

ST. LOUIS POST-DISPATCH, July 11, 1996 p. 2B
(Best Copy Available)

City Schools Issue Rules About Students, Religion

By Joan Little

Of the Post-Dispatch Staff

Students in St. Louis Public Schools can wear religious messages on their clothes, hand out religious literature to classmates and meet in religious groups before or after school on school grounds.

And students may pray "in a non-disruptive manner" at school when not involved in a school activity. That means in informal settings, such as cafeterias and hallways.

Those were some of the rules adopted this week by the St. Louis School Board, as part of a settlement of a suit by a student who claimed he had been disciplined for praying at school.

The new policy more clearly defines a student's rights regarding school prayer and other issues. It says teachers and administrators — while not allowed to encourage religious activity — are not allowed to discourage it, either.

Ken Brostron, attorney for the School Board, said that while the school district had allowed certain activities, it had never spelled them out before.

Raymond Raines, a 12-year-old student at Waring School, filed suit in 1994 against the city schools and his principal, claiming he was disciplined for quietly saying a prayer before lunch in the cafeteria. Raymond's mother, Ellen Raines, joined in the suit.

The school district has always maintained that Ray-

mond was disciplined for reasons other than school prayer.

Raymond's attorney, Tim Belz, said Tuesday that the School Board and the Raineses had reached an agreement to resolve the suit with the board approving a policy that spells out students' rights on prayer in school. No monetary settlement was involved, both sides say.

"Raymond and his mother never wanted any money," Belz said. "Their ultimate goal was to get a policy. This addresses the question of practice, not just belief."

Brostron said the policy additions were taken from a list of new guidelines the U.S. Department of Education released about a year ago. Praying in school has been a controversial issue around the country.

Students may distribute religious literature to their schoolmates or display religious messages on clothing to the same extent they are allowed to display other messages.

Students may attempt to persuade their peers about religious topics just as they might do with political ones, the policy says.

And student religious groups will have the same rights as other groups to use school buildings before or after school hours.

Raymond landed in the national spotlight in December 1994, when U.S. Rep. Newt Gingrich, then House Speaker-elect, mentioned his case on NBC's "Meet the Press."

USA Today, January 11, 1996, P. 3

Student prayer fails court test

Mississippi law struck down

By Tony Mauro
USA TODAY

A Mississippi law that allowed student-led prayer in public schools was struck down Wednesday by a federal appeals court.

The panel said the law "tells students that the state wants them to pray," thereby violating the constitutional ban on state-established religion.

The ruling is a blow to efforts by the religious right to reintroduce prayer in public schools by arguing that students have a free-speech right to initiate prayers.

"This ruling reaffirms that student-led prayer can be just as coercive and involuntary as teacher-led prayer," says Barry Lynn of Americans United for Separation of Church and State. The Supreme Court banned teacher-led prayer in public schools in 1962.

The law, viewed by many as the nation's most sweeping effort to put prayer back in schools, let students lead prayer in school settings — from classrooms to football games.

It was passed in 1993 after a Jackson high school principal, Bishop Knox, was fired for allowing students to pray over the intercom. His firing was lat-

er reduced to a suspension.

A federal judge halted enforcement of the law from the beginning, but many schools in the state proceeded or continued allowing student prayer.

"There is some form of prayer in many districts here," says David Ingebretsen of the American Civil Liberties Union of Mississippi. "I hope this ruling sends the message that even if you call it voluntary, school prayer can be unconstitutional."

The ruling Wednesday leaves in place an earlier decision by the same appeals court that allows student prayer at graduations in the judicial district that includes Louisiana, Mississippi and Texas.

T. Hunt Cole, an attorney for Mississippi, says an appeal to the Supreme Court will be seriously considered.

Supporters of student-led prayer say the ruling was aimed only at Mississippi's broad law and won't affect informal, student-initiated religious expression.

"The problem wasn't with student prayer but that the law gave it the state imprimatur," says Jay Sekulow of American Center for Law and Justice. "The ruling struck down a law that should not have been passed in the first place."

SCHOOL CHOICE PLAN, continued...

Relig.
choice P.

Donna Lashus, a Dorchester mother of four school-age children, said that neither her 7-year-old twin sons nor her 14-year-old daughter were placed in their first or second-choice schools this fall.

"Not getting our choice was very difficult," said Lashus, who is black and directs a parent resource center for disadvantaged families receiving federal education funding. "My daughter felt she'd worked all her time getting good grades and then got assigned to a school that did not have her focus, didn't have a good reputation and which she didn't want to go to."

But she said she still supports choice.

City Councilor Peggy Davis-Mullen, who chairs the council's Education Committee and pressed for the Bain study, said she will push for a broader survey to include parents who have already abandoned Boston schools.

"You get a skewed perspective when you only talk to people who use the system," Davis-Mullen said. "There are a lot of unhappy people who didn't get their choice and left the system."

Washington Post, December 14, 1995, P. 9

Jewish School Takeover

Reuter

NEW YORK, Dec. 13—A judge ordered the first federal takeover of a Jewish religious school following repeated refusals by the institution to turn over financial records in a fraud probe.

U.S. District Judge Leonard Sand appointed a receiver to control the Yeshiva of New Square located in Rockland County, N.Y., to protect the school's assets. The receiver will control all school funds and oversee all government subsidy programs in which the school participates.

The yeshiva, which has been the target of a grand jury investigation since last year, has accrued fines of \$3.25 million since April for refusing to cooperate with authorities.

The New York-based Daily News reported that the investigation focuses on criminal tax evasion—whether the yeshiva deserves the tax-exempt status granted charitable organizations—and fraudulent use of government funds.

The paper said the school owns properties that receive thousands of dollars in federal housing grants.

E. J. Dionne Jr.

Politics and Prayer

"Oh, God, in this America where politicians attempt to overrule the prophets, and pundits arrogantly disparage the gospel, help me to speak straight and strong."

You could think that this prayer was offered at the opening of a Christian Coalition meeting. Or perhaps you'd guess it comes from one of those collections on the virtues that Bill Bennett has been putting together. But, no, it comes from a new book of "prayers and meditations on loving and working for children." The book is called "Guide My Feet," and its author, Marian Wright Edelman, is president of the Children's Defense Fund. She is widely (and correctly) seen as one of those liberals least likely to bend to political fashion.

That particular prayer is one of the more explicitly political in the volume. Many of them could be recited by Christians and Jews of very different political orientations. They are often prayers about personal responsibility, to use a good phrase that is now sadly hackneyed from overuse as a political slogan. A lot of them are the sorts of prayers people say all the time: pleas to God for strength, guidance, courage and comfort.

There should be nothing in the least surprising that Marian Wright Edelman, a preacher's daughter who reveres the faith of her parents, should write such a book. Yet it does not fit at all with the currently popular understandings of who religious people are and how they apply what they learn from their faith to politics. Because the Christian Coalition has come to dominate so much of the discussion of religion and politics, the standard arguments on the subject are pre-programmed shrieks, high on moralism and low on seriousness.

For critics of the Christian Right, mixing faith and politics inevitably means the violation of church-state separation and the imposition of "narrow" moral norms on everyone else through the force of law. For many of the

religious conservatives, being liberal means never saying a prayer, always opposing the interests and values of religious people, and forever upholding the "immoral" norms of a deadly "counterculture."

This way of casting the question leaves out almost all the interesting issues—and, almost certainly, a large majority of those Americans who consider themselves religious. As a historical matter, the simple equation of "religious" and "right" ignores those whose faith drew them to abolitionism, to movements for social reform at the turn of the century and to civil rights. It consigns the African American church to an irrelevant corner of the country's religious life. It seems to presume that Catholics, Jews and main-line Protestants don't exist. It assumes that Christians who are "evangelical" or "fundamentalist" are automatic supporters of every plank of every Republican platform.

The Christian Coalition is doing all it can to promote the view that this era's particular definition of conservative politics is a kind of infallible expression of what all right-thinking Christians believe. Last weekend, it launched a new project to organize conservative Catholics as part of Pat Robertson's legions.

Now there's nothing wrong with Christian citizens supporting tax cuts, deregulation, legal reform and assorted other items on the standard conservative agenda. In particular, trying to reduce the burdens on families of modest means—including tax burdens—might be seen as rooted in a certain set of values. But there is something strange about sanctifying an entire ideological agenda in explicitly religious or Christian terms. It is hard to understand where the Gospel provides a mandate for capital gains tax cuts or accelerated depreciation.

The Christian Right of the 1990s can be seen as making the same mistake that some on the Christian Left made in the 1970s and

1980s by embracing Marxism too closely. When religious faith is overly ideologized, religious people give up the very things that religious conviction *ought* to bring to politics: a sense of critical distance, an understanding of human imperfection, a belief that the immediate strategies and goals of those in power—and our own goals, too—need to be examined skeptically against higher standards.

Turning faith into ideology also assumes, wrongly, that people of faith can logically come to only one set of conclusions about public matters. True, contemporary Christians can agree on rejecting certain things—for example, policies that are indifferent to the poor or dictatorships that brutalize their people. But that is only the beginning of the debate.

That debate is opening up again as religious people who disagree with the Christian Right find their voices not only as citizens but also explicitly as people of faith. The recent declarations of the Catholic Bishops on the poor and the witness of a group of Christians who got arrested last week demonstrating against the welfare bill are visible examples of this challenge. Edelman's book underscores that this challenge is being launched by people whose own faith is deep and who could not be more in tune with the moral concerns of so many of the Christian Right's rank-and-file.

"I worry with every fiber of my being about our many children who, lacking a sense of the sacred or internal moral moorings, are trying to grow up in a society without boundaries, without respect," she writes in her introduction. "Never have we exposed children so early and relentlessly to cultural messages glamorizing violence, sex, possessions, alcohol, and tobacco, with so few mediating influences from responsible adults." Maybe certain ideas really can pass from the realm of ideology back into the sphere of common sense. Or is that too much to pray for?

vidig/schools

19.

Merry Whatever

Schools Tread Line Between Secular, Sacred

By Debbi Wilgoren
Washington Post Staff Writer

The holiday bulletin board in Eleanor Dasenbrook's classroom is an attempt at a modern-day miracle: a painstaking effort to show seasonal cheer and explain different ethnic traditions—all while maintaining the legal separation of church and state.

A dreidel—the traditional Hanukkah toy—and a description of Kwanzaa, an African American celebration, share space with a Christmas stocking and tree ornaments. There are no pictures of Jesus.

But when Dasenbrook assigned her sixth-graders at Thomas Jefferson

Middle School in Arlington to bring in December holiday mementos, two students—one Muslim, one a Jehovah's Witness—worriedly raised their hands. Neither faith celebrates holidays at this time of year.

"I have to be very careful," said Dasenbrook, who has been teaching for 20 years and can remember school concerts of nothing but carols and hymns.

These days, the first season's greetings to arrive at schools come from religious and civil liberties organizations that span the political spectrum. They send an avalanche of mailings each fall summarizing

their versions of what the law permits.

Because the Supreme Court has never ruled on a case about holiday observances in public schools, there are few absolutes. Legal authorities agree, however, that schools can teach about religion but must not indoctrinate students in a particular faith.

A manger scene, for example, may be used during a lesson as a visual aid. So could a Hanukkah menorah. But teachers may not keep creches on view in their classroom or lead students in reciting a daily prayer over the Hanukkah candles.

School-sponsored pageants reenacting Christ's birth or the Hanukkah

miracle also are problematic, because they could suggest that the school endorses a particular belief, authorities said.

Although courts have deemed sacred music to be educational and a legitimate part of winter concerts, most authorities advise varying the program. It is fine "to sing 'Silent Night' if you also sing 'Frosty the Snowman,'" said Barry Lynn, executive director of the Washington-based Americans United for the Separation of Church and State. "And several Kwanzaa songs. And something about a dreidel."

And like other government entities, schools cannot prevent individuals or student organizations from posting religious displays in spaces where other forms of expression are permitted.

That's why the Fellowship of Christian Athletes could place a creche in a display case reserved for student groups this year at Thomas Jefferson High School in Fairfax.

It's a tightrope many educators don't want to walk. Audrey Hawkins, a drama teacher at Eastern Senior High School in the District, said she tells students to keep it secular when they write skits for the annual Christmas assembly.

This year, the teenagers composed scenes for a television-like talk show, a situation comedy and a soap opera. The holiday details are decidedly unspiritual: a man receiving a Christmas bonus at work, a bartender serving up eggnog, a leering boss asking his secretary to share her "Christmas cheer."

There are no references to Jesus as savior or to doctrines of other faiths, and Hawkins—whose students include one Muslim and an Apostolic Christian who does not observe Dec. 25 as Christ's birthday—prefers it that way. "I don't want to offend anyone," Hawkins said. "This is like playing it safe."

Other educators who share that goal have ended up insulting devout Christians or denying them the right to individual expression, authorities on religious liberty said. They told stories of teachers forbidding youngsters' to talk about their faith or insisting that students depict Christmas in a wholly secular way: drawing nativity scenes featuring Santa Claus instead of the baby Jesus, for example.

At a Chicago school where the chairman of the Parent-Community Council is a Muslim, the principal ordered teachers not to decorate for Christmas this year and canceled school-organized holiday observances to avoid isolating Muslim students and others who do not celebrate holidays in December. An outraged city Board of Education reminded the principal that Christmas has been ruled a national holiday by the courts. The school reluctantly reversed its decision.

Experts said educators who have avoided controversy generally have done so by listening to parents' concerns and drawing from as many traditions as possible. At Arlington's Jefferson Middle School, where 875

More...

MERRY WHATEVER, continued...

students have roots in 56 countries, "we try to just recognize that everyone has their own celebrations," Principal Larry Grove said.

Holiday-related activities are limited to the two weeks before winter vacation (like many other jurisdictions, Arlington no longer uses the C-word to refer to the December break). Next Wednesday's Winter Festival will feature songs ranging from "Greensleeves" to "Baa, Baa, Black Sheep."

Apart from educational displays, holiday decorations are rare and subdued. The small Christmas tree in the main office is tucked into a corner and sports only a few red balls and a gold star.

There is far less religious diversity at Eastern. Principal Ralph Neal

said he knows of only about 20 Muslim and no Jewish students. Visitors know it's Christmas the minute they walk through the door.

The grand marble foyer features three large evergreens surrounded by brightly wrapped gift boxes. Pine boughs and silver tinsel are woven through the banisters. The tinny notes of Christmas carols, courtesy of a two-foot-high mechanized Santa, fill the air.

It is a far different atmosphere from what history teacher Reynauld Smith was used to when he arrived at Eastern from Wootton Senior High School in Rockville, where he taught large numbers of Christian and Jewish teenagers, along with Muslims, Hindus and others.

"Here, we tend to be more nar-

row," Smith said. Although he is Christian, he has not joined other teachers in decorating his door for the holidays. "I think our kids think that the system they're under is the only system that there is."

Kalimah Abdul-Sabur, 17, the one Muslim student in Hawkins's drama class, said the seasonal hoopla doesn't bother her. She simply stays away from after-school Christmas parties.

"I know that I myself don't celebrate in that way," she said. "I've learned to accept it. It's like, 'This is what you do. This is what I do.' It's understood."

In Arlington, Dasenbrook solved her December problem by allowing the Muslim student to bring in something from his family's Thanks-

giving celebration and the Jehovah's Witness to bring in literature explaining her family's faith.

Her students will spend the day before vacation in holiday workshops: dipping candles, making wrapping paper, decorating holiday napkin rings. There will be "snow people" of felt and "pine trees" for the napkin ring project, Dasenbrook said. But students will be free to make up their own designs.

FOR MORE INFORMATION

To read statements by the ACLU and the Christian Coalition about public holiday celebrations, see *Digital Ink*, The Post's on-line service. To learn about *Digital Ink*, call 202-334-4740.

Religious freedom finally has a friend in White House

OLIVER THOMAS

Past
Want to know a secret?

The Clinton administration is friendly to religion. Better yet, it is the most friendly administration that religion has had in years.

Hard to believe?
Look at the facts:

The Clinton administration recently sent a directive urging every public school district in America to take religion seriously. The directive — based on the input of several dozen religious and civil liberties groups — urges schools to allow students to pray, read Scripture, form religious clubs and express religious viewpoints as long as the students aren't disruptive and don't infringe upon the rights of others. No other president has taken such a step.

President Clinton, along with Sen. Orrin Hatch, R-Utah, and Edward Kennedy, D-Mass., also took the lead in passing the most important civil rights bill for religion in history. The Religious Freedom Restoration Act guarantees a robust role for religion in the life of the republic.

No longer can government censor, encroach upon, discourage or regulate religion unless it is absolutely necessary to accomplish a "compelling government interest" such as health or safety. Even then, the government must pursue its interest in the "least burdensome" to religion.

As a result, Christians can teach their children at home or run their own schools; Orthodox Jews can refuse autopsies and wear their yarmulkes in government buildings; the Amish can drive their horse-drawn carriages on public streets (with silver reflector tape rather than the gar-

ish red triangles proscribed by their faith), and countless other religious people can practice their faith without fear of government reprisal.

The Religious Freedom Restoration Act is being taken seriously by the courts. In the District of Columbia, zoning officials have been told that churches may operate soup kitchens even in residential neighborhoods. And in California, school bureaucrats have been forced to admit Sikh boys and allow

them to wear their ceremonial kirpans (i.e., daggers) to school as long as the boys are willing to sew the knives into their sheaths so they may not be used as weapons. A little messy? Yes, but the point remains — it is good for religion, and Mr. Clinton made us do it.

That isn't all. In a recent court case, the Clinton administration reversed

prior Justice Department policy and stepped in to ensure that a trustee in bankruptcy couldn't force churches and synagogues to disgorge past tithes and offerings to satisfy a debtor's creditors. The administration has since created a special task force — with at least one lawyer in each federal agency — to ensure that religious rights are taken seriously.

Even the Equal Employment Opportunity Commission under Mr. Clinton has filed its first-ever class-action lawsuit based on religion. The case, filed against Dillard Department Stores for its alleged "no excuses" Saturday/Sunday work policy, has been settled favorably to the claimants and to the churches

and synagogues that were prepared to join the government's case as "friends of the court."

Many of the problems corrected by Mr. Clinton stem from a 1990 U.S. Supreme Court case in which the court held that traditional First Amendment protections no longer applied to religion. It was Reagan appointee Antonin Scalia who wrote the opinion in that case, which religious leaders still refer to as

the "Dred Scott" of church-state law. And when dozens of religious groups appealed to the Bush administration for help, it refused.

Mr. Clinton has been different. His administration, with the help of Congress, has changed all that. Now, religion is protected as it once was. Despite angering some religious conservatives by refusing to criminalize abortion and by supporting equal justice for all Americans — including gays — this president has proved himself a friend to religion.

Even Steve McFarland of the conservative Christian Legal Society recently was quoted as saying, "The president clearly has indicated he has a personal interest in religious rights."

As a result of Mr. Clinton, the free exercise of religion is more secure than ever. This president has guaranteed that all religions, including that of his strongest opponents, are welcome in the public square.

And that is the best-kept secret in America.

Oliver Thomas, a minister and lawyer, chairs the Coalition for the Free Exercise of Religion, which drafted and provided the grass-roots support for the Religious Freedom Restoration Act.

GOP offers competing proposals on school prayer

By Marcia Gelbart

Since the Republican takeover, school prayer opponents and supporters alike have been waiting to see what kind of legislation GOP leaders would introduce.

Now they have two to choose from.

Thanks to Speaker Newt Gingrich's penchant for circumventing the committee system, there are two competing Republican bills on school prayer.

The first was introduced last week by Rep. Henry Hyde (R-Ill.), chairman of the Judiciary Committee, which has jurisdiction over the issue. The committee has held several hearings, including a few across the country, on its so-called "religious equalities amendment."

Co-sponsored by Reps. Charles Canady (R-Fla.) and Bill Goodlatte (R-Va.), the Hyde amendment would strengthen the establishment clause in the Constitution, prohibiting government from discrimination based on religion. The amendment does not directly mention school prayer.

The second proposal comes from Rep. Ernest Istook (R-Okla.), who was designated as Republican pointman on the legislation by Gingrich last winter. Istook, whose bill is called the "religious liberties amendment," has met privately with several religious groups over the last 10 months.

Istook's also introduced last week,

would allow local school boards and communities to vote to allow student-led prayer, such as the Lord's Prayer, in public schools.

Roger Davidson, professor of government and politics at the University of Maryland, said that "Pitting the established committee system against an ad hoc system of assignments and task forces makes the organization" — in this case, Congress — "more adaptable to change."

"The effect is to create some sort of creative tension between the established or-

'It would be nice to have the word prayer in there'

der and a more radical way of looking at the problem," he added.

Similarly, said Barbara Sinclair, an expert on Congress at the University of California at Riverside, "If you look at the various task forces Gingrich has set up, it's pretty clear he has different aims with different ones."

Those aims, she said, include giving junior members more responsibility, putting pressure on the committee, and also getting public notice through the press.

She added, "In this case, I wouldn't be totally surprised if a little bit of confusion to slow the process down might not be part of the Speaker's (plan). He hasn't shown real enthusiasm for getting into these controversial kind of things."

Indeed, the two pieces of legislation have divided religious conservative groups, and could split Republican lawmakers as well. Currently, the Istook amendment has 93 co-sponsors; Hyde's has five. The Judiciary Committee will hold more hearings before the December recess.

The reason for the sharp divide is that the proposals are quite different from one another.

"The Hyde one talks about how the government must treat religious people whereas the Istook one talks about what the government itself can do with respect to religion," said Kathryn Hazeem, chief counsel on the Judiciary's Subcommittee on the Constitution.

Also, the Hyde amendment would prohibit the federal or any state government from denying financial benefits to be used for religious purposes.

"If a state government wanted to give vouchers to students to attend private non-religious school, they would also have to give vouchers to students to attend private religious schools," Hazeem explained, noting it's a fundamental change in current law.

She and Davidson pointed out that the religious community is not monolithic in a desire to put prayer back in the classroom.

Among the supporters for the Istook amendment are Concerned Women for America, American Family Association, Americans for Voluntary School Prayer, headed by former Rep. Bill Dannemeyer (R-Calif.), and the American Center for Law and Justice.

Hazeem said the religious conservative groups backing the Hyde amendment include the Christian Legal Society, Family Research Council and Focus on Family.

The Christian Coalition hasn't taken a formal position. "At this point, we're working with both of the authors on individual issues," said Brian Lopina, director of government affairs.

However, Lopina noted a preference for some of the language in the Istook version, saying, "It would be nice to have the word 'prayer' in there since it's been known as that from the beginning."

The Hyde amendment also addresses school prayer, but under the term "religious expression."

"The leadership is under pressure from the religious right to address these kind of issues that are very divisive in society at large," Davidson said. "The question is — and I don't know the answer — how central are these issues to the Republican revolution?"

Mark Stern, et al.

Moment of Silence

continue to work
w/ v. ch. group
w. on legislation

Agenda

I. Purpose of Meeting: Discussion of Proposed Options re: Responding to Calls for Clarification of Law Governing Prayer in the Schools

A. Constitutional Amendment

B. Legislation:

1. Amendment to Equal Access Act

2. Moment of Silence

C. Public Information and Education Campaign: Seeking Common Ground and Consensus Building -- efforts in the religious and civil liberties communities

II. The Dellinger Memorandum

A. The Equal Access Act

1. Clarification of What the First Amendment Permits

2. Expansion of Definitions and Circumstance

a. Non-Instructional Time

b. Distribution of Literature

3. Moment of Silence

B. Limitations/Concerns

1. Coverage *elementary schools*

2. Potential confusion

3. Restrictive interpretation

4. Acheson Policy Concerns

III. Next Steps

Good
work
Gov. I'm
to handle -
but
your rules
goes from
now.

2/15/95

Religious Liberty, Public Education, and the Future of American Democracy

A S T A T E M E N T O F P R I N C I P L E S

Religious Liberty, Public Education, and the Future of American Democracy

A S T A T E M E N T O F P R I N C I P L E S

For more than one hundred and fifty years, most Americans have learned to live with deep differences in our nation's public schools. Today, increasingly bitter disputes in public schools over educational philosophy, school reform, and the role of religion and values divide many communities and threaten the cohesion and strength of American democracy. Regardless of which side may "win" a given dispute, the truth is that all parties lose, because such controversies generate ever-greater distrust and hostility and undermine efforts to improve public education.

Our nation urgently needs a reaffirmation of our shared commitment, as American citizens, to the guiding principles of the Religious Liberty clauses of the First Amendment to the Constitution. The rights and responsibilities of religious liberty provide the civic framework within which we are able to debate our differences, to understand one another, and to forge public policies that serve the common good in public education.

In the spirit of the First Amendment, we propose the following principles as civic ground rules for addressing conflicts in public education:

I FREEDOM OF CONSCIENCE FOR ALL

Religious liberty, or freedom of conscience, is an inalienable right of every person.

As Americans, we all share the responsibility to guard that right for every citizen. The Constitution of the United States with its Bill of Rights provides a civic framework of rights and responsibilities that enables Americans to work together for the common good in public education.

II THE MEANING OF CITIZENSHIP

Citizenship in a diverse society means living with our deepest differences and committing ourselves to work for public policies that are in the best interest of all individuals, families, communities and our nation.

The framers of our Constitution referred to this concept of moral responsibility as civic virtue.

III SCHOOLS BELONG TO ALL CITIZENS

Public schools must model the democratic process and constitutional principles in the development of policies and curricula.

Decisions by officials or governing bodies should be made only after appropriate involvement of those affected by the decision and with due consideration for the rights of those holding dissenting views.

IV RELIGIOUS LIBERTY AND PUBLIC SCHOOLS

Public schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect.

Schools uphold the First Amendment when they protect the religious liberty rights of all students. Schools act in the spirit of the First Amendment when they ensure that the curriculum includes study about religion, where appropriate, as an important part of a complete education.

V THE RELATIONSHIP BETWEEN PARENTS AND SCHOOLS

Parents are recognized as having the primary responsibility for the upbringing of their children, including education.

Parents may delegate to public school educators some of the responsibility for their children's education. In so doing, parents acknowledge the crucial role of educators without abdicating their parental duty. Parents may also choose not to send their children to public schools and have their children educated at home or in private school. However, many private citizens, business leaders and others also have the right to demand that public education give students the tools to live in a productive democratic society. All citizens must have a shared commitment to offer students the best possible education. Parents have a special responsibility to participate in the activity of their children's schools. Children and schools benefit greatly when parents and educators work closely together to shape school policies and practices and to ensure that public education supports the societal values of their community without undermining family values and convictions.

VI CONDUCT OF PUBLIC DISPUTES

Civil debate, the cornerstone of a true democracy, is vital to the success of any effort to improve and reform America's public schools.

Personal attacks, name-calling, ridicule, and similar tactics destroy the fabric of our society and undermine the educational mission of our schools. When our differences are deep, all parties engaged in public disputes should treat one another with civility and respect, and should strive to be accurate and fair. Through constructive dialogue we have much to learn from one another.

This Statement of Principles is not an attempt to ignore or minimize differences that are important and abiding, but rather a reaffirmation of what we share as American citizens across our differences. Democratic citizenship does not require a compromise of our deepest convictions. We invite all men and women of good will to join us in affirming these principles and putting them into action. The time has come for us to work together for academic excellence, fairness, and shared civic values in our nation's schools.

FREEDOM FORUM INITIATIVE

1.HAVE AGREED TO SIGN DOCUMENT

co-authors -- Freedom Forum
co-authors -- National Association of Evangelicals
co-authors -- Assoc. for Supervision and Curriculum Development

Citizens for Excellence in Education -- Bob Simonds
Carnegie Foundation for Advancement of Teaching -- Ernie Boyer
ACLJ --Pat Robertson legal group

2.STRONGLY LEANING TOWARD SIGNING

Christian Coalition
American Jewish Congress
National School Boards Association
National Council of Churches -- Buzz Thomas
Christian Legal Society -- Steve McFarland

3.CURRENTLY REVIEWING DOCUMENT

Religious Action Center -- David Sapperstein
PTA
People for the American Way
AFT
National Assoc. of Catholic Educators -- Sister Lourdes Sheehan
Southern Baptists

4.WILL NOT SIGN

Eagle Forum
ACLU

THE TRINITY FORUM

February 14, 1995

The President
The White House
Washington, DC 20510

via fax: 202-456-6703
(hard copy to follow)

Dear Mr. President,

Thank you so much for the signed copy of the State of the Union address. It was a real privilege for me to be part of the discussion at Camp David and I am encouraged to see that you are addressing the issue of "restoring the civil society" so consistently.

This letter is to follow up that discussion, and also my proposal to you of last September 13: "An American Covenant." I am writing to invite you to take the lead in a significant initiative on behalf of religious liberty in public education—the presentation of the enclosed statement on "Religious Liberty, Public Education, and the Future of American Democracy."

As you know, there is at present a flurry of initiatives being prepared to address the contentious place of religious liberty in public life. Some are legislative, including at least five proposed amendments to the Constitution, and others are educational, including a summary of the present state of the law on the subject of religion and public education.

The statement of principles is unique among these proposals in several ways. First, it has been carefully developed to transcend the divisiveness of the "culture warring" and shift the focus from law and litigiousness to rebuilding the common vision for the common good—or, more practically, a civic framework of shared values in which deep and important differences can be resolved. In other words, it gives substance to a key aspect of the "new covenant" at the grass roots level.

Second, the statement has been drafted by a broad, bipartisan coalition of groups and is now supported by an even wider spectrum. It is therefore genuinely all-American and allows you to support something that is substantive, constructive, and unifying. Among major organizations who are enthusiastically supporting it are the Association for Supervision and Curriculum Development (ASCD), the National Association of Evangelicals (NAE), Citizens for Excellence in Education, and the Carnegie Foundation for the Advancement of Teaching (Dr. Ernest Boyer).

The proposal is that you invite to the White House a representative audience of American leaders, predominantly from the religious and educational communities, and that you give a major address on the subject after which the statement is launched with the support of Secretary Riley and the major educational leaders who endorse the statement. The occasion would be further enhanced if you were to symbolize the bipartisan leadership by inviting leading

Republicans to join you in supporting this initiative—especially Majority Leader Dole and Speaker Gingrich.

Ideally, the event should take place in the next three to six weeks (in order for you to seize the momentum) and the timing should coincide with some date of symbolic significance (for example, March 31 is the 503rd anniversary of the infamous expulsion of the Jews from Spain).

I would be only too happy to work with Don Baer on making your speech one that could have wide interest to the press or be made into a chapter for a book, as suggested in the original "American Covenant" proposal.

This letter comes on behalf of Dr. Charles Haynes of the Freedom Forum's First Amendment Center, who has spearheaded this important initiative. We both believe strongly that many of the other proposals are quite inadequate to lift the national debate beyond the fruitless controversies of the culture wars. And some of them are likely only to make things worse. You have a unique opportunity to lead the nation toward much-needed healing. As you stated at the signing ceremony of the Religious Freedom Restoration Act, we need to heal our land.

I look forward to hearing your response.

With warmest regards as ever,

Sincerely,



Dr. Os Guinness

Enc.: "Religious Liberty, Public Education, and the Future of American Democracy"
"An American Covenant"



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

January 31, 1995

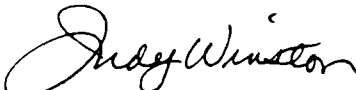
Note to the Secretary

Subject: School Prayer

Walter Dellinger has requested the Department's views on his attached draft memorandum to Janet Reno outlining a possible legislative proposal on school prayer. He also forwarded, for our review, the attached memorandum from Eleanor Acheson commenting on his draft proposal. These documents are provided for the "eyes only" of the principals copied below.

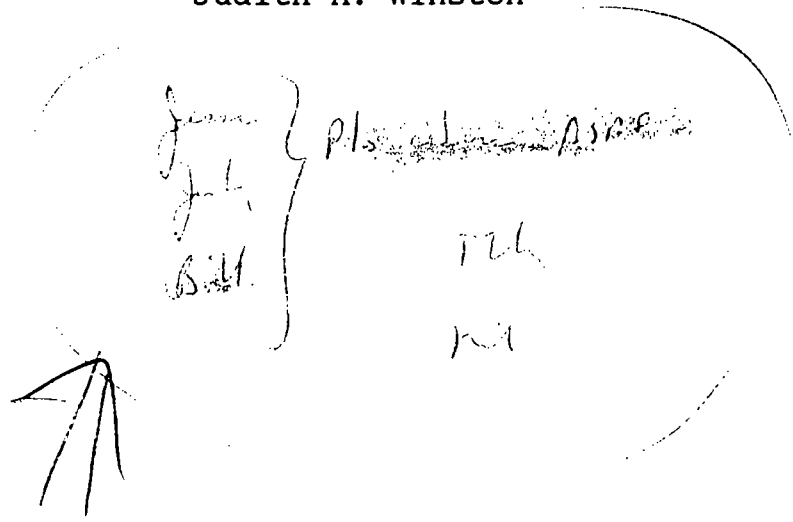
As you will recall, Walter met with you and several other senior officers on this topic on December 15, 1994. We discussed at that time the Department's idea to have the Attorney General and you join with the Freedom Forum in providing clear information to the public on the extent to which religious activities may be accommodated by public schools under current law.

Knowing of your strong interest in this matter, and given the significant policy issues presented, I am proceeding to have a meeting scheduled with you and other interested senior officers to discuss the proposal.


Judith A. Winston

Attachments

cc: Madeleine Kunin
Mike Smith
Kay Casstevens
Tom Payzant
Frank Holleman
Terry Peterson
Kay Kahler
Kevin Sullivan





U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

January 24, 1994

MEMORANDUM FOR

JANET RENO
ATTORNEY GENERAL

DRAFT

ABNER J. MIKVA
COUNSEL TO THE PRESIDENT

From: Walter Dellinger

Re: School Prayer Issues

This memorandum sets forth some preliminary views regarding the status of prayer and other religious speech in public schools. First, the memorandum outlines briefly what we understand to be the legal principles that govern this area. Second, the memorandum describes a possible legislative response to recent calls for action, in the form of amendments to the Equal Access Act, 20 U.S.C. §§ 4071-4074.

A. Legal Premises

The following legal premises guide our response to the current debate over prayer and religious speech in public schools. Putting aside the possibility of a constitutional amendment, these principles set the boundaries for congressional action in the area. In our view, they leave significant room for additional legislative intervention.

Official prayer is prohibited. As the Supreme Court recently reaffirmed, a school may not "persuade or compel a student to participate in a religious exercise." Lee v. Weisman, 112 S. Ct. 2649, 2661 (1992). A state's use of its public school system to encourage recitation of prayer is a "practice wholly inconsistent with the Establishment Clause." Engel v. Vitale, 370 U.S. 421, 424 (1962). Accordingly, public schools may not hold official prayer exercises.

DRAFT

We think this basic principle rests on very strong ground and merits vigorous defense. It is difficult to improve on the formulation of Justice Black, writing for the Court in Engel:

[T]he constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

Id. at 425. The Establishment Clause prohibition on government sponsorship of official prayer exercises is necessary to protect the rights of religious minorities and, for religious believers and nonbelievers alike, "that sphere of inviolable conscience and belief which is the mark of a free people." Weisman, 112 S. Ct. at 2658. It also is intended to protect religion itself, as against the "degrad[ation]" that tends to follow from "a union of government and religion." See Engel, 370 U.S. at 431.

At a minimum, this principle prohibits school or other government officials from leading or directing students in prayer as part of a school's curricular activities. See Abington Sch. Dist. v. Schempp, 374 U.S. 203, 223 (1963). This prohibition applies regardless of whether students may be excused from the prayer session, see id. at 224-25; Engel, 370 U.S. at 430, and it applies as well when state officials invite a private party to lead the prayers, see Weisman, 112 S. Ct. at 2655. Moreover, it is clear that at least some important school functions that occur outside the normal school day, such as graduations, are among the school activities at which official prayer is impermissible. See id., 112 S. Ct. at 2659-60.

This basic prohibition on official school prayer renders legally questionable any organized prayer at official school functions like graduations, even when the prayer is directed and led by students or private parties. For the nonadhering student, whose presence is in every "real sense" compelled, id. at 2659, the school's involvement in the function as a whole is likely to exert pressure to participate in all of the function's component parts. Cf. id. at 2658 (discussing "subtle coercive pressure" exerted by school control of graduation ceremony itself). While it may be permissible for the valedictorian to offer her own religious thoughts, determination by school officials that there will be a prayer, or delegation by school officials of that decision to a collective student referendum, may violate the principle against officially organized prayers. Though the question is not free from doubt, and its resolution may in some cases turn upon particular factual nuances, we think that in the end appellate courts are likely to conclude that organized prayer at high school graduations violates the Establishment Clause. See Harris v. Joint Sch. Dist. No. 241, No. 93-35839, 1994 U.S. App. LEXIS 32646 (9th Cir. June 6, 1994) (student-organized graduation prayer violates Establishment Clause); but see Jones v. Clear Creek Indep. Sch. Dist., 977 F.2d 963 (5th Cir. 1992) (student-organized graduation prayer does not violate Establishment Clause), cert. denied, 113 S. Ct. 2950 (1993).

this is a complicated set of issues.

S. J. R.
- ~~Justice~~
- New Justice

Scalia
Rumsfeld
Kennedy

Private prayer is permitted. By contrast, the Establishment Clause does not prohibit prayer in schools under circumstances which neither convey endorsement of religion by the state nor exert pressure to participate upon nonadhering students. See Westside Community Bd. of Educ. v. Mergens, 496 U.S. 226, 250-51 (1990) (plurality opinion) (equal access to school facilities for student-initiated religious groups creates "little if any risk of official state endorsement or coercion").

Indeed, the Supreme Court already has made clear that purely voluntary, student-initiated religious meetings may be held at public universities and secondary schools consistent with the Establishment Clause. See Widmar v. Vincent, 454 U.S. 263, 270-75 (1981) (public university); Mergens, 496 U.S. at 247-53. This is so even if the meetings in question involve actual religious worship exercises. Widmar, 454 U.S. at 265, 271 n.9; Mergens, 496 U.S. at 232. Congress has codified the right of student-initiated religious clubs to meet at secondary schools on the same basis as other student clubs in the Equal Access Act, 20 U.S.C. §§ 4071-4074.

Moreover, under the Establishment Clause as interpreted by the Supreme Court, students at all public schools may, in appropriate circumstances, engage in silent prayer during the school day. Cf. Wallace v. Jaffree, 472 U.S. 38, 57-58 n.45, 59 (1985) (discussing ability of students to pray silently at school even in absence of legislation so providing). By the same token, the Establishment Clause does not prohibit discussion among students about religion under appropriate circumstances.

A moment of silence is likely permitted. From the principles described above, it follows that a truly neutral moment of silence, offering an opportunity for private prayer, does not necessarily violate the Establishment Clause. To the contrary, the Supreme Court suggested very strongly in Jaffree that such a moment of silence would be permissible. See id. at 59 ("merely protecting every student's right to engage in voluntary prayer during an appropriate moment of silence" distinguished from promotion of prayer); id. at 62 (Powell, J., concurring); id. at 76 (O'Connor, J., concurring in the judgment).

The Court in Jaffree, to be sure, invalidated the particular moment of silence law before it on the grounds that the statute was enacted for the "sole purpose of expressing the State's endorsement of prayer activities," id. at 60, and hence lacked the requisite "secular purpose" under Lemon v. Kurtzman, 403 U.S. 602 (1971). In reaching this conclusion, the Court relied in part on expressions of motivation by the sponsor of the bill, Jaffree, 472 U.S. at 56-57, and in part on the fact that the law singled out in its text "voluntary prayer" as a "favored practice," id. at 60 (law establishes period of silence for "meditation or voluntary prayer"). Later case law, however, suggests that emphasis on the motives of legislators is misplaced, and that a moment of silence statute neutral as to religion on its face and in application would not be rendered unconstitutional by the fact that "some legislators were motivated by a conviction that religious [thought] in particular was valuable and worthy of protection." See Mergens, 496 U.S. at 248-49 (plurality opinion) (Equal Access Act meets

"secular purpose" standard because it protects secular as well as religious speech, regardless of legislative motivation).

What would render a facially neutral moment of silence law impermissible is any effort by school or other state officials applying the law to "convey the message that children should use the moment of silence for prayer." Jaffree, 472 U.S. at 73 (O'Connor, J., concurring in the judgment). Any moment of silence law must be implemented by school officials in a manner that conveys neither endorsement nor disparagement of religion. ||

Speech rights are limited in the school setting. The Free Speech Clause of the First Amendment protects "personal intercommunication among the students" on school premises. See Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 512 (1969). At the same time, schools maintain the right to control the content of their curricula, and to set standards for student speech in official, school-sponsored activities and gatherings. See Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 270-73 (1988) (school newspaper); Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 683-86 (1986) (school assembly). With respect to school-sponsored, rather than purely personal, expressive activities, schools may "exercis[e] editorial control over the style and content of student speech" so long as their actions are "reasonably related to legitimate pedagogical concerns." Hazelwood, 484 U.S. at 273; see also Fraser, 478 U.S. at 685 (school may impose sanctions for vulgar speech that "undermine[s] the school's basic educational mission"). ||

Congress can address discrimination against religious speech in public schools. Finally, we think it clear that Congress has the authority to pass legislation addressing discrimination by public school officials against student religious speech.

As a threshold matter, Congress could determine that school officials currently are engaging in unwarranted discrimination against personal religious speech by students. Such discrimination may well be the product of sincere but misguided efforts to conform to sometimes ill-defined Establishment Clause requirements. Whatever the cause, however, there appears to be growing concern that the attitude of school officials toward religious speech is having a chilling effect on the religious expression of students. See generally Christina Engstrom Martin, Note, Student-Initiated Religious Expression after Mergens and Weisman, 61 U. Chi. L. Rev. 1565 (1994) (discussing examples).¹ ||

The Equal Access Act, upheld by the Supreme Court in Mergens, is precedent for legislation "intended to address [such] perceived widespread discrimination against religious speech in public schools." Mergens, 496 U.S. at 239. It is clear from Mergens that Congress, pursuant to its Spending Clause power, may impose obligations regarding protection of religious speech on public schools as a condition of receiving federal financial

¹ See also Letter from Jay Alan Sekulow, Chief Counsel, The American Center for Law & Justice, to Janet Reno, Attorney General, and Richard W. Riley, Secretary of Education, re: Patterns of Violations of the Equal Access Act (Feb. 15, 1994) ["Sekulow Letter"].

assistance. Id. at 241. At the same time, however, it was important to the Court in Mergens that the Equal Access Act does not purport to dictate the contents of school curricula, but rather leaves school districts with "their traditional latitude to determine appropriate subjects of instruction." Id. at 240-41 (citing Hazelwood). Finally, as discussed above, Mergens establishes that the legal prospects of such legislation are improved significantly if it is facially neutral, extending to secular as well as to religious speech. Id. at 248-49 (plurality opinion).

B. Possible Legislation

Whether the Administration should propose legislation addressing prayer and religious speech in public schools is, of course, a question with important policy dimensions deserving of careful study. As a legal matter, however, we think it clear that the principles outlined above permit significant legislative action in this area.

If legislation is deemed advisable, then we suggest that it might appropriately take the form of amendments to the Equal Access Act. Such legislation would have two primary virtues. First, it would call attention to the existence of a statute that itself addresses many of the perceived problems in this area. Second, amendments to the Equal Access Act could take advantage of the carefully drafted general provisions that already are a part of that statute.

We recognize that extension of the equal access principle on which the current Act rests may in practice raise significant concerns. However unobjectionable the principle in theory, there may be circumstances in which what is intended as equal treatment is experienced by school children as endorsement -- or, in the words of Justice Marshall, in which "the failure of a school to stand apart from religious speech can convey a message that the school endorses rather than merely tolerates that speech." Mergens, 496 U.S. at 264 (Marshall, J., concurring in the judgment). It is our view that the applications of the equal access principle discussed here are on their face constitutionally permissible. However, we do not doubt that their implementation must be monitored closely to avoid specific outcomes that are problematic from both a legal and a policy perspective:

[V]igilance must extend to our monitoring of the actual effects of an "equal access" policy. If public schools are perceived as conferring the imprimatur of the State on religious doctrine or practice as a result of such a policy, the nominally "neutral" character of the policy will not save it from running afoul of the Establishment Clause. Id.

a. The Equal Access Act

A copy of the Equal Access Act, which is quite short, is attached to this memorandum. Very briefly, the Equal Access Act provides that secondary schools receiving federal funds may not discriminate in access to a "limited open forum" for student-initiated

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meetings on the basis of the "religious, political, philosophical, or other content" of the speech at such meetings. 20 U.S.C. § 4071(a). A school has a "limited open forum" if it allows one or more "noncurriculum related" student group to meet on school premises during "noninstructional time." *Id.* § 4071(b). In granting a "fair opportunity" for student meetings, a school must provide, *inter alia*, that meetings are voluntary and student-initiated; that there is no school sponsorship of meetings; and that meetings do not "materially and substantially" interfere with the educational activities of the school. *Id.* § 4071(c).

A definitional section of the Act defines "noninstructional time" as time set aside by the school before or after actual classroom instruction; "meeting" to include those activities generally permitted in the limited open forum; and "sponsorship" to include "promoting, leading, or participating" in a meeting. *Id.* § 4072. General qualifiers provide that nothing in the Act shall be construed to authorize school "influence" over the content of any religious activity or the expenditure of public funds beyond the incidental cost of providing space. *Id.* § 4071(d). The authority of schools to maintain discipline and student well-being is expressly preserved. *Id.* § 4071(f). Finally, the Act creates no express remedies, and provides that denial of federal funds to schools is not authorized. *Id.* § 4071(e).

b. Possible Amendments

1. Lunch-time and recess covered. The question has arisen under the Act whether a school creates a limited open forum, triggering equal access rights, when it allows students to meet during their lunch period. The United States has taken the position that the Act does apply in such circumstances.² To clarify this point, the Act's definition of "noninstructional time" might be amended to include "*time set aside by the school before, after, or in between actual classroom instruction.*" Arguably, the risk of peer pressure increases if student religious meetings are held during the school day, when nonconforming students are necessarily present. Nevertheless, so long as no classroom time is involved, there is "little if any risk of official state endorsement or coercion." *Mergens*, 496 U.S. at 251 (plurality opinion).

2. Prayer services and worship exercises covered. Some school districts may have read the Equal Access Act narrowly and concluded (erroneously in our view) that the Act permits religious groups to hold "meetings" but that the Establishment Clause would prohibit prayers from being recited or worship services held at such meetings. To clarify that such prayer meetings, as well as other worship services, may be protected by the Act, the definition of "meeting" might be amended by adding at the end a new sentence: "*A meeting may include a prayer service, Bible reading, or other worship exercise.*"

One area of controversy has been over what is commonly known as "flagpole" prayer, a nationwide Christian prayer exercise in which participating students gather around

² *Ceniceros v. San Diego Unified Sch. Dist.*, 9th Cir. No. 94-55257 (argument pending).

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school flagpoles to pray before each school day.³ The amendment proposed here would make clear that such gatherings are not excluded from the scope of the statute on the grounds that they involve a prayer service. Whether such activities qualify as protected "meetings" under § 4072(3) would continue to turn on whether similar gatherings generally "are permitted under a school's limited open forum" -- that is, whether other noncurriculum related student groups are given access to comparable sites at the school.

3. Fair opportunity criteria. There have been reports that schools sometimes deny student religious groups the same access as other groups to the means of publicizing their meetings, as by use of the school public address system.⁴ In our view, such denials, if they indeed have occurred, very likely violate § 4071(a)'s mandate that student groups be provided "equal access" to and a "fair opportunity" to use a school's limited open forum: if a school generally opens its public address system to announcements concerning events that are not school sponsored or approved, then equal access would appear to require that announcements concerning the activities of student religious groups also be permitted. To clarify this point, § 4071(c)'s list of "fair opportunity criteria" might be amended by adding a requirement that *"students initiating meetings covered under this section are not denied access to means of publicizing their meetings on the basis of the religious, political, philosophical or other content of the speech at such meetings."*

4. Religious literature permitted in otherwise available forum. Students have advanced, unsuccessfully, claims that the distribution of religious literature may be deemed a "meeting" for purposes of the Equal Access Act, and hence protected by the statute against discriminatory suppression.⁵ We agree with the courts that the Act does not now cover distribution of literature. The principles that underlie the Act, however, might well support a prohibition on discrimination in this context, as well. At least with respect to material that is not school-sponsored, see Hazelwood, 484 U.S. at 273, and as applied to secondary school students, who are "mature enough . . . to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis," see Mergens, 496 U.S. at 250 (plurality opinion), a prohibition on discriminatory suppression of student-distributed material might be appropriate.⁶

³ See Student-Initiated Religious Expression, *supra*, at 1573.

⁴ See Sekulow Letter at 2.

⁵ See Clark v. Dallas Indep. Sch. Dist., 806 F. Supp. 116, 120 (N.D. Tex. 1992); Thompson v. Waynesboro Area Sch. Dist., 673 F. Supp. 1379, 1383-84 (M.D. Pa. 1987).

⁶ Indeed, such a prohibition, at least in some contexts, may be compelled in any event by the Free Speech Clause of the First Amendment. See Clark, 806 F. Supp. at 120 (prohibition on distribution of religious materials by public high school students violates Free Speech Clause); Thompson, 673 F. Supp. at 1388-92 (content-based restriction on distribution of Christian newspaper by junior high school students violates Free Speech Clause).

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To achieve this end, a new section closely paralleling § 4071 could be added to the Equal Access Act. The new section might be drafted along the following lines:

It shall be unlawful for any public secondary school which receives federal financial assistance and which has a limited open forum for distribution of printed or other expressive material to deny equal access or a fair opportunity to, or discriminate against, any students who wish to distribute material within that limited open forum on the basis of the religious, political, philosophical, or other content of the material in question.

For purposes of this section, a school has a limited open forum for distribution of printed or other expressive material if it grants students the opportunity for distribution on school premises during noninstructional time of material that is unrelated to the school curriculum or to school activities.

Schools shall be deemed to offer a fair opportunity to students who wish to distribute printed or other expressive material within its limited open forum if such school uniformly provides that—

- (1) the distribution is student-initiated and the receipt of such material is voluntary;*
- (2) there is no sponsorship of the material or the distribution by the school, the government, or its agents or employees;*
- (3) the distribution does not materially and substantially interfere with the orderly conduct of educational activities within the school, or undermine the school's basic educational mission;⁷ and*
- (4) nonschool persons may not direct, conduct, control, or participate in the distribution.*

Nothing in this provision shall preclude a school from adopting time, place and manner restrictions that are applicable without regard to the content of the literature being distributed.

5. Silent prayer and religious discussion permitted. There appear to have been instances, some of them well-publicized, in which individual students have been prevented

⁷ Consistency with the school's "basic educational mission" is not now a requirement for student meetings under the Act. Insertion of this standard, derived from the Bethel case, will preserve the authority of schools to restrict the distribution of vulgar material.

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from engaging in nondisruptive prayer or religious discussion at school.⁸ To codify the right of students at both elementary and secondary schools to engage in such activities, two new sections could be added to the Equal Access Act, as follows:

It shall be unlawful for any public elementary or secondary school which receives federal financial assistance to punish a student for, or otherwise prevent a student from, engaging in silent and nondisruptive activity during noninstructional time on the basis of the religious, political, or philosophical nature of such activity.

isn't this covered already?

weird

It shall be unlawful for any public elementary or secondary school which receives federal financial assistance to punish a student for, or otherwise prevent a student from, engaging in nondisruptive discussion with other students who voluntarily participate in such discussion during noninstructional time on the basis of the religious, political, philosophical or other content of such discussion.

overkill?

over-regulating

Of course, the general qualifiers already a part of the Equal Access Act, prohibiting school influence over religious activity and preserving school disciplinary authority, would apply to these new provisions, as well.

6. Moment of silence permitted. As discussed above, it is our view that truly neutral moments of silence in public school are likely permissible under the Establishment Clause. The Equal Access Act might be amended to codify that understanding, and to ensure the necessary neutrality in implementation of moments of silence. A possible amendment is sketched out below:

Any public elementary or secondary school receiving federal financial assistance may provide for the observance by its students of a period of silent and private contemplation or introspection during the school day.

states

If a school provides for a period of silent and private contemplation, then the school may not:

Punish a student for, or otherwise prevent a student from, using the period at his or her discretion to engage in the silent and private contemplation or introspection of his or her choice.

Direct, control, conduct, or otherwise seek to influence the form or content of silent and private student contemplation or introspection.

⁸ See, e.g., Student-Initiated Religious Expression, *supra*, at 1575 & n.58.

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7. Enforcement. As noted above, the Equal Access Act currently contains no express provision for enforcement. At least one court has held that the Act creates rights enforceable through an implied private cause of action,⁹ while other courts appear simply to assume the existence of such an implied cause of action. Both to clarify this issue and to signal support for vigorous enforcement of the Act, an amendment providing for an express private cause of action might be appropriate.

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*Clarify that nothing in the act shall prevent
school employees from private, non-disruptive conduct due
to...*

*Teacher
admin.*

⁹ See Student Coalition for Peace v. Lower Merion Sch. Dist., 776 F.2d 431 (3d Cir. 1985).



U.S. Department of Justice

Office of Policy Development

Office of the Assistant Attorney General

Washington, D.C. 20530

January 10, 1995

MEMORANDUM

TO: Walter Dellinger
Assistant Attorney General
Office of Legal Counsel

FROM: Eleanor D. Acheson, MAG *EDA*

SUBJECT: School Prayer Issues: Comments on OLC's Draft
Proposals to Expand the Equal Access Act

Thank you for the opportunity to comment on OLC's draft memorandum of December 21 on school prayer issues. While your proposals may avoid constitutional problems, OPD has a few policy concerns and suggestions, which I explain below. (I leave to another time discussion of the strategic question of how and when the Administration should present its views on school prayer issues.)

A. The Appeal, and the Potential Danger, of the Equal Access Principle

The appeal of the Equal Access Act is that, at least in principle, it involves neither government sponsorship of religion, nor government coercion of religious participation. The permitted activities are neither initiated nor carried out by government or school officials, and the risk of coerced attendance is reduced because the activities take place outside school hours. But however unobjectionable the Act may be in principle, there are real dangers inherent in the Act's implementation because subtle factors that are difficult to anticipate and police can lead, in practice, to religion's acquiring government imprimatur and to de facto coercion. Although the media have publicized some instances in which students have been denied their existing rights to engage in religious activities at school, in our view the greater practical risk to First Amendment values arises from expanding the role of religious activities in the public schools. The problem is exacerbated by the fact that some of the religious groups that

wish to avail themselves of the Act's protection, as well as some school officials and teachers, may desire to use the schools to proselytize and impose religion on others. Further, we should also realize that some may see any expansion of the Equal Access Act as an opening to reach for materially different "equal treatment" goals, such as equal funding for religious schools.

In order to avoid any actual or perceived official endorsement of religious activities, it is essential that the Act accommodate religion only where, and only to the extent that, other interests are accommodated. In addition, the Act must scrupulously ensure that any religious activities in the public schools are completely voluntary. Some of the proposed amendments may strain these principles of noncoercion and nonsponsorship. The Court reasoned in Widmar and Mergens that religion will not receive government imprimatur if the government simply opens a particular forum to a broad spectrum of groups, including religious groups, and if government or school officials do not participate. Some of the proposed amendments would, however, allow school officials or official school channels of communication to publicize the religious activities (albeit on an equal basis with nonreligious activities). Although the involvement of school officials or channels of communication is consistent in some contexts with government neutrality, such involvement may present more of an appearance of government endorsement of religion than the activities permitted by the present Equal Access Act.

Similarly, the coercive potential of prayer and other religious exercises on school property is heightened when the religious activity takes place in a setting like the classroom where the students are, in effect, a captive audience. In such a setting, those who do not wish to participate in the religious activity must affirmatively opt out and set themselves apart from the group while the activity takes place; this is certainly difficult for anyone, let alone any child, to do. The Equal Access Act, in its present form, minimizes the captive-audience problem by restricting equal access to times and places at which the students need not be present. Certain of the proposed amendments, however, by broadening the scope of equal access, would allow prayer in settings that as a practical matter may have great coercive potential.

2. Comments on Specific Proposals

a. Moment of Silence

The most significant of the specific proposals in your memorandum is proposal 6, that public schools be permitted expressly to provide for a moment of silence. (Indeed, if we eventually advance or support such a proposal, we might want to make that proposal only, rather than combine it with the other

proposed amendments, which may come across as window dressing.) We would not object to the Administration's supporting a moment of silence, although we think such an enactment inevitably will give rise to serious risks of coercion and state sponsorship of religion. The proposal for a moment of silence would go well beyond the terms of the existing Act; as you note, however, the proposal is probably permissible under the Establishment Clause. If that is right, since the proposal is itself only permissive, it would not work any substantive change in the law (except, perhaps, by providing a private right of action for interference with student contemplation or introspection).

Because the moment of silence may take place during instructional time and may be initiated by a teacher or other school official, it presents much greater risks of de facto coercion and endorsement than equal access to school meeting rooms. The students would undoubtedly be a captive audience during the moment of silence, and there is no question that the school will be endorsing the period of silence -- it will be requiring it. All that is needed to cross the line into coercion or endorsement of religious activity is for a teacher or group of students to make clear, by word or deed, that the period is for prayer. To take one example, if nearly all of the students in a class and the classroom teacher assumed a kneeling position with their hands folded in prayer, it would likely have a coercive impact on those students who do not adhere to the religion of the teacher and participating students. This particular scenario could perhaps be precluded by specific drafting, such as, for example, prohibiting any teacher or school official or invited guest from using the "P" word or assuming a prayerful posture. But further implementation problems of the same nature may be difficult to envisage and correct at the drafting stage. And as a general matter, there is obviously no way in which the federal government can or should police the implementation of the Act in schools throughout the country. Moreover, adding detailed restrictions to the moment-of-silence legislation to prevent such implementation problems would undercut the political value of the proposal.

In any event, because some teachers and students desire to place government imprimatur and coercion behind religion, and because the ways in which a neutral moment of silence can be converted into a moment for prayer are subtle, the line inevitably will be crossed in some schools. Any amendment should leave no doubt that the Act does not authorize state sponsorship of religious activities, and that, notwithstanding the soundness of the general principle of equal access, sincere efforts at applying that principle may result in violations of the Establishment Clause. Cf. Board of Educ. of Westside Comm. Schools v. Mergens, 496 U.S. 226, 264 (Marshall, J., concurring) (1990) ("[V]igilance must extend to our monitoring of the actual

effects of an 'equal access' policy. If public schools are perceived as conferring the imprimatur of the State on religious doctrine or practice as a result of such a policy, the nominally 'neutral' character of the policy will not save it from running afoul of the Establishment Clause.")

b. Other proposals

1. Lunch time and recess

The first legislative proposal, to expand the Act to cover lunch-time and recess, appears to fit within the principle of equal access and make only a minor change in existing law. Given the other provisions in the act, such a proposal should not serve to authorize a special or preferred role for religious activities; rather, as we read the Act, religious activities should be permitted only where the school generally permits extracurricular activities to take place during lunch-time and recess.

2. Specification that meetings may include prayers

Proposal 2 would clarify that under the Act, meetings may include prayer. We agree that this proposal would not change current law, particularly since the Supreme Court has held that prayer is a form of protected speech. We also think that the proposal is fine as a policy matter, because it effectuates students' voluntary choices and creates no increased risk of coercion or official sponsorship. That is not the case, however, in the scenario that you mention of a worship service around the flagpole, which we do not believe would be good or even acceptable policy. Just as a creche in a courthouse poses heightened Establishment Clause concerns, a prayer service around the flagpole is problematic because the flagpole is a unique and particularly official site and because the flag is the emblem of government. We do not think it is appropriate (and it may not be constitutional) for a public school to authorize prayer services at the flagpole, and we do not think the proposal (or its legislative history) should be written in such a way as to endorse that result. But the general extension of the equal access principle not to bar prayer is sensible.

3. Publicizing

Proposal 3 -- a fair opportunity to publicize religious meetings -- is unobjectionable in theory, but we think it is more likely than the other proposals to create the appearance or reality of state endorsement of religion. In theory, the idea of equal access could be understood to encompass access to the means of publicizing meetings, though we are not persuaded that existing law sweeps so broadly. Such access, however, to the extent that it opens an official organ of the government to

religious groups, may create the appearance or reality of endorsement of religion by school officials. The example given in your memorandum of the school public address system illustrates this point. In general, announcements on the public address system, whether made by school officials or students, concern school-sponsored or school-approved matters. Therefore, publicizing religious meetings through this medium will seem to cloak the meetings with official approval. This problem is particularly great in the case of young students. Finally, as with proposal 1, the equal access principle should not degenerate into a preference for religious activities; thus, any announcements should be strictly informational (time and place of meeting) and part of a general announcement of extracurricular activities. Thus, this proposal should not sanction a practice such as the one in Ecrú, Mississippi, where prayers are broadcast over the intercom every morning at all levels of the school system. See "Mother Files Suit to Halt Prayer in a Public School in Mississippi," New York Times, December 23, 1994 (attached).

not if well done
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4. Distribution of religious literature

We have strong policy concerns about Proposal 4, which addresses the distribution of religious literature in secondary schools. This proposal more than any other illustrates that in certain contexts, adherence to the equal access principle may still give rise to problems of coercion or state sponsorship. Thus, there is an important difference between permitting students to pray or discuss religion privately, and providing a platform for proselytization of other students. We recognize that the risk of school endorsement of religion is minimized by the restriction to secondary schools and the requirement that distribution be initiated by students and not carried out by government or school officials. (The proposal does not specify, and perhaps it should, that nonstudents may not distribute religious literature, even if the activity has been initiated by students.) But even if the literature is initiated by students, it will still result in peer pressure, and the risk of stigmatization or exclusion of students who do not share the religious views of the majority; it is the government's power over the student during the school day that makes this pressure possible. As a policy matter, we do not favor exposing public school students to such pressures.

5. Silent prayer and private right of action

We have no problem with proposals 5 and 7. Proposal 5 makes very little change, if any, in the Act. Since the silent activity or discussion would be permitted only in noninstructional time, the danger of coercion is low. Proposal 7, to provide expressly for a private right of action under the Act, would also not significantly change current law; therefore, it could be a way to show support for the principle of equal

access without creating new risks to the Establishment Clause. It is worth considering, however, whether this proposal would encourage litigation attempting to expand the reach of the Equal Access Act. This potential could be significant in combination with proposals like 3, 4, and 6 that would raise a range of new issues about the Act's scope.

LEVEL 1 - 1 OF 6 STORIES

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December 23, 1994, Friday, Late Edition - Final

SECTION: Section A; Page 22; Column 1; National Desk

LENGTH: 638 words

HEADLINE: Mother Files Suit to Halt Prayer In a Public School in Mississippi

BYLINE: AP

DATELINE: ECRU, Miss., Dec. 22

BODY:

Ecru, a town with five churches and no traffic light, is ready for Christmas. Nearly all the homes are adorned with wreaths and lights, and large colored lights hang from poles leading to the downtown area.

But among the holly, plastic angels and wishes for peace on earth, a bitter religious dispute is pitting most of Ecru's 700 residents against a woman who is suing to stop morning prayers and Bible classes in the public school.

Lisa Herdahl, a mother of six who moved here from Wisconsin last year, said at a news conference that she had filed the Federal lawsuit against the school district on Tuesday "as a last resort to defend my family's religious freedom."

"I simply do not want the school telling my children how and when to pray," said Ms. Herdahl, who has children in kindergarten and grades three, four, six and nine.

Ms. Herdahl says her children, baptized as Lutherans, have been ridiculed by their classmates; her 7-year-old son, Jason, was called "football head" after a teacher made him wear headphones to drown out the prayers broadcast on the school's intercom.

But her yearlong effort to eliminate prayer and Bible study from her children's classes has few supporters at the North Pontotoc Attendance Center, which serves 1,300 students in kindergarten through high school.

The school district, about 80 miles southeast of Memphis, has announced that it will fight the lawsuit with support from the American Family Association, a conservative religious group based in nearby Tupelo.

The school superintendent, Jerry Horton, said the prayers recited most mornings over the intercom system were controlled by students and had gone unchallenged for at least eight years.

"We don't consider it a state-sponsored prayer or force people to do it or listen to it," Mr. Horton said, adding that the prayers were done "for the good of the student body."

Mr. Horton said he did not know whether students had taunted Ms. Herdahl's children. He acknowledged that a teacher had placed headphones on one of Ms.

The New York Times, December 23, 1994

PAGE

Herdahl's sons, but he said the teacher had been trying not to draw attention the boy by having him leave the classroom instead.

As for the Bible lessons, Mr. Horton said that in kindergarten through six grade they were part of a daily class rotation, alternating with physical education and music classes; seventh through 12th grades are offered an elect called Middle Eastern history, in which the text is the King James Bible and curriculum is Judeo-Christian beliefs.

Many parents say Ms. Herdahl has caused conflict ever since she moved to their town, nestled in the hills of northeast Mississippi between Oxford and Tupelo, by speaking out at school board meetings and complaining to the school superintendent about the prayers.

Her stance has rankled what Mayor Sam Newsom calls a very conservative community. "I feel sorry this lady has got the attitude she's got," the Mayor said.

The lawsuit comes at a time when advocates of school prayer are becoming more vocal in their demands. In Washington, the incoming House Speaker, Representative Newt Gingrich of Georgia, has called for a vote by July 4 on a constitutional amendment authorizing organized school prayer. And President Clinton outraged civil liberties groups by saying he would not rule out the idea. The White House later said Mr. Clinton would support a law allowing a moment of silence in schools.

Ms. Herdahl cannot expect much support from state leaders either. Public schools in Mississippi have traditionally allowed prayer over intercoms at the opening of the school day, saying those prayers do not violate the Supreme Court's ban on government-sponsored prayers because students initiate them.

And the State Legislature this year legalized student-initiated prayer any time during the day.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: December 23, 1994

M E M O

TO: Mike Smith

CC: Jessica Levin
Judy Wurtzel

FROM: Bill Kincaid

DATE: February 1, 1995

RE: School Prayer

I have reviewed Walter Dellinger's draft memo, as well as Eleanor Acheson's observations. I am pleased to see some serious thought going into these matters. I think it would be a great move for this Administration to make some responsible proposals to guarantee that public schools are not a hostile environment for people of faith while protecting all students from having others' religious views imposed upon them. Such measured actions would: reduce the need for indefensible line-drawing on behalf of school administrators, address the fear of moderates that values are largely absent from public schools, and diminish the perception among religious conservatives that their children are unwelcome in our nation's schools. Moreover, such actions would dilute the support for more radical steps, such as a school prayer amendment to the Constitution. Most importantly, such proposals would accurately reflect the moderate, tolerant approach espoused by the President and the Secretary.

I have the following comments:

I. Legal Premises

The memo accurately presents the current state of the law as I understand it, although I think it is important to emphasize that there is a circuit split on student-led prayer at graduations, and that this is likely to be a close call when it reaches the Supreme Court. I would also note that, as far as I can tell, the possible amendments to the Equal Access Act outlined in the Dellinger memo would not address this very thorny area.

If nothing else is done, I like the idea of convening a conference to emphasize the range of activities which are allowable under current law. In fact, I would suggest that something along these lines should be done *even if* some of the possible amendments are proposed by the Administration, to clarify that some would simply codify existing law.

II. Possible Amendments to Equal Access Act

A. Lunch time and recess.

An amendment clarifying that protection extends to these periods makes sense. The suggested language is a little awkward, but seems ok.

B. Prayer/worship covered.

Such an amendment also makes sense. The last thing you want is the school trying to police student meetings to determine whether students are merely *discussing religion or praying*. The language is explicit, and seems ok to me.

(Acheson's comments concerning "flagpole prayer" are rather peculiar. The issue is whether *any* student group should be able to gather around the flagpole for any purpose. If so, religious groups should be allowed to do so as well, regardless of the "officialness" of the site, or the proximity to the flag).

C. Fair opportunity criteria [publicity for events].

Again, this makes sense. If other groups are allowed to notify students of meetings, religiously-based groups should be able to do so as well, within the same parameters. There are more potential problems here (with apparent endorsement, etc.) but they don't outweigh the benefits and would not provide a haven for the Mississippi prayer-every-morning routine.

D. Religious literature.

Logically, it makes sense to extend protections to distribution of religious literature, so long as the school permits distribution of other noncurriculum-related literature. However, the potential problems here are substantial, because of the potential involvement of **outside groups**.

Along these lines, the suggested amendment has one specific problem spot, which is the provision that states "nonschool persons may not direct, conduct, control, or participate in the distribution." The problem this language seeks to address is critical. However, it would invite heaps of litigation. What does it mean to "direct, conduct, control, or participate?" What if the Gideons recruit student members of a religious club to distribute Bibles? What if the Gideons simply give several boxes of Bibles to a church, one of whose members decides on her own to distribute them? What if the coordinator of a local Young Life or Fellowship of Christian Athletes program agrees to xerox a one-page statement on religious beliefs that a student wrote and wants to distribute to classmates? What if the coordinator drafted the statement? Courts would be forced to decide whether these scenarios involved prohibited activity -- a potential nightmare.

In light of this concern, it might make sense to further explore and emphasize what protections such expression already has without trying to build it into amendments to the Equal Access Act.

E. Silent prayer/discussion

This right should be codified, if only to disprove the notion that students can't do it already. However, the suggested paragraphs seem a little cumbersome to me, especially the second, which seems over-regulatory.

F. Moment of silence.

It appears that this has worked out acceptably in places where administered such that students understand the time may be used in *whatever nondisruptive way they choose*. It seems far more respectful of diverse beliefs than a full-blown school prayer amendment. The recommended language appears to have the proper protections.

G. Enforcement.

There is no clear reason not to include a private right of action if other changes are to be made.

III. Other issues.

In commentary on religion in schools, something that occasionally comes up (including in the moment of silence context) is limitations on the rights of *teachers and administrators*. For example, in one instance, a locality adopted a moment of silence law, but teachers were prohibited from praying *themselves* so as not to give the appearance that this is what students were supposed to do.

It seems misguided to prohibit teachers from using moments of silence or other non-instructional time as they see fit, or to subject them to blanket prohibitions on anything which might suggest some sort of religious sympathy -- so long as they do not proselytize and make sure kids know they are not required to follow suit. Perhaps the rights of teachers and administrators should be addressed in some way by any amendments offered.

IV. Conclusion.

Most of the changes suggested make good sense substantively and politically, although some drafting improvements would be advisable. The amendments would go a long way towards reducing real or imagined second-class treatment for students' religious views under existing law, and would diminish somewhat the need for school officials to make impossible judgment calls. Furthermore, the proposals would considerably strengthen the President's efforts to show voters that the federal government is not hostile to religion.

Useful, but relatively safe, would be provisions pertaining to lunch and recess, specifying that meetings may include prayers, publicity for meetings, silent prayer, and a private right of action. The proposal for a moment of silence option is also fairly attractive. The provisions pertaining to religious literature make sense in principle, but, in practice, could cause more conflict than they resolve.

Earth, supra). Although I believe that inquiry is part of the contingency enhancement determination, see *Delaware Valley II, supra*, at 733, 107 S.Ct., at 3089. (O'CONNOR, J., concurring in part and concurring in judgment), I also believe that it was error to base the degree of enhancement on case-specific factors. Because I can find no market-specific support for the 25% enhancement figure in the affidavits submitted by respondents in support of the fee request, I would vacate the judgment affirming the fee award and remand for a market-based assessment of a suitable enhancement for contingency.



Robert E. LEE, Individually and as
Principal of Nathan Bishop Middle
School, et al., Petitioners

v.

Daniel WEISMAN etc.

No. 90-1014.

Argued Nov. 6, 1991.

Decided June 24, 1992.

Public school student and her father brought suit seeking permanent injunction to prevent inclusion of invocations and benedictions in form of prayer in graduation ceremonies of city public schools. The United States District Court for the District of Rhode Island, Francis J. Boyle, Chief Judge, 728 F.Supp. 68, granted relief. Appeal was taken. The Court of Appeals for the First Circuit, 908 F.2d 1090, affirmed. Petition for certiorari was granted. The Supreme Court, Justice Kennedy, held that school could not provide for "nonsectarian" prayer to be given by clergyman selected by school.

Affirmed.

Justice Blackmun concurred and filed opinion with which Justice Stevens and Justice O'Connor joined.

Justice Souter concurred and filed opinion, with which Justice Stevens and Justice O'Connor joined.

Justice Scalia dissented and filed opinion with which Chief Justice Rehnquist, Justice White, and Justice Thomas joined.

1. Constitutional Law ¶84.5(3)

Reassessment of decision in *Lemon v. Kurtzman*, which set forth standards for evaluation of establishment clause cases, was not required in order to determine whether "nonsectarian" prayer could be offered at school graduation; "pervasive" degree of government involvement with religious activity in present case, to point of creating state-sponsored and state-directed religious exercise in public school, was sufficient to determine constitutionality without reference to *Lemon* test. U.S.C.A. Const.Amends. 1, 14.

2. Constitutional Law ¶84(1)

Principle that government may accommodate free exercise of religion does not supercede fundamental limitations imposed by establishment clause. U.S.C.A. Const. Amends. 1, 14.

3. Constitutional Law ¶84(1)

It is beyond dispute that, at minimum, Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in way which establishes state religion or religious faith or tends to do so. U.S.C.A. Const.Amends. 1, 14.

4. Constitutional Law ¶84.5(3)

Schools ¶165, 178

Public school's activities in connection with the offering of prayer at graduation ceremony constituted government involvement prohibited by establishment clause; school officials decided that there would be prayer at ceremony, selected clergyman to give prayer, and dictated content of prayer

by presenting to clergyman pamphlet setting forth guidelines for "nonsectarian" prayer at school graduations. U.S.C.A. Const.Amends. 1, 14.

5. Constitutional Law §84.5(3)

Schools §165, 178

Establishment clause prohibited public school students from being exposed to religion in form of "nonsectarian" prayer given by school-selected clergyman at graduation ceremony, even though students were subjected to variety of ideas in courses, with freedom of communication being protected by First Amendment; under free speech portion of First Amendment it was contemplated that government would be participant in expression of ideas, while under establishment clause it was provided that government would remain separate from religious affairs. U.S.C.A. Const.Amends. 1, 14.

6. Constitutional Law §84.5(3)

Schools §165, 178

Public school's inclusion of "nonsectarian" prayer in school graduation ceremony constituted impermissible establishment of religion under establishment clause, by coercing student to stand and remain silent during giving of prayer, even though student was not required to join in message in any way and could meditate on own religion or let mind wander, and even though prayer and closing benediction involved approximately two minutes of total ceremony. U.S.C.A. Const.Amends. 1, 14.

7. Constitutional Law §84.5(3)

Schools §165, 178

A requirement that student stand and remain silent during giving of "nonsectarian" prayer at graduation ceremony in public school violated establishment clause, even though attendance at ceremony was completely voluntary; student would not be required to give up attendance at ceremony, an important event in her life, in

order to avoid unwanted exposure to religion. U.S.C.A. Const.Amends. 1, 14.

Syllabus *

Principals of public middle and high schools in Providence, Rhode Island, are permitted to invite members of the clergy to give invocations and benedictions at their schools' graduation ceremonies. Petitioner Lee, a middle school principal, invited a rabbi to offer such prayers at the graduation ceremony for Deborah Weisman's class, gave the Rabbi a pamphlet containing guidelines for the composition of public prayers at civic ceremonies, and advised him that the prayers should be nonsectarian. Shortly before the ceremony, the District Court denied the motion of respondent Weisman, Deborah's father, for a temporary restraining order to prohibit school officials from including the prayers in the ceremony. Deborah and her family attended the ceremony, and the prayers were recited. Subsequently, Weisman sought a permanent injunction barring Lee and other petitioners, various Providence public school officials, from inviting clergy to deliver invocations and benedictions at future graduations. It appears likely that such prayers will be conducted at Deborah's high school graduation. The District Court enjoined petitioners from continuing the practice at issue on the ground that it violated the Establishment Clause of the First Amendment. The Court of Appeals affirmed.

Held: Including clergy who offer prayers as part of an official public school graduation ceremony is forbidden by the Establishment Clause. Pp. 2655-2656.

(a) This Court need not revisit the questions of the definition and scope of the principles governing the extent of permitted accommodation by the State for its citizens' religious beliefs and practices, for the controlling precedents as they relate to prayer and religious exercise in primary

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the

reader. See *United States v. Detroit Lumber Co.* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

and secondary public schools compel the holding here. Thus, the Court will not reconsider its decision in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745. The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause, which guarantees at a minimum that a government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which "establishes a [state] religion or religious faith, or tends to do so." *Lynch v. Donnelly*, 465 U.S. 668, 678, 104 S.Ct. 1355, 1361, 79 L.Ed.2d 604. Pp. 2655-2656.

(b) State officials here direct the performance of a formal religious exercise at secondary schools' promotional and graduation ceremonies. Lee's decision that prayers should be given and his selection of the religious participant are choices attributable to the State. Moreover, through the pamphlet and his advice that the prayers be nonsectarian, he directed and controlled the prayers' content. That the directions may have been given in a good faith attempt to make the prayers acceptable to most persons does not resolve the dilemma caused by the school's involvement, since the government may not establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds. Pp. 2656-2657.

(c) The Establishment Clause was inspired by the lesson that in the hands of government what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce. Prayer exercises in elementary and secondary schools carry a particular risk of indirect coercion. *Engel v. Vitale*, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601; *Abington School District v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844. The school district's supervision and control of a high school graduation ceremony places subtle and indirect public and peer pressure on attending students to stand as a group or

maintain respectful silence during the invocation and benediction. A reasonable dissenter of high school age could believe that standing or remaining silent signified her own participation in, or approval of, the group exercise, rather than her respect for it. And the State may not place the student dissenter in the dilemma of participating or protesting. Since adolescents are often susceptible to peer pressure, especially in matters of social convention, the State may no more use social pressure to enforce orthodoxy than it may use direct means. The embarrassment and intrusion of the religious exercise cannot be refuted by arguing that the prayers are of a *de minimis* character, since that is an affront to the Rabbi and those for whom the prayers have meaning, and since any intrusion was both real and a violation of the objectors' rights. Pp. 2657-2659.

(d) Petitioners' argument that the option of not attending the ceremony excuses any inducement or coercion in the ceremony itself is rejected. In this society, high school graduation is one of life's most significant occasions, and a student is not free to absent herself from the exercise in any real sense of the term "voluntary." Also not dispositive is the contention that prayers are an essential part of these ceremonies because for many persons the occasion would lack meaning without the recognition that human achievements cannot be understood apart from their spiritual essence. This position fails to acknowledge that what for many was a spiritual imperative was for the Weismans religious conformance compelled by the State. It also gives insufficient recognition to the real conflict of conscience faced by a student who would have to choose whether to miss graduation or conform to the state-sponsored practice, in an environment where the risk of compulsion is especially high. Pp. 2659-2660.

(e) Inherent differences between the public school system and a session of a state legislature distinguish this case from *Marsh v. Chambers*, 463 U.S. 783, 103 S.Ct.

3330, 77 L.Ed.2d 1019, which condoned a prayer exercise. The atmosphere at a state legislature's opening, where adults are free to enter and leave with little comment and for any number of reasons, cannot compare with the constraining potential of the one school event most important for the student to attend. Pp. 2660-2661.

908 F.2d 1090 (CA1 1990), affirmed.

KENNEDY, J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, and SOUTER, JJ., joined. BLACKMUN, J., and SOUTER, J., filed concurring opinions, in which STEVENS and O'CONNOR, JJ., joined. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and WHITE and THOMAS, JJ., joined.

Charles J. Cooper, for petitioners.

Kenneth W. Starr, as amicus curiae, in support of petitioners.

Sandra A. Blanding, for respondent.

Justice KENNEDY delivered the opinion of the Court.

School principals in the public school system of the city of Providence, Rhode Island, are permitted to invite members of the clergy to offer invocation and benediction prayers as part of the formal graduation ceremonies for middle schools and for high schools. The question before us is whether including clerical members who offer prayers as part of the official school graduation ceremony is consistent with the Religion Clauses of the First Amendment, provisions the Fourteenth Amendment makes applicable with full force to the States and their school districts.

I

A

Deborah Weisman graduated from Nathan Bishop Middle School, a public school in Providence, at a formal ceremony in June 1989. She was about 14 years old. For many years it has been the policy of

the Providence School Committee and the Superintendent of Schools to permit principals to invite members of the clergy to give invocations and benedictions at middle school and high school graduations. Many, but not all, of the principals elected to include prayers as part of the graduation ceremonies. Acting for himself and his daughter, Deborah's father, Daniel Weisman, objected to any prayers at Deborah's middle school graduation, but to no avail. The school principal, petitioner Robert E. Lee, invited a rabbi to deliver prayers at the graduation exercises for Deborah's class. Rabbi Leslie Gutterman, of the Temple Beth El in Providence, accepted.

It has been the custom of Providence school officials to provide invited clergy with a pamphlet entitled "Guidelines for Civic Occasions," prepared by the National Conference of Christians and Jews. The Guidelines recommend that public prayers at nonsectarian civic ceremonies be composed with "inclusiveness and sensitivity," though they acknowledge that "[p]rayer of any kind may be inappropriate on some civic occasions." App. 20-21. The principal gave Rabbi Gutterman the pamphlet before the graduation and advised him the invocation and benediction should be nonsectarian. Agreed Statement of Facts ¶ 17, *id.*, at 13.

Rabbi Gutterman's prayers were as follows:

"INVOCATION

"God of the Free, Hope of the Brave:

"For the legacy of America where diversity is celebrated and the rights of minorities are protected, we thank You. May these young men and women grow up to enrich it.

"For the liberty of America, we thank You. May these new graduates grow up to guard it.

"For the political process of America in which all its citizens may participate, for its court system where all may seek justice we thank You. May those we honor this morning always turn to it in trust.

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Id., at 22-

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Author: Vicky Stroud at WDCE02

Date: 2/11/95 12:38 PM

Priority: Normal

TO: Marjorie Black at WDCE04

TO: Jessica Levin

TO: William Kincaid

Subject: Re: School Prayer Meeting With Secretary Riley

----- Message Contents -----

Majorie,

Mike would like Jessica and Bill Kincaid to attend this meeting since he will not be in town. I will forward this email to them!

Thanks,

Vicky

It has been confirmed that this meeting will take place in the Secretary's Large Conference Room. The date for this meeting is Thursday, February 16, 1995 at 10:00 - 11:00 a.m.

Also, with respect to briefing materials, please consult the January 31, 1995 memo to the Secretary from Judy Winston on School Prayer. Thanks.

White House Tries to Clarify Its Stand on School Prayer

Continued • • •

in a moment of silence. He signed a bill as Governor of Arkansas on that. What he is saying is that he wants to find a common ground."

Asked whether that common ground included a constitutional amendment, Mr. Mikva said, "Some of the Republicans are talking about the absolute need for a constitutional amendment, and I don't think the President's there."

Mr. Galston said: "The President is on record going back many years as being opposed to mandatory prayer and to situations that create coercion for individuals. That is a very bright line, and as a country, we do not pass it. He has been opposed to every constitutional amendment he's seen on the subject."

Yet Mr. Galston refused to rule out that Mr. Clinton might back an amendment down the road. Asked why he believed that the President's comments had been misinterpreted, he said, "If you don't know the President's record and history in this area, then his words are open to a variety of interpretations."

Arthur J. Kropp, the president of People for the American Way, a civil liberties group that attacked Mr. Clinton for his comments on prayer, said in an interview that "we would not oppose 60 seconds of silence" if the President offered that as his alternative.

Even so, Mr. Kropp said Mr. Clinton's comments were damaging. "It was a big mistake to let Gingrich run around town and say the President was openminded about this constitutional amendment when a constitutional amendment was clearly wrong," he said. "He made Gingrich look like he was even more powerful, like he was setting the agenda."

While Mr. Clinton, a southern Baptist, has long supported voluntary school prayer, he had not seriously discussed a constitutional amendment before this week. In July 1992, during the Presidential campaign, Mr. Clinton expressed concern that prayer in school could be coercive.

But Mr. Galston said today that the President believed that "appropriately drafted moment-of-silence legislation can pass constitutional muster."

Although the Supreme Court first ruled in 1962 that organized prayer in the public schools violated the First Amendment's prohibition against the establishment of religion, more recent rulings have been less clear.

In 1985, the Justices struck down an Alabama state law that prescribed a "moment of silence" in public school classrooms. But the Court said that the history of the Alabama law made it clear that it was intended as an endorsement of religion, to encourage the students to pray, leaving open whether a law that was not seen as such an endorsement could pass muster.

Constitutional amendments to overturn the Court's school prayer rulings have been introduced in Congress since 1962 but have never succeeded. A constitutional amendment must be approved by two-thirds majorities in both houses of Congress and then by the legislatures of three-quarters of the states.

CASEBOOK

The Supreme Court and School Prayer

ENGEL V. VITALE, 1962

The court ruled that organized prayer in the public schools violates the First Amendment's prohibition against the establishment of religion. At issue was a nondenominational prayer to be repeated voluntarily at the beginning of each school day, proposed by the New York Board of Regents for adoption by the state school districts.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP V. SCHEMPP, 1963

The Court found that state-ordered recitation of The Lord's Prayer and Bible readings in public school classrooms are unconstitutional but added that religion can be taught as a subject.

WALLACE V. JAFFREE, 1985

The Justices struck down an Alabama state law that prescribed a "moment of silence" in public school classrooms. The history of the Alabama law made it clear, the Court said, that it was intended as an endorsement of religion, to encourage the students to pray.

LEE V. WEISMAN, 1992

The court found that inclusion of a prayer at a school graduation ceremony in Providence, R.I., was unconstitutional. The First Amendment was violated, wrote Justice Anthony M. Kennedy, by "pervasive" government involvement in a religious activity that left students no real choice but to participate.

Christian Coalition rolls out social goals

By NANCY MATHEIS

Houston Chronicle Washington Bureau

Plan would ax Education Department

WASHINGTON — The Christian Coalition, claiming its political spoils, outlined a social agenda for the new Republican Congress on Tuesday, calling for a religious liberty constitutional amendment, an to abortion funding and abolition of the Education Department.

Executive Director Ralph Reed said the religious powerhouse founded by television evangelist Pat Robertson will spend \$1 million on a grass-roots campaign to support passage of the GOP's "Contract with America," its 100-day economic and government reform agenda. He urged Congress to turn to social issues once it completes the contract.

The lobbying campaign starts today as the Christian Coalition's 50 state directors meet here with top GOP leaders for private briefings on the contract's contents and lobbying sessions on behalf of the proposed balanced budget amendment.

"The 1994 elections were also im-

portant because they gave people of faith what they have always sought: a place at the table, a sense of legitimacy and a voice in the conversation that we call democracy," Reed said, during a speech at Detroit's Economic Club. The Christian Coalition provided a text of his speech.

Reed proposed a "religious liberty" statute and constitutional amendment "to guarantee the right of all Americans to express their faith without fear of discrimination."

He called for eliminating federal involvement in welfare over the next decade and shifting the responsibility to private charities and "the faith community." He called for an end to taxpayer financing of abortions, now provided only to financially needy victims of rape and incest.

Reed suggested the elimination or downgrading of Cabinet-level departments such as Commerce, Energy, Housing and Urban Development, and Education. Reed said abolishing or downgrading the Edu-

cation Department would be the coalition's top legislative priority.

Funding should be eliminated for the National Endowment for the Arts, the National Endowment for the Humanities and the Corporation for Public Broadcasting, he said. Funding should be reduced to the Legal Services Corp., he said.

He said the coalition supports the GOP's call for a \$500 tax credit per child but wants members to increase the proposed \$500 tax credit to as much as \$2,000 per child so that no family of four earning less than \$30,000 would have to pay federal taxes.

Missing from Reed's speech were the coalition's traditional call for a constitutional amendment banning abortion.

Arthur Kropp, head of the liberal People for the American Way, said, "There hasn't been a political movement in recent American history that is as significant as the religious right is."

Reed, according to Kropp, is "try-

ing to put a happy face" on what he termed a "mean-spirited" agenda and is seeking mainstream acceptance by promoting an economic platform.

Reed said the landslide Republican election in November "was a landslide for a particular kind of change: pro-life, pro-family, low-tax and unapologetically committed to restoring traditional values."

Reed said that passage of the Republican "Contract with America" will be "the largest single lobbying effort in our history," beginning with the state directors flying here.

Texas Sen. Phil Gramm, Rep. Joe Barton, R-Ennis, and Rep. Charles Stenholm, D-Avoca, will be among the members briefing the state directors on the contract. Barton and Stenholm will be promoting their competing versions of balanced budget amendments.

Barton said the Christian Coalition deserves to be heard after being so politically active and helpful during the elections.

'Place at the table': Christian Coalition pushes GOP agenda

By Mimi Hall
USA TODAY

Christian Coalition Director Ralph Reed on Tuesday announced his influential group will launch a massive lobbying campaign to help the Republican-led Congress pass tax and spending cuts.

Issues like abortion and school prayer long have topped the agenda of religious conservatives, who voted last fall in record numbers. But Tuesday, Reed urged them to "be patient" on such social concerns.

After the GOP passes its 10-point Contract with America, Reed assured members, they can push other issues.

The \$1 million campaign begins today, when 50 state Christian Coalition leaders meet with Senate Majority Leader Bob Dole and House Speaker Newt Gingrich.

They'll visit other congressional offices to lobby for a balanced budget amendment, a

key piece of the contract.

The November elections, Reed said in a speech at the Detroit Economic Club, "gave people of faith what they have always sought: a place at the table, a sense of legitimacy, and a voice in the conversation that we call democracy."

The Christian Coalition plans to mobilize its 1.5 million members to demand passage of everything from a tougher crime bill and welfare reform to term limits and tax cuts.

Then, Reed said, his group will push Congress to:

- ▶ Eliminate federal taxes for any family of four making less than \$30,000.

- ▶ Eliminate funding for the arts and public broadcasting.

- ▶ Eliminate funding for the Legal Services Corp. because it finances 200,000 divorces for poor people annually.

- ▶ Cut or abolish the Education Department and give states grants for scholarships or vouchers for public or pri-

vate schools.

- ▶ Dismantle the federal welfare system and shift responsibility for the poor back to charities and religious groups.

- ▶ Pass a measure allowing voluntary prayer in schools.

Those items, Reed said, "are the embodiment of our legislative agenda."

Reed's critics say that by mobilizing support for the GOP contract, he is trying to enhance his group's clout.

It's a "quid pro quo" arrangement, says Art Kropp of the liberal group People for the American Way. "He's going to demonstrate that his organization is ... a team player."

But Gary Bauer, head of the conservative Family Research Council, sees nothing cynical in the plan.

"The same folks who are concerned about religious liberty and abortion and educational choice are also concerned about balanced budgets and lower taxes," Bauer said.

'Superwoman' Losing Hero Status

Continued....

have any homework done," said Shira, who maintains a 3.87 grade-point average. "It was too much."

Like the other girls interviewed locally, Suzanne Worthington, of Fairfax, said that having a working mother has not deterred her career goals, which combine being a computer analyst and raising a family. Although the 16-year-old senior at Thomas Jefferson High School for Science and Technology said she sometimes wonders "if I'm in way over my head with everything I want to do," she remains determined to get an engineering degree in college.

If she does, she'll be among the few, as 85 percent of all undergraduate engineering degrees are awarded to men.

Studies suggest there is a long way to go in changing the attitudes of some teachers, parents and even the best and brightest of students about women's roles.

When 284 gifted girls and boys who attended a summer enrichment program at the University of Virginia last year were surveyed, strong holdover attitudes emerged. For ex-

ample, 91 percent of the girls said they expected to work after getting married, but 20 percent of the boys thought they should stay home.

Down the road, 29 percent of the girls expected to be combining a career and family by age 30, but only 9 percent of the boys thought the girls would. Twenty-six percent of the girls thought mothers should not work, while 65 percent of the boys agreed. And 14 percent of the boys thought caring for children was a woman's responsibility, a notion shared by none of the 144 girls surveyed.

Still, there are signs of changing attitudes and practices. Efforts to improve gender awareness at Thomas Jefferson, for example, recently have led to more girls taking more-difficult courses. And this year, for the first time, women outnumber men in the entering class at Yale University's School of Medicine.

This is good news for people such as Samantha Lentz, freshman class president at West Springfield High School, and Anna Wojcicki, a senior at Thomas Jefferson, both of whom want to practice medicine.

Anna, who acknowledges being stressed from taking five advanced courses this semester, said she "absolutely" wants a family too but hopes to "get my career going first."

Asked how she planned to combine it with raising children, she said, "I haven't figured that out in such detail. . . . I expect it to be very difficult, but I'm willing to work really hard. . . . I'm hoping I'll have a supportive spouse."

Samantha, who also wants a family, said she knows that being a full-time doctor and a full-time mother will be formidable, "but I've been class president for the last three years, so I know what it's like to juggle things and just go crazy."

Asked whether she knew any women who had stretched themselves too far, she said no.

"I really admire them. I've never felt I don't want to do that."

Teaching 'about' religion in schools gains support

By Larry Witham
THE WASHINGTON TIMES

A movement to promote teaching "about" religion in public schools is gaining steam from a new guidebook for teachers, principals and parents, and its advocates hope it also may deflate the debate over school prayer.

A first printing of 2,500 has nearly run out in the month since the booklet was released, said John Leach of the Freedom Forum First Amendment Center at Vanderbilt University.

"Several state and local school districts have gotten in touch with us," Mr. Leach said.

The guide, which advises on how to navigate issues such as school prayer, religious holidays, studying religion and student Bible clubs, comes a decade after a new effort to make study of religion acceptable in schools.

"This work is going to bring a lot of light to a subject where there is mainly heat and smoke," Steve McFarland, director of the Center for Law and Religious Freedom of the Christian Legal Society in Annandale, said at a recent event releasing the guidebook.

Mr. McFarland said the "flood of support" for a school prayer amendment was the result of seeing all mention of religion denied students in public schools.

The 170-page guidebook, "Finding Common Ground: A First Amendment Guide to Religion and Public Education," is published by the Gannett-funded Freedom Forum and will go into further printings to meet demand, Mr. Leach said.

Though the guide implicitly rejects the idea of a prayer amendment or even a moment of silence for prayer, it explains how to uphold student rights of religious expression and the respectful academic study of religion in various

"The question should no longer be 'Should I teach about religion?'" said Karen Clayborn, chairman of history and social science at Valencia High School in Yorba Linda, Calif. "It's 'What should I teach?'"

The guide's solutions, presented mostly in a question-answer format, have been supported by such diverse groups as the American Civil Liberties Union and the National Association of Evangelicals (NAE).

NAE legal counsel Forest Montgomery said the guidance strikes a compromise that has become necessary in the polarizing religion-in-schools debate.

"Compromise is the only way we can solve this seemingly unsolvable problem," Mr. Montgomery said.

The NAE, for example, supports some kind of constitutional amendment that allows organized student prayer as free speech. But the ACLU and several Jewish organizations that endorsed the guide oppose all school prayer initiatives.

That such differing groups can back the guidebook "shows that in the vast majority of disputes about religion in the schools there is vast agreement," said Robert Peck, the ACLU's legislative counsel.

The debate on religion in public schools made a transition in 1984 when Congress passed the Equal Access Act, which allowed students to form Bible clubs outside class time just like a French or soccer club.

At the same time, textbook ana-

lysts began to note that religion had been excised from American history and social science textbooks. That was done, they reported, to avoid controversy after several decades of court rulings against religion in publicly funded institutions.

The author of the new guidebook, historian Charles Haynes, was among those in the mid-1980s who began to argue for teaching "about" religion as a way to include the spiritual dimension and imbue tolerance in Americans.

He was joined in the advocacy by Ernest L. Boyer, president of the Carnegie Foundation for the Advancement of Teaching. Mr. Boyer argued that the education reform movement launched in 1983 addressed techniques and processes but overlooked how to appropriately study questions of values.

In 1990, Mr. Haynes and Mr. Boyer were joined by other groups in releasing a curriculum for teachers to incorporate study of religion into classwork.

The curriculum, "Living With Our Deepest Differences: Religious Liberty in a Pluralistic Society," is distributed by Learning Connections in Boston and is in its third edition. It covers grades four through 12.

For about four years, with support from Americans United for Separation of Church and State and the First Liberty Institute at George Mason University, Mr. Haynes conducted training programs for school teachers.

Nevertheless, Vanderbilt's Mr. Leach said school workers are confused by the religion issues and needed a more precise handbook on detailed situations.

Point of View

By Isaac Kramnick and R. Laurence Moore

Is the U.S. Constitution Godless?

PEOPLE ALWAYS FALL BACK on the opinions of the Founding Fathers of the United States as a trump card in any debate about public policy, regardless of how different our world is from that of the late 18th century. Whatever the hot issue—balanced budgets, gun control, welfare policy—at some point someone inevitably trots out his or her interpretation of what the framers of American government originally intended. Nowhere is this more ritualized than in discussions of relations between church and state.

Most recently, politicians such as Newt Gingrich and Pat Buchanan and Christian Right activists such as the Rev. Pat Robertson and Ralph Reed have insisted that the framers wanted to establish a Christian government, and would therefore have been foursquare in favor of prayers in the public schools. Opponents of school prayer angrily reply that the framers meant to construct a high wall separating church and state.

Efforts to determine the appropriate relationship between church and state usually have focused on interpreting the religion clauses of the First Amendment of the Bill of Rights, which state: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The problem is that little agreement exists on the meaning of those words, especially the establishment clause. Two opposing camps face off. One reads the establishment clause broadly, arguing that it removes the national government from any support of or involvement with religion. The other reads it narrowly, arguing that it prohibits only a state-supported church. The second group goes on to claim that, because the founders were themselves Christians, they may not have specified the role of religion in the new national government, but instead wanted to leave it open to individual states to decide how to support religion.

Another way of inferring the framers' intention, however, which we describe more fully in a recent book, *The Godless Constitution: The Case Against Religious Correctness*, relies on recent research that provides a more definitive picture of the founders' design. Rather than relying on the Bill of Rights, this approach focuses on the widespread debates in 1787 and 1788 over the clause in Article VI of the Constitution stating that "no religious test shall ever be required as a qualification to any office or public trust under the United States." These debates, not mentioned in the celebrated *Federalist* papers of Madison, Hamilton, and Jay, focused on the very issue of whether the new national government was Christian.

Scholars have had easy access to this debate only for the last decade and a half, since preparations for the celebration of the Constitution's bicentennial in 1987 produced a treasure trove of new publications. They include the University of Wisconsin's multivolume edition of all of the debates at the state conventions held in 1787 and 1788 to ratify the Constitution, and the University of Chicago's *Complete Anti-Federalist*, a collection of all the tracts written in 1787 and 1788 by critics of the proposed Constitution.

Looking at the ratification debates, we can see that the framers wanted to maintain a godly nation, but that their experience with the divisiveness of established churches during the colonial period had convinced them that the best way to do so was to keep religion in the private sphere, not subject to government dictates and interference. The fact that the framers did not view the separation of church and state as a threat to religion ought to make us skeptical of the Christian right's claim that to be a moral nation, the United States must incorporate religious views into its public schools and government policies.

In the debates over Article VI, many delegates to the

state conventions angrily denounced the proposed new Constitution as ungodly, because nowhere did it mention either God or Christianity, and because Article VI prohibited religious tests for officeholders. One Massachusetts delegate was upset that the Constitution did not require men in power to be religious. He said that while he wanted to see "Christians" in office, under the Constitution "a papist, or an infidel was as eligible as they." The Rev. David Caldwell, a Presbyterian minister and a delegate at North Carolina's convention, worried that the Constitution's failure to require a religious test of officeholders was an invitation to "Jews and pagans of every kind" to govern the country. Disputants around America complained of the framers' "silence" and "indifference about religion."

The epithet given to the document by these oppo-

"The Christian Coalition and the politicians who court its undeniable political clout seek to assign government the task of making Americans moral."

nents, "the godless Constitution," correctly recognized that the framers acted deliberately. Opponents offered a spate of proposals in 1787 and 1788 to remedy the perceived defect. In Connecticut, a delegate formally moved that the Constitution's one-sentence preamble be enlarged to include a Christian conception of politics. After the words "We the people of the United States," he proposed inserting "in a firm belief of the being and perfection of the one living God, the creator and supreme governor of the World, in His universal providence and the authority of His laws." All such proposals were rejected, although efforts to write similar amendments into the Constitution have continued throughout our history.

To be sure, critics have won a few minor victories. "In God we trust" is stamped on our money. Chaplains invoke God's name before sessions of Congress and the Supreme Court. Schoolchildren place the nation "under God" in the Pledge of Allegiance to the U.S. flag, a phrase inserted in 1952, early in the Cold War. But the Constitution remains what its enemies at the ratifying conventions said it was—a godless document.

The Bicentennial publications do not, of course, settle the many controversies that linger regarding applications or interpretations of the First Amendment. What exemptions to prevailing laws may people claim in the name of their religious practice? Is it fair for a state-supported university to provide aid for all student publications and clubs except religious ones? Those broad questions will continue to generate disagreement that no appeal to the founders' intentions can settle. Nonetheless, the 18th-century debates do allow us to discredit—thoroughly—the most outrageous claims of leaders of the Christian Coalition, the political extension of Pat Robertson's media empire. When those leaders call the separation of church and state "a lie of the left," they are wrong. Such assertions are historical nonsense, and the reticence shown by politicians of both political parties to refute them should cause us national shame.

However, we should not overlook the fact that the recently expanded historical record also underscores that, in writing a godless Constitution, the founders were not taking a stand against religion or turning their backs on the important role that they expected religion to play in democratic states. Most of them were religious, and even those who had little use for the Christianity that was preached in the churches of the time

believed that a moral citizenry was necessary to democracy, and that morality often rested on religious conviction.

The framers placed religion in the private sphere without at all intending that religion would play no part in informing public debate. Their hope was that religion, while remaining above the struggles of political factions, would provide a moral foundation for American public life. Alexis de Tocqueville echoed Thomas Jefferson's views in his reflections on American democracy in the early 1830s: "In the United States religion exercises but little influence upon the laws and upon the details of public opinion; but it directs the customs of the community, and, by regulating domestic life, it regulates the state."

Recently, leaders of the religious right in this country have gotten considerable political mileage from the charge that many liberal academics, in particular, ignore religion in condescending ways. We believe that religious instruction has no place in college curricula. At the same time, the secular nature of the university does not require institutions to ignore Christian ideals in students' core educational courses.

Yet if anyone has brought disrespect to the place of religion in American life, it is those who have sought relentlessly to use religion to serve the partisan agenda of one wing of the Republican Party. We are now witnessing religion's playing the divisive role in politics that the founders most feared. What are we to make of a Roman Catholic candidate for President who urges his followers to mount a culture war, without the slightest recognition of how that historically ugly term was used against Catholics in 19th-century America?

WHAT UNIVERSITY INTELLECTUALS—and the news media—owe to public debate is a balanced view of what is going on. Pat Buchanan should not make university pundits lose their heads and mistakenly take the voices of the Christian Coalition as representative of all Protestant Christians who take conservative positions on sexual and family matters.

Ralph Reed, the executive director of the coalition, is not a minister but a political junkie obsessed with mailing lists of voters. He and his organization have nothing in common with, say, the evangelist Billy Graham, who warns of the dangers of placing religion in the service of political leaders. Despite claims to the contrary, Mr. Reed has little standing among Catholics, Seventh-day Adventists, Mormons, and a great swath of evangelical Protestants, including many Baptists, who regard his focus on politics as dangerous.

The Christian Coalition and the politicians who court its undeniable political clout seek to assign government the task of making Americans moral, forgetting the long struggles of most churches in this country to keep the business of churches free from the hypocrisy of politics. Religion in the United States is a vast cultural resource that, because of its strength, will always tempt some to misuse it in the political arena. That danger, however, does not make religion the enemy. We join the founders in suggesting that disrespect for religion is something this nation can ill afford. Those in the university who are declared secularists should champion the separation of church and state, while always remembering that the original purpose of that separation was, in large part, to promote respect for religion, whose health the founders deemed vital to democracy.

Isaac Kramnick is a professor of government and R. Laurence Moore is a professor of history at Cornell University. They are the authors of *The Godless Constitution: The Case Against Religious Correctness* (W. W. Norton & Company, 1996).

Notes From Academe: Japan

By Carolyn J. Mooney

The Power of Prayer: Students in Japan Go to a Shinto Shrine in Search of a Competitive Edge

KYOTO, JAPAN

THERE ARE SURE SIGNS OF SPRING at the Shinto shrine known as *Kitano Tenman-gū*. The air has lost its chilly edge, the tiny magenta buds of the plum trees have pushed open, and Japanese high-school students have been spilling through the massive *torii* gates to pray for success on their college-entrance exams.

They come here because the shrine is dedicated to Sugawara no Michizane, a ninth-century court scholar who is worshiped as the god of scholarship. For many students, offering a wish in writing or requesting a prayer or rubbing the shrine's bronze ox is the last step in a grueling college-admissions process that began years before.

Japanese students believe that a spot in the right university, more than anything else, will determine their future in Japan's rigidly hierarchical society. Because admission is based almost entirely on the results of entrance exams, applying to college is stressful. Intense pressure to pass the exams (universities offer their own, and so do many secondary schools) has given rise to the phenomenon known as "examination hell." Serious candidates follow a formula: Study hard. Go to a good high school. Attend after-school or weekend *juku* courses—extra cram sessions.

With so much at stake, a visit to a shrine dedicated to Tenjin—the name of Michizane's deified spirit—apparently can't hurt. Tenjin is especially revered on days like this one, when you can feel the sharpness of winter subsiding into spring. Japanese universities hold their entrance exams between January and March to pick a class for the new academic year starting in April, so this is a busy season for *Kitano Tenman-gū*. The shrine and its grounds, laced with paths that meander past statues and plum trees, are deceptively peaceful on this weekday morning. But listen closely, and you can almost hear wishes being made: Bells tinkle softly as visitors perform the Shinto custom of tossing money in a cashbox, pulling a long rope attached to a gong, bowing deeply, and clapping. Tiny strips of paper bearing fortunes flutter from nearby trees. A small shop sells amulets—for auto safety and general health, as well as for entrance exams. For 5,000 yen—about \$50—students can have a "college success" prayer recited for them by the shrine's priests. (There's also a \$40 version.) Most students, though, buy one of the small wooden tablets known as *ema* for about \$4, scrawl a wish on it, and hang it from one of the many racks clustered outdoors in a special corner.

Thousands of *ema* hang in rows on top of one another—thousands of yearnings that rattle gently when a breeze blows. "For my best friend, I hope you pass the exam this year," reads one. A student who had failed his exams two years in a row listed six universities to which he had applied, starting with his first choice, Keio University. The race for prestige begins early for some. "May I pass my junior-high-school entrance exam," a 12-year-old girl wrote. On another tablet, a grandmother wished her 6-year-old granddaughter success in elementary school and, someday, hopefully, at Kyoto University. A few fortune seekers have placed bunches of colorful origami cranes—1,000 strung together for good luck—among the pale wooden tablets.

The *ema* are blank on one side and have an ox—Tenjin's messenger—printed on the other. The size of small index cards, they speak volumes about Japan, a nation known for its cultural cohesion, respect for tra-

At this Shinto shrine in Kyoto, students scrawl their college-admission hopes on wooden tablets called ema, hang them on racks, and hope for the best.



CHRONICLE PHOTOGRAPH BY CAROLYN J. MOONEY

dition, and emphasis on academic pedigree. Some professions are inextricably linked to certain universities, rarely allowing those without the proper credentials to rise. The list of elite institutions is led by Kyoto, Tokyo, and Waseda Universities, to name three. There has been talk about reforming the system by relying less heavily on the exams and encouraging universities and employers to look more broadly at candidates. But for now, students intent on success play by the rules.

Many universities post the results publicly or notify applicants by mail. But some add a poetic touch, telling successful candidates that the cherry blossoms are in bloom, or that the tea in their cup smells nice, or that the university's founder is smiling. (The less fortunate would be told the opposite.)

By the way, once students make it to college, the rules change. Making contacts for the future takes precedence over studying.

Kazuyuki Kikkou, a recent high-school graduate, passed the big hurdle. After offering an *ema* at *Kitano Tenman-gū* earlier this year, he was accepted by his top-choice college. Now he has returned with a small fabric thank-you charm. Had he failed, "I would have been *rōnin* for a year," he says. An old term that refers to a samurai with no master, *rōnin* now describes students who take a full year off to study—often at special schools called *yobikō*—before taking the exams again.

A little later, a young woman from Shizuoka hangs two tablets on a rack—one for each of the universities she has applied to. She hopes to study agriculture at Kyoto Prefectural University. "If I get in, I'll come back to say thank you," she says.

The slightly larger thank-you tablet costs \$8. A woman from Chiba offers one for her niece, who was just accepted into a veterinarian program.

OFFERING PRAYERS to Shinto deities, known as *kami*, is a long-standing cultural tradition—though not necessarily a religious one—in Japan. Many families begin their New Year's holiday by visiting a shrine, and businesses and other groups pay their respects. The tradition remains strong even in an era whose hallmarks include dense urbanization, sophisticated technology, and the high-speed *Shinkansen* trains that leave this city for Tokyo every few minutes.

Those who offer *ema* know their wishes can't replace hard work. More likely, "some people think it has a calming effect," says Robert Borgen, a scholar at the University of California at Davis who has written a book on Michizane. (The book was recently reissued by the University of Hawaii Press.)

The practice of praying to Tenjin is thought to be a postwar trend, but the figure at its center has been influential for centuries. Sugawara no Michizane, born in 845, was an accomplished scholar of Chinese, a calligrapher, and a poet who admired the plum trees first brought here from China. He was appointed to a high-ranking position by Emperor Uda, but later was unjustly exiled to Dazaifu, on the island of Kyūshū. After his death, in 903, his furious ghost was blamed for a series of earthquakes and other disasters. Hoping to placate his spirit, the Imperial Court deified Michizane as the god Tenjin. He was an angry god at first, but by the time the Heian period ended, in the late 12th century, literary men worshiped him as a god of letters, says Mr. Borgen.

Japanese schoolchildren learn the story of Michizane, which is depicted on a famous scroll housed in the shrine here. Japan has about 10,000 shrines dedicated to Tenjin, his spirit. Those in Dazaifu, which has a museum devoted to Michizane, and Tokyo also draw large numbers of college-bound students. According to Mr. Borgen, only two other Shinto deities—Inari, the god of harvest, and Hachiman, the god of war—have more shrines dedicated to them.

Back at *Kitano Tenman-gū*, Satoko Nishimuta is explaining why she attended a *juku* school twice a week for a year before applying to universities. "There's a lot of pressure," she says. "Our society is very particular about what university you go to." She would like to see the system change, but she isn't optimistic. Her aunt, Youko Iwasa, adds her own opinion. "The society should respect individuality and ability more," she says. "In Japan, a university's name affects your entire life."

And why had they come to the shrine today?

To celebrate the young woman's admission to Kyoritsu Women's University, her first choice. Earlier in the year, they asked that a prayer be said on her behalf here at *Kitano Tenman-gū*. They chose the expensive version.