

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a letter	Todd Stern to President; RE: Options for addressing the religion/school prayer (1 page)	05/27/1995	P5 4036
001b memo	George Stephanopoulos to the President; RE: Options for Addressing Religion/School Prayer (6 pages)	05/26/1995	P5 4037

COLLECTION:

Clinton Presidential Records
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FOLDER TITLE:

Catholic Issues

Debbie Bush
2007-0088-F
db2269

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE PRESIDENT HAS SEEN

5/30
THE WHITE HOUSE
WASHINGTON

May 27, 1995

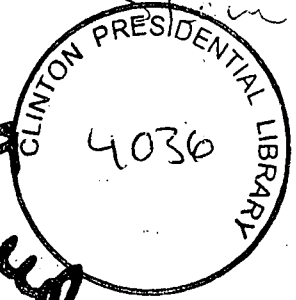
MR. PRESIDENT:

Attached is a memo from George and Secretary Riley on options for addressing the religion/school prayer issue before your June 21 White House Conference. George and Sec. Riley are concerned that the Conference could be dominated by these issues unless the Administration clarifies its position in advance. Five options for doing so are discussed:

(i) Announcing your position on religion and schools, making clear what the First Amendment does permit; (ii) proposing legislation to amend the Equal Access Act; (iii) alternatively, issue a Presidential directive on religious expression in schools; (iv) include in proposed legislation a provision on expression at graduation ceremonies; (v) alternatively, reiterate your view on what the First Amendment allows with regard to graduation ceremonies.

George, Sec. Riley and Bill Galston asked that you get this memo this weekend. Leon is out of town. Harold has cleared it.

Todd Stern
Todd Stern



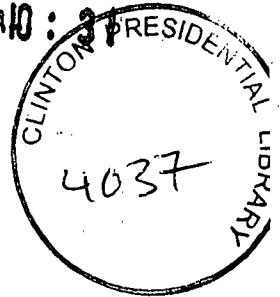
THE PRESIDENT HAS SEEN

THE WHITE HOUSE

WASHINGTON

May 26, 1995

95 MAY 27 AID: 27



MEMORANDUM FOR THE PRESIDENT

THROUGH:

HAROLD ICKES

FROM:

THE SECRETARY OF EDUCATION
GEORGE STEPHANOPOULOS

SUBJECT:

OPTIONS FOR ADDRESSING RELIGION/SCHOOL PRAYER

ISSUES

1. Should you set forth your position on religion/school prayer issues before the June 21 White House conference (tentatively titled Healing, Civility and Common Good)?
2. As part of this or any future effort, should the Administration propose legislation addressing religious expression in schools?

BACKGROUND

We believe you now have a window of opportunity to position yourself on the issues of religious expression and school prayer. While we believe your personal entry into this debate should proceed with extreme caution, the next several weeks may be the best opportunity for you to influence the debate in a manner that does not appear either overtly political or simply responsive to Republican proposals. We are also concerned that the June 21 conference on healing, civility and common good could be dominated -- in terms of discussion and press coverage -- by religion and school prayer issues unless the Administration clarifies its position on those issues before the event.

The Office of Legal Counsel at the Justice Department has completed a draft, begun last year, of legislation that would clarify the extent to which the First Amendment already permits religious expression in schools. (As you know, a broad spectrum of religious groups has recognized the extent to which such expression is permitted.) The draft legislation is in the form of proposed amendments to the Equal Access Act, a statute designed to guarantee student religious groups the same right of access to public school facilities as is enjoyed by other comparable student groups. The draft legislation is described in detail in the attached memorandum from Walter Dellinger. Among other things, the legislation would permit elementary and secondary schools to provide a neutral "moment of silence" for personal contemplation by students.

As you will see, the current draft legislative proposal does not address religious expression at graduation ceremonies or other school events. You have previously criticized

What's the Supreme in this
and opening Congress up to prayer
Having a church chapel?
the Supreme Court's holding in Lee v. Weisman (1992) that the Establishment Clause prohibits school officials from determining that prayer will be included in a graduation ceremony. Although the lower courts have been divided on the question of whether student-initiated prayer is similarly prohibited at a graduation ceremony, the Justice Department has concluded that the principles underlying Weisman would similarly prohibit student-initiated prayer. Walter Dellinger's attached memorandum does, however, discuss a possible amendment to the Equal Access Act that would expressly authorize a neutral moment of silence at graduation ceremonies and other school events.

OPTIONS

1. **Announce your position on school prayer prior to the June 21 conference.**

In one or more speeches, you could articulate the broad themes that flow from your long-held views, including: religion and religious institutions are central to the history of this nation and to our future; religion draws our communities together, and helps us heal together in times of tragedy; for most Americans, religion is the primary source of values and personal morality. Nothing in the current debate, however, justifies tampering, for the first time in over 200 years, with the First Amendment and the core principles upon which this nation was founded. The First Amendment embodies a careful balance that protects all forms of religious expression as long as the government is not sponsoring religion and people are not compelled or coerced to participate.

You could also reiterate your concern about incidents where school teachers or administrators believe -- incorrectly -- that our schools must be religion-free. You might announce that you have instructed Secretary Riley and the Attorney General to undertake an initiative to inform school administrators, teachers and parents about the extent to which religious expression in schools is permitted under current law.

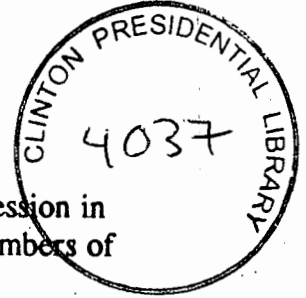
Pros: Regain the initiative and present an alternative to the Christian Coalition; establish yourself as the true defender of the Constitution and the protection it affords religion; support government and private initiatives to educate school officials about the extent to which the First Amendment already permits religious expression in schools; reduce likelihood that religion and prayer issues will dominate the scheduled June 21 conference.

Cons: Might be perceived as politically-motivated reaction to Christian Coalition.

2. **Propose legislation addressing religious expression in schools.**

The attached Dellinger memorandum sets forth a series of possible amendments to the Equal Access Act. We believe that any such legislation should be proposed only after you have articulated a set of general principles that define your position.

Pros: A clear alternative to a Constitutional amendment; a concrete step that demonstrates your commitment to religious expression; could clarify the extent



to which the First Amendment currently permits religious expression in schools; might be attractive to moderate Republicans; gives Members of Congress something to vote for.

Cons: Will not satisfy supporters of Constitutional amendment, and may not be of much interest to others; legitimizes Congress as the forum for addressing religion/prayer issues; could be characterized as a mere political gimmick; proposing legislation now would limit our ability to solicit sponsorship from Members of Congress at a later time when such sponsorship might be attractive to them.

3. Issue a Presidential directive on religious expression in schools.

If you choose not to propose legislation at this time, you could direct -- by means of a memorandum or, if appropriate, an executive order -- that the Secretary of Education and the Attorney General utilize the existing Equal Access Act and more general constitutional principles to seek the fullest possible, non-discriminatory access for religious expression in public schools. You could direct the Secretary of Education to distribute widely an explanation of the extent to which the First Amendment currently permits religious expression in public schools. You could also direct the filing of amicus briefs, where appropriate, to support moments of silence during the school day and at school-sponsored activities such as graduation ceremonies; access for religious groups to public address systems; and other activities beyond those expressly covered in the existing Equal Access Act.

Issuing a directive in the coming weeks would not preclude the opportunity to propose legislation in the future.

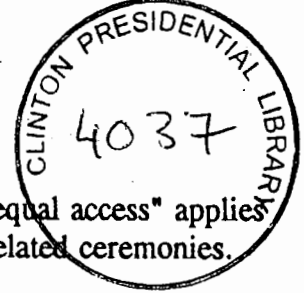
Pros: A way to demonstrate leadership; you maintain control and do not have to submit proposals to a Republican Congress; less controversial than legislation; allows the possibility that legislation could be introduced on a bipartisan basis at a later time.

Cons: Not as strong as legislation, particularly as an alternative to Constitutional amendment; does not give Members of Congress an alternative to vote for.

4. Legislation to address religious expression related to graduation ceremonies.

As noted above, it is the view of the Justice Department that the Supreme Court's analysis in Weisman would prohibit both school-sponsored and student-initiated prayer at graduation ceremonies -- although the Supreme Court has not yet addressed the issue of student-initiated prayer and the lower courts are divided on that subject.

One option would be an amendment to the Equal Access Act to clarify that a neutral moment of silence would be permissible at graduation ceremonies, sporting events or



other extra-curricular events. Legislation might also clarify that "equal access" applies to privately-sponsored baccalaureate services or other graduation-related ceremonies.

Pros: You would be taking a step, permitted by the First Amendment, to promote religious expression in connection with graduations and school events.

Cons: Would not permit prayer at ceremonies, and could appear to legitimize efforts to amend the Constitution; could become an invitation for schools or students to circumvent Weisman.

5. **Make a statement on religious expression at graduation ceremonies.**

As another alternative to legislation, you could reiterate your view that the First Amendment does permit some religious expression at graduation ceremonies and other school events. You could explain that while you disagree with Weisman, you do not believe it is appropriate to tamper with the First Amendment. You could then explain that you are prepared to continue to advocate your views, with the hope that the Supreme Court will ultimately correct or narrow its Weisman holding. You might call upon the Supreme Court to lend clarity to this area as appropriate cases arise, or state that the Administration will look for suitable cases in which to intervene on "unsettled" issues. We believe it is critical that any such statements be coordinated with, and reviewed in advance by, the Education Department and the Justice Department, including the Solicitor General.

Pros: An opportunity to reiterate and pursue your longstanding views on this issue.

Cons: Your appointees to the Supreme Court are understood to have views consistent with the Weisman majority; creates unnecessary conflict with the Supreme Court, which could undercut the strategy of supporting the First Amendment; problematic to call for Court action outside the context of a particular case.

RECOMMENDATIONS

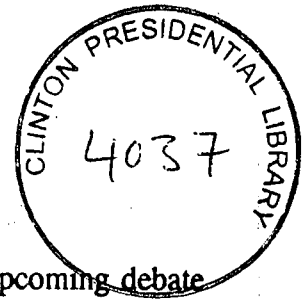
Option 1: Announcing your position before the June 21 conference

It is our recommendation that you present your position on religious expression and school prayer prior to the June 21 conference. A commencement address at an appropriate institution might be a particularly fitting platform. Such an address might also be presented to the National Youth Summit on June 6.

Announce before June 21 _____

Do not announce before June 21 _____

Discuss _____



Option 2: Proposed legislation to amend Equal Access Act

We believe that if the Administration is to have a key role in the upcoming debate about a Constitutional amendment, it is critical for the Administration to take a leadership position before a Constitutional amendment is formally introduced. Secretary Riley supports the proposed Equal Access Act legislation set forth in the attached memorandum from Walter Dellinger and believes that proposing such legislation would allow the Administration to take a leadership role. The White House staff working on these issues, while concerned about the risks inherent in a legislative strategy -- including the possibility that such legislation could be unattractive both to Constitutional amendment supporters and to advocates of church/state separation -- generally concurs with Secretary Riley's views. We all recommend that any legislative proposal be introduced only after you have articulated the general principles that define your position. We also feel strongly that if you choose to pursue a legislative alternative, the Administration should first consult on specifics with appropriate representatives of the religious community.

Propose legislation before June 21 _____

Consider legislation later _____

Do not propose legislation _____

Discuss _____

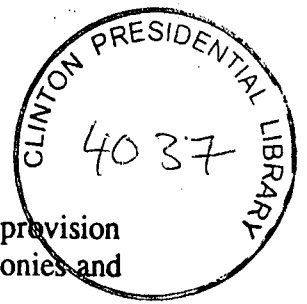
Option 3: Presidential directive on religious expression in schools.

If you do not pursue legislation at this time, we believe a Presidential directive could establish your leadership role and help clarify the extent to which current law permits religious expression in schools. Such a directive could demonstrate the Administration's commitment to support the full Constitutional protection accorded religious expression. The directive could also initiate a national effort to inform teachers, parents and community leaders of the broad protection afforded by the First Amendment. Secretary Riley notes that this alternative allows you to take the initiative but avoid subjecting your proposals to a Republican Congress.

Prepare Presidential directive before June 21 _____

Do not pursue Presidential directive _____

Discuss _____



Option 4: Proposed legislation on expression at graduation ceremonies

We recommend that any amendments to the Equal Access Act include a provision recognizing that neutral moments of silence are appropriate at graduation ceremonies and perhaps at other school events.

Include Equal Access amendment on graduation ceremonies _____

Do not include amendment on graduation ceremonies _____

Discuss _____

Option 5: Statement on religious expression at graduation ceremonies

As another alternative to legislation, you could reiterate your view that the First Amendment permits religious expression at graduation ceremonies and other school events. You could affirm your commitment to pursue this view in the courts. We believe it is critical to consult with the Justice Department and the Education Department before making any public statements in this regard.

Pursue a statement on graduation ceremonies _____

Do not pursue a statement on graduation ceremonies _____

Discuss _____