MARK O. HATFIELD
OREGON

United States Senate
WASHINGTON, D.C. 20510

April 11, 1984

RECEIVED
APR 16 1984
HUMAN RELATIONS COMMS.

Mr. Vincent A. Deguc
Metroplitan Human Relations Commission
1120 S.W. 5th Avenue, #520
Portland, Oregon 97204

Dear Mr. Deguc:

Thank you for your recent correspondence.

There has been a substantial outpouring of interest in a constitutional amendment on school prayer. This interest was generated by debate on the President's prayer initiative, S.J. Res. 73. This resolution needed 67 votes to pass in the Senate, but was defeated 56-44. Though my opposition to the President's prayer amendment was no secret, I am very pleased we had the chance to debate the issue in a forthright manner.

We do not need a constitutional amendment to clear up the confusion over the appropriate role of religious activity in our public schools. The First Amendment guarantees of free speech and freedom of association are fully capable of protecting the free speech rights of students. Just as the Supreme Court has recognized that the political free speech rights of students must be protected, we need to recognize that religious free speech is not to be given second class treatment. Students do not shed their Constitutional rights to free speech at the schoolhouse gate.

However, there is widespread confusion around the country over the issue of access to school facilities for prayer and religious discussion. Most of the debate on the school prayer issue missed the point. By chilling sincere efforts of students to pray or meet during non-classroom hours we do far more damage to our moral fiber than is done by any Supreme Court decision that invalidates a routine, formalistic and government-structured prayer time. Instead of looking to Caesar to instill religious doctrine and prayer, let us focus on the voluntary efforts of young men and women to meet and pray without governmental sponsorship. Even though the President's amendment prohibits direct influence of form or content of religious activities by government, we still would be injecting the government into this sensitive area.

I have been joined by 29 other Senators, spanning the political spectrum, in introducing S. 815. This bi-partisan legislation applies the principles outlined in the Supreme Court decision of Widmar v. Vincent to secondary schools. That case held that a public university may not deny the use of facilities to student

groups who wish to meet and speak on religious subjects, if it makes facilities generally available to meetings on non-religious subjects. Should this legislation be enacted, a secondary school which permits students to meet during non-instructional time during the school day, could not discriminate against student meetings with religious content.

Specifically, the bill would:

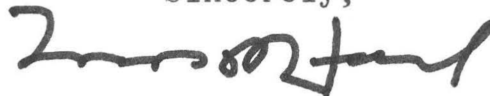
- -- prohibit school or state officials from influencing the form or content of any prayer or other religious activity;
- -- prohibit school or state officials from forcing any student to participate in prayer or other religious activity;
- -- protect the important discretionary role of school officials in administering -- to ensure meetings are voluntary and lawful; and
- -- not open up the campus to outside groups because its focus is on student-initiated meetings consistent with the Widmar decision.

Senator Howard Baker, the Majority Leader of the Senate, has assured me that the Senate definitely will be given an opportunity to consider this legislation. There is growing sentiment in both the House and Senate that this equal access approach makes the most sense in rooting out the ridiculous barriers that forbid voluntary meetings of students seeking to pray or discuss religious matters. I will be working diligently to see that this legislation moves forward in the near future.

Thank you for taking the time to contact me.

Kind regards.

Sincerely,



Mark O. Hatfield
United States Senator

MOH/jap-265
Enclosure

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PROCEEDINGS AND DEBATES OF THE 98th CONGRESS, SECOND SESSION

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Senate

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Mr. HATFIELD. Mr. President, the issue of prayer is not trivial. To hundreds of Oregonians who have called my office, this is an issue of heartfelt importance. But as Senator DANFORTH so eloquently stated on the Senate floor, the religious groups who oppose Senate Joint Resolution 73 also are acting out of deep conviction, and I happen to be one such person.

The central question in this debate as I see it is simply:

How can we adequately protect the right of our people to be free from having an alien religious practice forced upon their children by governmental action, but at the same time allow them to freely exercise their own religion without government hostility. In my view, Senate Joint Resolution 73 fails to measure up to this crucial standard.

Objections to the pending prayer amendment that I wish to comment on:

First, I think if you look at the pending prayer amendment you will find that amendment looks to the State, to the teacher, and to the school board to initiate, orchestrate, structure, and organize prayer or religious activity in our public schools.

Second, the pending prayer amendment fundamentally alters the careful balance in the first amendment between the free exercise clause and the prohibition against the establishment of religion. When our Constitution was established, no other nation provided so carefully to prevent the combination of the power of religion with the power of the national government. According to Professor Malone of the University of Virginia, the preeminent scholar of Jefferson who has authored a six-volume study on the third President, entitled "Jefferson and His Time," the intolerance of religious leaders when they obtain political power was a driving force behind the first amendment. And history has proven Jefferson to be correct. Where government sponsors, initiates, and dominates in matters of religion there is stagnation, monolithic church institutions and little creativity. Where government stays neutral and benevolently accommodates the religious expressions of all, religion flourishes and a vitality is evident in the healthy diversity of religious practices. In my view, there is nothing wrong with the first amendment as it is presently written. Let us abstain from enacting wholesale alterations in its language that could do serious damage to the religious liberties that we all hold so dear.

Third, the pending prayer amendment violates another central premise of the first amendment, and that is that government should be prohibited from favoring certain religions at the expense of others. According to Professor Cord of Northeastern University, who has been sharply critical of the Supreme Court's decisions on the establishment clause, "daily Bible reading and the recitation of the New Testament's Lord's Prayer elevates the Christian religion into a legally preferred status forbidden by the first amendment."

He further notes that:

> A prayer amendment which is so openended as to constitutionally sanction all group prayer in public schools clearly departs from our first amendment heritage. It excludes no prayers. Those that are exclusively Christian, exclusively Catholic, exclusively Jewish, exclusively Atheistic, and so on would be given constitutional protection. In essence, the content of public school prayer would become a political football for local jurisdictions. If this is what returning God to our public schools really entails, I would suspect that many proponents of the prayer amendment would want no part of it.

The primary thrust of these objections to Senate Joint Resolution 73 apply as well to other constitutional amendments that are being floated around as potential compromises. Let me reiterate again. There is nothing wrong with the first amendment in its present form. It has served us well. While we may individually disagree on various Supreme Court decisions from time to time let us pause carefully before we fundamentally alter the balance that already exists. In my view, there is no overwhelming defect that demands a constitutional remedy.

What is really behind the school

prayer controversy, we might legitimately ask.

In the 1962 landmark decision of Engel against Vitale, the U.S. Supreme Court ruled that the recitation of prescribed nondenominational prayer by government officials violated the first amendment's protection against the establishment of religion.

In language that echoed the warnings of Madison, Justice Black noted that the first amendment "rested on the belief that a union of government and religion tends to destroy government and to degrade religion."

In his opinion, Justice Black wrote that:

> The establishment clause thus stands as an expression of principle on the part of the founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate.

Since that decision, the Supreme Court's ruling has been claimed for the deteriorating quality of public education, for the breakdown of the American family, for the decay in moral principles, and abdication of governmental institutions to the norm of secular humanism.

In articulating its support of the President's prayer amendment the editors of Christianity Today wrote:

> By no means do we wish the school to replace the church and the home as the primary source of religious instruction to the young. But no one denies that the American public school plays a decisive role in transmitting culture in our society. It is to the degree a person thinks religion is important that he will be unwilling for this crucial influence upon the young of our nation to be totally divorced from religious influence.
>
> Moreover, we dare not teach our youngsters that religion is a purely private affair that does not affect public life. Religion deals with one's ultimate commitments and, if genuine, affects every area of life. It is important, therefore, to see that the state is not the highest authority. Like every other aspect of human life, the state, too, is subject to a higher divine law of righteousness and justice.
>
> Pluralism in America does not mean or require that our government must root out every vestige of religion from public life.

In his 1964 dissent in Abington against Schempp, Justice Stewart noted that the total absence of religious exercises in public schools places religion at a state created disadvantage. It is viewed not as state neutrality, "but rather as the establishment of a religion of secularism."

Prof. Nathan Glazer views the school prayer drive as a defensive reaction of the conservative heartland that is seeking to keep traditional values in a preferred position in our public schools. These proponents reject the very notion of "value-free education." When strict separationists seek to confine all religious expression to the church and to the home enormous tension is created in our political process and in our schools. As the distinguished Luther Pastor Richard Neuhaus summarized in a 1981 address to the Harvard City Club:

> If our only choice is between the militant fundamentalism of the Moral Majority and the militant secularism of the American Civil Liberties Union, the outlook is not encouraging.

There is an alternative, S. 815. But there is a better alternative. The first amendment to the U.S. Constitution sets limits on the ability of government to promote, establish, and inculcate religious beliefs in public school students—but it sets no limit on student-initiated prayer or religious discussion during noninstructional time periods. Instead of concentrating upon a school prayer amendment, I urge my colleagues to devote their energies to rooting out ridiculous barriers that have been erected to forbid voluntary meetings of students who seek to meet and pray in nondisruptive ways.

A growing number of Federal courts have expanded the prohibitions on the sponsorship by the state of religious activity in public schools to encompass equal access policies adopted by school boards as well as student requests to meet on their own time before or after school hours for prayer, devotional reading or religious discussions. These prohibitions are hostile to the rights of religious expression and, in my view, violate the free speech rights of students.

In the Lubbock School Board case, 23 Senators joined with me in filing a friend of the court brief asking the Supreme Court to grant a hearing and reverse the decision. In that brief, we argued that:

> Neither legislation nor a constitutional amendment is required to permit a school to open its facilities for all appropriate student-initiated and student-managed activities including, if the students wish, religious activities. The Constitution already so provides. The Establishment, Free Exercise and Free Speech clauses of the First Amendment require treatment of such activities in a neutral manner. Consequently, public schools properly may allow students equal access to school facilities for voluntary, extra-curricular, religious speech and assembly.

As the original sponsor of equal access legislation that was introduced on September 17, 1982, I want the Senate to know that I am adamantly opposed to the idea of including equal access language in a constitutional amendment for it undercuts the very heart of my legislation. A student's right to gather together with others for prayer and religious discussion is

inherent in the first amendment right now. It comes under the protections of free speech and the freedom of association when an open forum is established by the school. Including this language in a constitutional amendment will significantly reverse the progress that has been made in pending litigation and puts a stamp of approval behind the logic of Brandon and Lubbock opinions. Instead of ill-conceived constitutional amendments, let us proceed to a simple statute that provides a judicial remedy to aggrieved high school students.

Some 26 Senators have joined me in offering Senate bill 815 which would make clear that secondary school students have the right to meet voluntarily during noninstructional time periods for prayer or devotional reading. S. 815 has united a number of Senators who differ on constitutional amendments that permit school sponsored prayer or statutory approaches which deny jurisdiction to Federal courts to decide school prayer cases. But the sponsors of S. 815 agree that the constitution does not allow our public schools to be hostile to religion.

S. 815 also has the support of religious groups that have opposed school prayer amendments such as the National Council of Churches, the Joint Baptist Committee and Americans United for Separation of Church and State. Moreover, companion legislation introduced in the House by Congressman BONKER will be considered by the House Education and Labor Committee in the very near future. In short, S. 815 can pass this Congress and provide a reasonable solution to the school prayer controversy.

The focus of S. 815 is on student-initiated religious activities instead of the government inculcation of religious belief. Given the strong bipartisan support that this bill has received in the Senate, I urge the Senate to approve S. 815.

Mr President, I send to the desk a copy of S. 815, with modifications, and ask that it be printed in the RECORD at this point.

There being no objection, the bill, as modified, was ordered to be printed in the RECORD, as follows:

S. 815

That this Act may be cited as the "Religious Speech Protection Act of 1984".

SEC. 2. (a) Any individual aggrieved or adversely affected by a violation, or by the enforcement of this Act may bring a civil action in the appropriate district court of the United States for such equitable or declaratory relief as may be appropriate.

(b) The district courts of the United States shall have jurisdiction of actions brought under this Act without regard to the amount in controversy.

(c) Each district court of the United States shall provide such equitable relief, including injunctive or declaratory relief, as may be appropriate to carry out the provisions of this Act.

(d) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine such case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge), who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(e) In any action commenced pursuant to this Act, the Court, in its discretion, may award to the prevailing party a reasonable attorney's fee as part of the costs.

SEC. 3. It shall be unlawful for a public secondary school receiving Federal financial assistance, which generally allows non-school sponsored groups of students to meet, to discriminate on the basis of the religious content of the speech at such meetings if—

(1) the meeting is voluntary and student initiated;

(2) there is no sponsorship of the meeting by the school, the government or its agents, or employees; and

(3) no activity which is in and of itself unlawful is permitted.

SEC. 4. Nothing in this Act shall be construed to permit the United States or any State or political subdivision thereof to (1) influence the form or content of any prayer or other religious activity, (2) require any person to participate in prayer or other religious activity, or (3) extend public funds beyond the cost of providing the meeting space for student initiated meetings.

SEC. 5. As used in this Act, the term "secondary school" means a public school which provides secondary education, as determined by State law, except that such term does not include any education provided beyond grade 12.

SEC. 6. The provisions of this Act shall supersede all other provisions of Federal law that are inconsistent with the provisions of this Act.

Mr. HATFIELD. Mr. President, the thing that concerns me at this point in time is that—not that I own a bill that I introduce; I recognize it becomes the property of the Senate—I have not had any consultation with those who have taken the initiative to add this to the constitutional amendment.

Now, notwithstanding that—and I cannot hang any major objection to that action being taken on the basis that I had not been consulted—let me say that I refrained from raising this bill or the content of this bill at this time because I felt that the Senate ought to have an opportunity to deal with the issue of a constitutional amendment procedure. It was also felt that it might undermine the possibility of that constitutional amendment

being passed by raising this other issue on equal access.

I accommodated that request. I refrained from offering that. Then I awaken to the fact that that has been offered and combined, fused, linked to the constitutional amendment.

Now it is more than, again, let me emphasize, whether or not this was done with or without my consent or whether or not I was acting in good faith to refrain from raising this on my own volition. But I think it raises confusion on what has been clarified as it relates to public universities and colleges. Let me explain.

We have had a case that went to the Supreme Court in which students who had asked to use public university facilities for religious purposes had been denied the right to use such facilities. That case was taken to the U.S. Supreme Court, and the U.S. Supreme Court ruled in the Widmar case that once a public university or a college had established the right of student to voluntarily organize and use public facilities for student associations of camera clubs, drama clubs, music clubs, or whatever else, that the same university that established the right of forum could not dictate the content of the forum and, therefore, students would be denied their constitutional right to use those same facilities for religious purposes that they could use for every other purpose. Now the Court has ruled on that.

What I attempted to do in S. 815 was merely to apply that same constitutional right that has been extended to university students in public institutions to students at the secondary level.

Now, again, by raising this matter and linking it to a constitutional amendment can create confusion that perhaps the Supreme Court ruling is not sufficient and now we have to go the constitutional route to guarantee those same students in public institutions, even though we are now addressing secondary institutions, the rights that have already been established by the Supreme Court for university students.

And we have a lot of that activity going on now.

We have Canterbury clubs on university campuses, which is Episcopalian; we have Westminister clubs, which is Presbyterian; we have Wesleyan clubs, which is Methodist; we have the Newman Club, which is Roman Catholic; we have the Hillel Society, which is Jewish; and we have the Campus Crusade for Christ, which is a parachurch organization. We have many such groups today that are legitimately and without question operating functions and activities on college campuses.

Now, all of a sudden along comes this constitutional amendment that wants to set up a prayer program for the secondary-elementary school students and S. 815, which deals with the Widmar case, is now being added to the constitutional amendment. It could do nothing but create question and raise confusion.

So those who think they are promoting religious activity, those who think they are promoting the possibility of spiritual renewal by some kind of civil religion in our public schools, ought to realize that they are also raising some serious questions and confusion among those activities that are now in place and functioning without question in our public universities.

So I oppose the constitutional amendments—all of them—that relate to school prayer, whether it is silent meditation or anything else. It is all part of our civil religion, not spiritual, Biblical faith.

And I do not think it is going to get anybody into heaven or any place else in the hereafter. And merely because they get goosebumps when they hear Kate Smith sing "God Bless America" or when they pledge allegiance to one nation under God or somehow they go through a ritualistic prayer in schools, they confuse that as being the spiritual sinew of America, the spiritual strength of America. I think that is pretty superficial and not at all in concert with what I feel is Biblical faith that is a foundation of my own religion. And I am not asking the schools to do something for my children that I am not willing to do at home.

I had one lady that spoke to me on my last visit to Oregon. She was very irate because she found out that I did not support the school prayer amendment. She said, "I believe my child should have the right to start every day with prayer." I said, "I do, too, and you ought to start him right at home before he leaves for school."

That is where you start the student day with prayer, in the home, and if the child wants to start his day in school with a classroom prayer, that is still his right. The Supreme Court did not rule voluntary prayer out of the school. It only spoke to the question of prescribed prayer, and the Supreme Court was absolutely right. On the idea that somehow in order to pray we have to go through some form of formality, prayer is of the heart and not of the mouth to begin with.

You pray out of your heart. That is what every student can do every day in the schools in America. There is no way to enforce any other system.

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VINCENT A. DEGUC, CHAIRPERSON
METROPOLITAN HUMAN RELATIONS COMMISSION
1120 SOUTHWEST 5 AVE RM 520
PORTLAND OR 97204

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

5037965136 MGM TDRN PORTLAND OR 161 03-20 0516P EST
ZIP
SENATOR MARK O HATFIELD
UNITED STATES SENATE 322 HART BUILDING
WASHINGTON DC 20510

WE, AT THE METROPOLITAN HUMAN RELATIONS COMMISSION, ARE CONCERNED ABOUT THE PRESENT DEBATE IN THE UNITED STATES SENP jE AND THE HOUSE OF REPRESENTATIVES RELATING TO SCHOOL PRAYER.

OF IMPORTANCE TO US IS THE IMPACT THAT PASSAGE OF THIS AMENDMENT MAY HAVE ON THE CIVIL RIGHTS OF CHILDREN, IN PARTICULAR CHILDREN WHOSE CHARACTER IS NOT CHARACTERIZED BY A CHRISTIAN TRADITION. IN ADDITION, THE PASSAGE OF THIS AMENDMENT WOULD PLACE A TREMENDOUS BURDEN ON THE SCHOOLS IN THEIR ATTEMPT TO COMPLY WITH A STANDARDIZED PRAYER IN A CULTURALLY PLURALISTIC SETTING.

ULTIMATELY, WE FEEL THAT RELIGION OR THE LACK OF RELIGION IS A PERSONAL MATTER BETWEEN PARENTS AND CHILDREN. WE HOPE THAT YOU GIVE CAREFUL CONSIDERATION TO THIS ISSUE AND VOTE "NAY" FOR ANY LEGISLATION WHICH TRIES TO LEGISLATE SCHOOL PRAYER.

WITH WARM REGARDS,

VINCENT A. DEGUC, CHAIRPERSON
METROPOLITAN HUMAN RELATIONS COMMISSION
1120 SOUTHWEST 5 AVE RM 520
PORTLAND OR 97204

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TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

MARK O. HATFIELD
OREGON

United States Senate
WASHINGTON, D.C. 20510

May 25, 1984

RECEIVED
MAY 30 1984
HUMAN RELATIONS COMMS.

Mr. Vincent A. Duguc
Ms. Linda Roberts
1120 S.W. 5th Avenue
#520
Portland, Oregon 97204

Dear Friends:

Thank you for your recent letter concerning your support of S. 2568.

The Supreme Court decision in the Grove City case contained two separate, controversial judicial findings on the Congressional intent underlying Title IX, a statute prohibiting discrimination on the basis of sex in federally-assisted educational programs or activities. The Court held 9-0 that financial aid to students constitutes aid to those colleges. The Court ruled by a 6-2 majority that the provisions of Title IX apply only to the specific program receiving federal dollars.

The holding by the Court pertaining to the "program specific" application of Title IX seriously restricts the federal government's ability to enforce Title IX regulations. Congress has stepped forward with proposed legislation to reverse this portion of the Supreme Court decision and to mandate institution-wide coverage of Title IX. The bill, S. 2568, addresses several antidiscrimination statutes besides Title IX, including section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964. S. 2568 provides that any "recipient" of federal assistance must comply with all provisions of the aforementioned statutes or risk termination of such federal assistance. [I am a cosponsor of S. 2568 and I wholeheartedly support this effort.]

Thank you again for taking the time to contact me. I hope you will continue to share your views with me.

Kind regards.

Sincerely,

Mark O. Hatfield
United States Senator

MOH/jtw
8962-8964

file copy

TO OREGON CONGRESSIONAL DELEGATION

May 16, 1984

The Metropolitan Human Relations Commission encourages your support for HR 5940 and S 2568, with no amendments.

Because of the ruling in the Grove City College case, many schools throughout the country, whose only form of federal government financial assistance is student aid, will be free to discriminate in all of their course offerings, extracurricular activities and student programs.

Unless Congress acts, the uncertainty created by Grove City will mean that existing discrimination will go unchecked. We encourage you to vote for legislation which makes it clear that discrimination applies broadly to recipients of federal aid, not just to programs and activities.

Sincerely,

Vincent A. Deguc
Chairperson

Linda Roberts
Executive Director

VAD:LR:gp