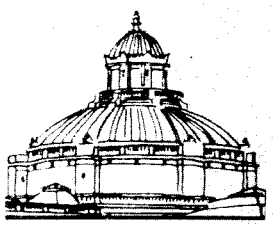
Issue Brief

Order Code IB84081

THE SCHOOL PRAYER CONTROVERSY: PRO-CON ARGUMENTS

UPDATED 08/26/85



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ISSUE DEFINITION

In 1962, the U.S. Supreme Court ruled that recitation of the New York Regents' prayer in the public schools violated the Establishment Clause of the First Amendment, made applicable to the States by the Fourteenth Amendment [Engel v. Vitale, 370 U.S. 421 (1962)]. The following year the Court held that daily devotional Bible reading and recitation of the Lord's Prayer in the public schools was an unconstitutional establishment of religion [Abington School District v. Schempp and Murray v. Curlett, 374 U.S. 203 (1963)]. A public reaction of unusual intensity greeted these decisions and gave rise to numerous proposals in Congress to overrule or limit them and efforts in a number of States to restore school prayers. The gathering momentum of the issue in recent years resulted in proposals in the 98th and 99th Congresses to permit some form of officially sanctioned school prayer, vocal or silent. The present controversy involves basic questions of public policy affecting the meaning of church-state separation and the place of religion in public education and national life, which are reviewed in this brief.

(For analysis of the constitutional and other legal issues outside the scope of this issue brief, the reader may contact the American Law Division, Congressional Research Service.)

BACKGROUND AND POLICY ANALYSIS

At the time of the Court's School Prayer rulings, probably a third to a half of the Nation's public schools began the day with devotional Bible readings, without comment. The practice of reciting daily prayers was widespread, usually involving the Lord's Prayer, which was regarded by many as non-sectarian and hence unobjectionable. Nineteenth century "common schools" had reflected a "non-sectarian" Protestant consensus on practical piety and Biblical values. Despite the gradual secularization of tax-supported public schools, religious practices believed to be non-sectarian, such as Bible reading and recitation of the Lord's Prayer, continued.

The movement to restore school prayer took various forms in the two decades following Engel v. Vitale and Schempp vs. Murray. Hundreds of proposals have been introduced in Congres, some favoring a constitutional amendment to overturn the Supreme Court's rulings, others favoring measures to remove the issue from the jurisdiction of Federal courts. Still others have sought alternative means for restoring prayer or some form of spiritual observance by permitting a period of silent prayer or meditation similar to the moment-of-silence laws in effect in many States. The constitutionality of State-sponsored moments of silence has yet to be dcided by the Supreme Court. SOme hold that periods of silent prayer have not been banned by the Court; others argue that they are implicitly forbidden.

A 1983 Gallup poll indicated that over 80% of the American people supported a constitutional amendment to allow voluntary group prayer in public schools. Other polls indicate some lessening of support when prayer is described as "required" or "mandatory." Opinion in the leadership of the religious community, however, is sharply divided. Mainline Protestant and many Jewish groups remain opposed to state-sponsored prayer in public

schools. Those opposed include the American Lutheran Church; the Church of the Brethren; the American Baptist Churches in the U.S.A.; the Episcopal Church; the First Church of Christ Scientist; the Baptist Joint Committee on Public Affairs; the Friends Committee on National Legislation; the Lutheran Church in America; the Lutheran Church-Missouri Synod; the National Council of Churches; the National Council of Jewish Women; the Seventh-day Adventists; the Unitarian Universalist Association; the Union of American Hebrew Congregations; the United Church of Christ; the United Methodist Church; and the Progressive National Baptist Convention. Groups supporting school prayer include the National Association of Evangelicals, representing 45 denominations, including the Assemblies of God; the Moral Majority; the Christian Voice; the Knights of Columbus; the American Council of Christian Churches; Campus Crusade for Christ; the Christian Broadcast Network; National Religious Broadcasters; the Religious Roundtable; United Pentecostal Church, International; the Covenant Churches; the Union of Orthodox Rabbis of the U.S.A. and Canada; and other civic, patriotic, and religious groups. In 1982 the U.S. Catholic Conference expressed support for the prayer amendment while also calling for an amendment to deal with "the larger issue" of voluntary religious instruction in public schools. This was a shift in position by the Conference (which had opposed the school prayer amendment in 1971). A similar change of position was reflected in a 1982 resolution of support for a prayer amendment by the Southern Baptist Convention (support predicated on the proviso that any prescribed prayers be written by non-governmental sources). In 1983 the Convention affirmed its opposition to any changes in the religion clauses of the First Amendment.

Debate in the 98th Congress centered on a constitutional amendment first submitted by President Reagan in 1982, S.J.Res. 73, as amended and reported by the Senate Judiciary Committee without recommendation: "Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or any state to participate in prayer. Neither the United States nor any state shall compose the words of any prayer to be said in public schools." The Committee also reported without recommendation S.J.Res. 212, a constitutional amendment allowing silent prayer or meditation: "Nothing in this Constitution shall be construed to prohibit individual or group silent prayer or meditation in public schools. Neither the United States nor any State shall require any person to participate in such prayer or meditation, nor shall they encourage any particular form of prayer or meditation."

An alternative constitutional amendment, S.J.Res. 218, emphasized the "right of persons lawfully assembled, in any public building which is supported in whole or in part through the expenditure of public funds, to participate in voluntary prayer." Numerous amendments were introduced in the quest for a consensus proposal that would command the necessary two-thirds majority for passage, including the addition of "vocal or silent" to allow free choice to students. Other changes strengthened provisions barring Federal or State authorities from composing or "mandating" any official prayer and included an "equal access" clause, as in the 2nd provision of S.J.Res. 212, to permit religious groups the use of public buildings for voluntary religious exercises during extracurricular periods. An "equal access" bill, H.R. 5345, introduced under a suspension of the rules, was defeated on May 15, 270 to 150, falling short of the necessary 2/3 majority. A similar measure in the Senate, S. 1059, was reported out by the Judiciary Committee on February 22. A revised version, extending "equal access" to all voluntary student-initiated groups, secular and religious, passed the Senate on June 27, 88-11, as an amendment to S. 1285, a bill upgrading mathematics

and science education. This revised measure passed the House on July 25 by 337-77 (H.R. 1310). Proponents of vocal prayer had been largely unwilling to support silent prayer or private meditation proposals, despite repeated attempts at compromise wording. However, a measure requiring schools to allow silent prayer passed the House in July by large majorities. Proposals for vocal prayer have raised questions regarding who would select such prayers and how that selection would be regulated. Some have suggested sudent-initiated prayers; others, prayers approved by parents or school authorities; and others, nondemoninational prayers written by citizen groups. Such decisions would presumably be made by State and local officials, who would also determine policy regarding students who objected to participating.

Although S.J.Res. 73, the President's amendment, was defeated in the Senate last year, 56 yeas to 44 nays, the issue continues as a national concern in the 99th Congress. On July 26, 1984, by 195-215, the House defeated a proposal to allow spoken prayer in schools. Then, in two votes of 378-29 and 356-50, the House adopted language amending an omnibus education bill to forbid State and local educational agencies from denying students voluntary participation in silent prayer. (Hearings were held in both House and Senate on "equal access" proposals that some support who do not favor officially sanctioned school prayers. An "equal access" bill failed to win the needed 2/3 vote on May 15 in the House. A similar proposal, incorporating several revisions, passed the Senate in June and the House in July.)

Underlying the continuing debate over school prayer are disagreements in public policy that involve divergent understandings of church-state separation, the place of religion in public life, and interpretation of American history.

Proponents of voluntary school prayer in its various forms contend that its restoration to the public schools would give official recognition to the rightful place of religion in education and in the Nation's life without violating Constitutional safeguards for freedom of conscience and religious liberty. They cite the historic precedent of almost 200 years of prayer in the schools as well as the tradition of "civil religion" in American public life from the beginning, manifest in public prayer at presidential inaugurals, in Congress, and in State legislatures. They assert further that the Constitutional right to free exercise of religion is denied when students are not permitted to engage in voluntary prayer as a sanctioned activity in the schools. They argue that the Supreme Court's school prayer decisions in 1962 and 1963 reflected an abstract and excessively rigid view of church-state separation not in keeping with the intent of the Founding Fathers. Some maintain that the effect of the Court's decisions is to advance irreligion by establishing a secularist ideology hostile or at best indifferent to the recognition of traditional religion. Proponents generally contend that restoring schol prayer would enhance the moral and spiritual climate in the public schools and thus benefit American society as a whole. They argue that the right of students to pray in the schools is effectively frustrated if prayer is denied public recognition or sanction and is confined to individual private devotion. They further contend that religious and educational decisions of essentially local concern are properly made by the States and localities rather than the Federal courts.

Supporters of school prayer often differ in principle on whether prayer should be vocal or silent. Those who prefer silent prayer, meditation, or reflection argue that a designated period of silence provides public recognition for the place of prayer or religious observance in the schools

while at the same time assuring complete freedom of conscience to students in their diversity of beliefs and preventing public or private agencies from imposing any authorized form of prayer. Supporters of school prayer who oppose periods of silence argue that silent prayer is not prayer in its traditional form and is therefore a way of avoiding or evading the issue.

Opponents of school prayer in its various form contend that, in fact, the right to voluntary prayer already exists and requires no special action by Congress. They argue that the Supreme Court's school prayer decisions in no way denied or circumscribed the right of students in school to pray privately whenever they wish. They support the school prayer decisions as assuring the neutrality of the public schools in dealing with the religious pluralism of American society and as preventing governmental intrusion in matters affecting religious belief and freedom of conscience. They assert that prayer should be the proper concern of family and home, church and synagogue, and not the public school. They argue that school prayers would necessarily be either sectarian in character and hence objectionable to some, or empty of specific religious content and hence innocuous. Further, they maintain that formal or prescribed school prayers would constitute an establishment of religion, that such prayers are likely to reflect the beliefs of the dominant religious group in any given area, and that the rights of minority religions and of non-believers would be infringed by the coercion, subtle or overt, implicit in such officially sanctioned prayers. They distinguish students in public schools, where they would be a captive audience for prayer, from adults in public life, where prayer is more truly a voluntary act. Finally, they maintain that the effect of restoring school prayer would be divisive, stirring up religious animosities and group tensions and weakening the social consensus.

Among those who generally oppose school prayer, some are inclined to support proposals for a period of silence, in which students who wished to pray or meditate could do so silently. Others, including many mainline religious groups opposed to school prayer, support 'equal access' as a practicable alternative. Though defeated in the House (May 15, 1984), a revised form of "equal access" passed both Senate and House, June 27 and July 25 respectively, and was signed into law by the President on Aug. 11 (P.L. 98-377). Others oppose silent prayer or meditation as an evasion of the Constitutional issue, a way of circumventing the Supreme Court's decisions. They argue that periods of silence would constitute official encouragement for school prayer and, as with proposals for vocal prayer, would result in problems for teachers and administrators as well as for students who might object. On June 4, 1985, the Supreme Court, voting 6-3 invalidated an Alabama statute that permitted silent "meditation or voluntary prayer," arguing that the intent of the law was to restore school prayer. The Senate Judiciary Subcommittee, on June 26, voting 4-1, approved a proposed constitutional amendment, S.J.Res. 2, that would permit silent prayer. If passed by Congress, the proposal must be ratified by 38 States within 7 years. The Court's decision [Wallace v. Jaffree] does not apply to States whose "moment of silence" laws do not expressly endorse or commend prayer. Some expect that such "neutral" laws might be upheld.

In the 99th Congress a number of resolutions have been introduced expressing the sense of Congress in support of "discretionary periods of silence" in the public schools. Other measures would amend the Constitution or the U.S. Code to permit or to restore voluntary school prayer and to preclude Federal jurisdiction over the issue. Still others would amend the Constitution to allow voluntary (vocal) prayer, silent prayer or reflection, Bible reading, and references to God. S.J.Res. 2, permitting silent prayer,

may come before this Congress. It was approved June 29 by the Senate Judiciary Subcommittee following the Supreme Court's decision in [Wallace v. Jaffree].

HEARINGS

U.S. Congress. Senate. Committee on the Judiciary. Proposed constitutional amendment to permit voluntary prayer. Hearings, 97th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1982. 82 p.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. Senate. Committee on the Judiciary. School prayer constitutional amendment; report to accompany S.J.Res. 212. Washington, U.S. Govt. Print. Off., 1984. (98th Congress, 2d session. Senate. Report no. 98-347)

----- Voluntary school prayer amendment; report to accompany S.J.Res. 73. Washington, U.S. Govt. Print. Off., 1984. (98th Congress, 2d session. Senate. Report no. 98-348)

U.S. Library of Congress. Congressional Research Service. Prayer and religion in the public schools: what is, and what is not permitted. Report no, 83-80A, [by] David M. Ackerman. Washington, 1981 (updated 1984). 133 p.

----- Religion and Public Policy: Background and Issues in the 80's. Report no. 84-104, [by] Charles H. Whittier. Washington, 1984. 60 p.

----- Religious activities in the public schools and the First Amendment: judicial decisions and the congressional responses. Report no. 85-17A, [by] David M. Ackerman. Washington, 1981 (updated 1984). 145 p.

ADDITIONAL REFERENCE SOURCES

Church and state: the Supreme Court and the First Amendment, [by] Philip B. Kurland. Chicago, University of Chicago Press. 1975.

Kurland, Philip B. Religion and the law of church and State and the Supreme Court. Midway reprint. Chicago, University of Chicago Press. 1978.

Stokes, Anson Phelps, and Leo Pfeffer. Church and State in the United States. Revised one-volume edition. New York, Harper and Row. 1964.