and communities, supporting the spectrum of necessary activities in a way that ensures both necessary flexibility and the fundamental protection of juveniles.

Second, although we provide direct federal investigative and prosecutorial resources in a relatively small number of juvenile cases, we need to have strong laws in place for those occasions. Notably, since the majority of these cases arise in Indian country, we must pay particular attention to the needs of the tribes in the creation and execution of laws concerning juveniles in the federal system.

Third, in order to protect the safety and well-being of juveniles throughout the Nation, we simply must have sensible, effective measures to keep guns and explosives away from them, and from criminals who would harm them and the rest of us. In 1997, 74 percent of the homicides committed by 18- to 20-year-old offenders involved firearms. And from the mid-1980s to the early 1990s, youth homicide victimization rates doubled, increasing at a higher rate than any other violent crimes for which statistics are available. We urge the conferees to ensure that measures to restrict youth access to guns are included in the final bill.

Our detailed analysis and comments concerning H.R. 1501 and S. 254 are provided in the attached document. First, however, we would like to highlight several specific provisions that the Administration believes must be included in the final juvenile crime bill that is forwarded to the President for his signature.

Close the gun show loophole. The Brady Law's background check requirement has worked to prevent more than 400,000 illegal, over-the-counter gun sales to felons, fugitives, and other prohibited persons. The Brady Law's requirement, however, does not apply to the many guns sold by unlicensed gun sellers at gun shows. In a bipartisan vote, the Senate passed a provision that would close this loophole in the Brady Law, and would also allow law enforcement to trace firearms sold at gun shows if those firearms were later used in crime. The Senate provision does this without weakening current law, creating any new bureaucracies, or intruding on the interests of law-abiding gun buyers and sellers. The Administration strongly supports the Senate's gun show provision and the instruction – approved overwhelmingly by the House – that the conferees produce a final bill that includes meaningful legislation to close the gun show loophole once and

Honorable Orrin G. Hatch
[Honorable Henry J. Hyde]
[Honorable William F. Goodling]

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for all.

Require safe storage devices to be sold with every handgun. Safety locks and gun lockboxes can prevent some crime and many accidental shootings. Every gun sold in the United States by a licensed firearms dealer should have such a device with it. The Administration supports the Senate's provision requiring such devices to be sold with every handgun.

Keep guns out of the hands of persons who have committed serious juvenile offenses. Our federal gun laws recognize that persons who commit serious violent criminal offenses should not be allowed to possess firearms. However, persons who commit serious drug or violent criminal offenses as juveniles are not prevented from owning firearms once they reach the age of majority. This is simply wrong. Although the Senate passed a measure designed to address this problem, the provision contains language that could delay its implementation indefinitely. The Administration looks forward to working with the conferees on this important provision.

Ban the importation of large-capacity ammunition clips. The 1994 Assault Weapons Ban was passed to limit the general public's access to assault weapons and magazines with a capacity of more than 10 rounds. The 1994 law, however, contained a provision to allow possession and importation of existing large capacity ammunition clips. This has led to an influx of imported large capacity clips. The Senate passed a provision – which the Administration fully supports – to close this loophole.

Prohibit youth from possessing assault weapons. As noted earlier, youth gun access remains an especially serious problem. S. 254 includes a provision prohibiting anyone less than 18 years of age from possessing a semiautomatic assault weapon. The Administration supports this sensible prohibition, but believes that it does not go far enough. Congress should adopt the Administration's proposal to prohibit anyone less than 21 years of age from possessing assault weapons and handguns.

Provide effective firearms enforcement. Over the past several years, the Justice and Treasury Departments have supported several innovative and effective firearms enforcement programs around the country, including Project Exile in Richmond, Virginia and Operation Ceasefire in Boston, Massachusetts, among others. Every one of these programs has been developed collaboratively by state and local – as well as federal – officials and tailored to address the gun violence problem specific to the locale by enforcing the toughest laws available. These partnerships have resulted in a significant increase in the overall number of firearms prosecutions in this country. Since 1992, the combined number of federal and state firearms convictions is up sharply, and about 22 percent more criminals were incarcerated for state and federal weapons

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[Honorable William F. Goodling]

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offenses in 1996 than in 1992. The number of federal gun cases in which the offender gets five or more years in prison is also up by more than 25 percent. We support giving our United States Attorneys and the Bureau of Alcohol, Tobacco and Firearms the resources they need to work with state and local authorities in developing and expanding individualized firearms violence reduction programs in their jurisdictions. However, the Senate and House Bills include provisions that would diminish the effectiveness of these programs by mandating the wholesale federalization of crimes even when state or local laws provide more stringent penalties, and would prevent states from implementing their own intensive firearms prosecution programs. These provisions should be dropped.

Strengthen firearms and explosives laws. We strongly support provisions in the Senate and House Bills to strengthen our federal firearms and explosive laws. For example, we support strengthening the crime gun tracing system and increasing the penalties on “straw purchasers” and others who facilitate illegal gun trafficking; prohibiting juvenile possession of explosives; and extending background checks and permit requirements to the purchase and possession of explosives by adults.

Prevent juvenile crime before it starts. We appreciate the inclusion this year of significant funding provisions that reflect the Congress’ commitment to fund juvenile crime prevention. We urge the conferees to adopt the Senate Bill’s 25 percent carve-out for prevention from the Juvenile Accountability Block Grant, and to ensure adequate, targeted funds for primary prevention.

Reform the federal juvenile justice system. As stated above, the federal government plays a small but vital role in investigating and prosecuting juvenile cases. Federal prosecutors need certain additional tools to bring their cases in a just and efficient way, and in a manner that does not unduly burden victims, witnesses, or the resources of the courts. However, these additional tools need not compromise unfairly the rights or interests of juveniles. We urge the conferees to adopt an appropriate balance, as described in the accompanying views letter.

Preserve the “core requirements.” States need flexibility to develop and implement their own juvenile justice policies. However, there are certain fundamental areas in which we know – from documented, tragic experience – that federal baselines save lives. The four “core requirements” that serve as funding conditions in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, have protected thousands of juveniles in state juvenile justice systems from serious physical and emotional harm, and have addressed the critical issue of racial disparity in the juvenile justice system. The Administration commends the House and Senate for the substantial steps they have taken to protect these requirements. We are disappointed, however, with the

Honorable Orrin G. Hatch
[Honorable Henry J. Hyde]
[Honorable William F. Goodling]
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Senate's virtual elimination of the requirement relating to Disproportionate Minority Confinement, and we urge the conferees to retain that requirement as the House has done. Additional recommendations concerning these requirements are detailed in the accompanying views letter.

Break the link between mental health problems and crime. We must take seriously the relationship between mental illness and delinquency. Too often, children with mental health problems end up in the juvenile justice system having never been treated for their problems, and then, once in the system, still do not get the care they need. We commend both houses for adding provisions to their bills this year that begin to address mental health needs in the juvenile justice system.

Ensure juvenile justice resources for Indian tribes. While juvenile crime has fallen on average nationwide, it is rising in Indian country. The Administration urges the conferees to make Indian tribal governments directly eligible for all of its juvenile justice funding streams. Eliminating the state "pass-through" gives appropriate deference to tribal sovereignty and streamlines the process for getting funds to tribal communities. In addition, we strongly advise the conferees to include section 1626 of the Senate Bill, which provides much-needed amendments to the federal criminal code to address crime in Indian country, in the final bill.

We note that this letter and the accompanying document incorporate the analysis of the Department of the Treasury on the firearms provisions, and that the Department of Education will separately communicate the Administration's views concerning certain provisions under its jurisdiction.

We hope that the conferees will ensure that the final bill includes the major provisions we have described above, as well as the comments included in our accompanying views letter. We are, of course, ready to work with the conferees and their staff, as needed, to accomplish this goal.

Sincerely,

Jon P. Jennings
Acting Assistant Attorney General

Honorable Orrin G. Hatch
[Honorable Henry J. Hyde]
[Honorable William F. Goodling]
Page 7

DRAFT – August 11, 1999

cc: Honorable Patrick J. Leahy
 Honorable John Conyers, Jr.
 Honorable William Clay

CRME
Ten Commandments

THE WHITE HOUSE
WASHINGTON

DOMESTIC POLICY COUNCIL

FACSIMILE FOR: Bruce Reed / Caton Mays

DATE: 8-12

TELEPHONE: _____

FAX: 628-78

FACSIMILE FROM: LEANNE SHIMABUKURO

TELEPHONE: (202) 456-5574

FAX: (202) 456-7028

NUMBER OF PAGES (INCLUDING COVER): 4

COMMENTS: Ten Commandments Language
from the news letter.

OK letter
→ Johnson and I keep Epi & Con Force Excludes out
very of what do not have policy

TITLE XI – LIMITATION ON RECOVERY OF ATTORNEYS FEES IN CERTAIN CASES

DENIAL OF ATTORNEYS' FEES FOR SUCCESSFUL ESTABLISHMENT CLAUSE SUITS INVOLVING STUDENTS' RELIGIOUS EXPRESSION

We note that the Department is reviewing H.R. 1501 § 1101 for constitutional concerns and we will provide further comments, if necessary, at a later time.

TITLE XII RIGHTS TO RELIGIOUS LIBERTY

TEN COMMANDMENTS DISPLAYS, RELIGIOUS EXPRESSION, AND DIRECTING COURTS' CONSTITUTIONAL INTERPRETATION

Section 1202(a) of H.R.1501 provides:

The power to display the Ten Commandments on or within property owned or administered by the several States or political subdivisions thereof is hereby declared to be among the powers reserved to the States respectively.

Section 1202(b), in turn, provides:

The expression of religious faith by individual persons on or within property owned or administered by the several States or political subdivisions thereof is hereby—

(1) declared to be among the rights secured against laws respecting an establishment of religion or prohibiting the free exercise of religion made or enforced by the United States Government or by any department or executive or judicial officer thereof; and

(2) declared to be among the liberties of which no State shall deprive any person without due process of law made in pursuance of powers reserved to the States respectively.

These “declar[ations]” would not, in and of themselves, have any operative legal effect. Nevertheless, we note that the “declar[ations]” are not, as a categorical matter, a correct description of constitutional law under governing First Amendment precedents.

For example, in certain contexts a display of the Ten Commandments in a government building might be constitutional, such as where it is part of a broader tableaux depicting historical lawgivers, see Allegheny County v. American Civil Liberties Union, Greater

Pittsburgh Chapter, 492 U.S. 573, 652-53 & n.13 (1989) (Stevens, J., concurring in part and dissenting in part); see also Edwards v. Aguillard, 482 U.S. 578, 593-94 (1987), or in a context in which it is apparent that the display reflects merely the private expression or sentiments of a government employee in her personal capacity. In many other contexts, however, such displays will violate the Establishment Clause. See, e.g., Stone v. Graham, 449 U.S. 39 (1980) (per curiam).⁶ Similarly, as explained in detail in the Administration's guidelines entitled "Religious Expression in Public Schools" (revised May 1998) and "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace" (Aug. 1997), there are many contexts in which the expression of religious faith by individual persons on or within government property is permissible, or even protected by statutory or constitutional law. See also, e.g., Board of Educ. of Westside Community Schools v. Mergens, 496 U.S. 226 (1990); Widmar v. Vincent, 454 U.S. 263 (1981); Chandler v. James, ___ F.3d ___, 1999 WL 493495 (11th Cir. July 13, 1999). But there also are contexts in which such expression (or the government's endorsement of, or preference for, such expression) would violate the Establishment Clause — in particular, where such expression is, or would reasonably be perceived as being, the state's own religious speech, or as having been endorsed or preferred by the state. See, e.g., Lee v. Weisman, 505 U.S. 577 (1992); Allegheny County, *supra*; Engel v. Vitale, 370 U.S. 421 (1962); Chandler, 1999 WL 493495, at *3-*4, *8, *9; Doe v. Santa Fe Indep. School Dist., 168 F.3d 806 (5th Cir. 1999); Ingebretsen v. Jackson Public School Dist., 88 F.3d 274 (5th Cir.), *cert. denied sub nom. Moore v. Ingebretsen*, 519 U.S. 965 (1996); ACLU of New Jersey v. Black Horse Pike Regional Board of Educ., 84 F.3d 1471 (3d Cir. 1996). The Establishment Clause analysis will depend in large part on the facts and circumstances of each case, including, e.g., the persons responsible for the religious expression, the government's endorsement of, or preference for, the expression, the extent to which the expression can be said to occur in a "public forum," the extent to which the expression is conveyed in a situation where the government has created a "captive audience," and whether governmental action results in any sectarian discrimination.

Subsection 1202(c) of H.R.1501 would violate the constitutional separation of powers. That subsection would provide that "[t]he courts constituted, ordained, and established by the

⁶ The provision in question would state that the power to display the Ten Commandments on or within state property is "among the power reserved to the States respectively," a finding that would, in turn, be based on the "find[ing]" that "[t]he Tenth Amendment reserves to the States respectively the powers not delegated to the United States Government, nor prohibited to the States." Section 1201(5) (emphasis added). As explained in the text, however, the Establishment Clause does, in certain contexts, "prohibit[]" the states from effecting such displays.

Congress shall exercise the judicial power in a manner consistent with the foregoing declarations [regarding the Ten Commandments and religious expression]." As explained above, the "foregoing declarations [regarding the Ten Commandments and religious expression]" are in certain respects inconsistent with governing Supreme Court doctrines. However, regardless of the particular content of the "foregoing declarations," and regardless of whether and to what extent those declarations are consistent with governing judicial precedent at any particular point in time, Congress may not direct the federal courts to interpret the Constitution in a particular way. See, e.g., City of Boerne v. Flores, 521 U.S. 507, 519 (1997) (Congress lacks the "power to decree the substance of the Fourteenth Amendment's restrictions on the States" and "the power to determine what constitutes a constitutional violation"); id. at 536 ("When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is.") (citing Marbury v. Madison, 1 Cranch 137, 177 (1803)); Monongahela Navigation Co. v. United States, 148 U.S. 312, 327 (1893) (Congress may not "assume[] the right to determine what shall be the measure of compensation" for a taking of property, because the "ascertainment" of that "constitutional" requirement "is a judicial inquiry"); Crowell v. Benson, 285 U.S. 22, 60 (1932) ("in cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function"); cf. United States v. Klein, 80 U.S. (13 Wall.) 128, 145-48 (1872); Yakus v. United States, 321 U.S. 414, 468 (1944) (Rutledge, J., dissenting) ("It is one thing for Congress to withhold jurisdiction. It is entirely another to confer it and direct that it be exercised in a manner inconsistent with constitutional requirements This Congress cannot do. . . . [W]henver the judicial power is called into play, it is responsible directly to the fundamental law and no other authority can intervene to force or authorize the judicial body to disregard it.").

TITLE XIII – JUVENILE CRIME CONTROL AND DELINQUENCY PREVENTION

SUBTITLE A AMENDMENTS TO JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

DEFINITIONS

H.R. 1501 § 1304(2), amending 42 U.S.C. § 5603 (page 142), a proposed amendment to Sec. 103(4) of the JJDP Act instructs to insert language before "the Omnibus." This term does not appear in the referenced section.

CONTENT OF MATERIAL PRODUCED WITH FEDERAL FUNDS

Section 1321 of H.R. 1501 directs that any hate crime prevention materials be "respectful of the diversity" of religious beliefs and "make it clear that for most people religious faith is not associated with prejudice and intolerance." We oppose this provision. [More to fill in here.

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and technical assistance programs. This amount is insufficient to support the office's national program demonstration and support activities, and we suspect it would result in deep cuts to ongoing programs, including ones to prevent child abuse and neglect.)

Mentoring Program

S. 254 § 302; amending Pub. L. No. 93-415 (42 U.S.C. § 5611) §§ 271-80 (1974) (pages 205-15), establishes four grant programs to support the use of mentors for at-risk youth: (1) Local Educational Grants for local education agencies and nonprofit organizations (S. 254 § 302, amending Pub. L. No. 93-415 (18 U.S.C. § 5611) § 273(a) (1974) (page 206); (2) Family-to-Family Mentoring Grants that match volunteer families with at-risk families, allowing parents to directly work with parents and children to work directly with children S. 254 § 302, amending Pub. L. No. 93-415 (18 U.S.C. § 5611) § 273(b) (1974) (page 207)); (3) Family Mentoring Program grants that match college age or young adult mentors directly with at-risk youth and use retirement-age couples to work with the parents and siblings of at-risk youth (S. 254 § 302, amending Pub. L. No. 93-415 (18 U.S.C. § 5611) § 279 (1974) (page 212-114)); and (4) Capacity Building funding to a national organization for the purpose of expanding and replicating capacity building programs to reduce the incidence of juvenile crime and delinquency among at-risk youth (S. 254 § 302, amending Pub. L. No. 93-415 (18 U.S.C. § 5611) § 280 (1974) (pages 214-15)). A total of \$20 million dollars is authorized each year to carry out these programs (S. 254 § 302, amending Pub. L. No. 93-415 (18 U.S.C. § 5611) § 291 (1974) (pages 215-17)). The House bill does not establish any dedicated mentoring programs. Rather, mentoring activities are incorporated into the authorized purpose areas of the Formula Grants and Prevention Block Grant Programs. We laud the Senate's inclusion of a dedicated mentoring program and recommend that it be included in the conference bill.

Religiously Affiliated Organizations

Both the House and Senate bills include provisions specifying that religiously affiliated organizations should be allowed to participate, generally on the same basis as other private organizations, in programs in which nongovernmental organizations use government funds to provide certain services or benefits to individual beneficiaries of the law. Section 302 of the Senate bill would significantly amend Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 ("JJDPA"), 42 U.S.C. § 5611, et seq., to create several different programs in which federal grants are provided, through states and localities, to private organizations to perform various social services. A new § 292(a) of the JJDPA would provide that "[t]he provisions of section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 (42 U.S.C. § 604a) §104 (1996), shall apply to a State or local government exercising its authority to distribute grants to applicants under this title." S. 254 § 302, amending Pub. L. No. 93-415 (42 U.S.C. § 5611 et seq.) § 292 (1974) (beginning page 217). Section 114 of the House bill similarly would add a new § 299J to the JJDPA, which also would

expressly incorporate subsections (b) through (k) of §104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), 42 U.S.C. § 604a(b)-(k), for grant programs under Title II of the JJDPA. Incorporation of these provisions of § 104 of the PRWORA would permit religious organizations to receive funds for the purpose of assisting needy families.

Incorporation of PRWORA § 104 into Title II of the JJDPA apparently would reflect "Congress' considered judgment that religious organizations can help solve the problems" to which the proposed statute is addressed. Bowen v. Kendrick, 487 U.S. 589, 606-07 (1988). The Administration believes that religious institutions can play an important and constructive role in providing social services. But of course this provision of public funds must be consistent with the requirements of the establishment clause. As the Supreme Court observed in Kendrick institutions with religious affiliations generally may participate equally in a neutral government financial aid program that benefits both religious and nonreligious entities, as long as government funds are not provided directly to "pervasively sectarian institutions." See id. at 608-11. We believe that § 302 of S. 254 and § 114 of H.R.1501 can and should be applied in a manner consistent with this requirement.

RUNAWAY AND HOMELESS YOUTH

The Administration strongly supports provisions in both bills to reauthorize the Runaway and homeless Youth Act. For over 25 years, the emergency shelter, street outreach, transitional living and related services provided by this Act have ensured the safety of tens of thousands of vulnerable young people and have helped to guide them on a path toward productive, self-sufficient adulthood. We urge the conferees to reauthorize these programs for 5 years, as included in S. 254.

We are concerned that sufficient resources and adequate time be provided should conferees include the new study requirements included in H.R. 1501.

SUBTITLE B: ACCOUNTABILITY FOR JUVENILE OFFENDERS AND PUBLIC PROTECTION INCENTIVE GRANTS

BLOCK GRANT PROGRAM

Both S. 254 and H.R. 1501 authorize a version of the Juvenile Accountability Incentive Block Grants (JAIBG) program, a program that has been appropriated, but not authorized, for the last two years.

Each bill amends the current program slightly differently, both renaming it the Juvenile Accountability Block Grants (JABG) program. Overall, the Department strongly supports the