NO, PRAY; NOT NOW

School prayer amendments strike fear into the hearts of liberals, but they ought to paralyze conservatives. Think about it. What would a prayer amendment accomplish? Do you answer that religion and morality would be returned to the schools? I think not. Even if the amendment holds up under scrutiny—and it's possible that it can—the results might be quite the opposite than proponents expect. That fact should give pause to House Republicans who now contemplate investing extraordinary capital in this enterprise, for they stand to lose principal and interest in this gamble.

I have argued for a long time now (and usually to sincere Christians earnest to reclaim that minimum of decent respect which they rightly think their government owes to their faith) that the transformation of the First Amendment to the Constitution in the last thirty five years has completely altered the calculus on questions such as school prayer. Where originally the freedom of religion was conceived and practiced as a right the people held beyond the grasp of government, gradual change by interpretation has turned it into a system of permissions or licenses granted to the people from the government. It has become government's task to decide when and where religion is aptly practiced or expressed, meaning that the citizen's discretion has been sharply truncated. Thus the relation between the citizen's religious faith and the government's power has been inverted, that power now having a primary role in determining the reach of that faith.

I have also pointed out that this regime specifically and most directly harms Christianity more than any other faith, for Christianity is by definition a proselytizing faith. To be a Christian is to take seriously the obligation to give witness of one's faith. The liberty to be a witness is reduced when the individual must first receive permission from government. That explains the continuing and deep resentment evangelical Christians have felt concerning the government's growing power to proscribe muscular expressions of Christianity. It also contains the secret of the paradox that reveals why it would be a mistake now to seek to vindicate the act of Christian witness (and that *is and must be* the goal of a school prayer amendment).

Any conceivable prayer amendment must far more directly, rather than less, involve the government in "licensing" religious expression—saying when and where it is appropriate to engage in legitimate religious conduct. Among other things, that means that the citizen, in exchange for the specific privilege sought, must formally surrender the power of discretion previously exercised. That power of discretion always included (though more by implication than actual practice in this century) the citizen's disposition to challenge any assertion of government authority in the realm of religious conduct. The string of court cases which produced the new regime were not expressions of resistance to government involvement so much as they were appeals to government to limit the citizen's discretion. Thus, the attack on school prayer, while portrayed as defending religion against state-imposed prayer, actually aimed at prayer itself—thereby attracting the ire of many religious people.

Now, in this context the specific response is perfectly clear—namely, defiance. On any ordinary calculation, if the number of citizens disposed to insist on prayer in the schools constitutes a majority of citizens (a necessary predicate for a successful prayer amendment), and if those same citizens, instead of praying to government for relief, were rather to pray in defiance of law (as Christianity did at its origins in Rome), nothing could be more obvious than that the nation's laws would be forced to accommodate such a demonstration of faith. The right to pray would have been defended, prayer would have been restored, and the people or culture's power to prevail over bureaucracy in determining the direction of education would be secure. At the same time, prayer would not be mandated by the state, whether in the form of state law or a school principal. Accordingly, a constitutional regime which has inch by inch leaned in the direction of expanding government's discretion would have been ever so slightly inclined back in the direction of the citizen's discretion.

This solution is preferable to a school prayer amendment for two reasons. The first reason has been explained as the need to avoid expanding the government's power as licenser of basic "rights." The still more compelling reason has to do with the culture. The health of the United States is closely tied with the matter of how tractable its citizens are—less healthy when more tractable and more healthy when less tractable. A prayer amendment solution to this problem serves only to reinforce recent tendencies toward submission to unwarranted assertions of government authority. By contrast, a "revolution" against misconstructions of our Constitution would strengthen habitudes and dispositions that would stand the country in good stead in years to come—years doubtless to be characterized by more dramatic need for a spirit of resistance in the population.*

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* Indeed, to make this as political as the hour calls for, one should note the rather different direction in which the Congress ought to be heading on "social" questions. I refer to the Freedom of Choice Act (FOCA). To neglect the harm this act has done while roiling the school prayer waters compounds the error. Do not think, though, that I counsel repeal of FOCA. Far rather, I advise its immediate extension to cover all legitimate interstate commerce. Thus, in a stroke, the new majority can restore the power of moral and political persuasion to the movement to defend innocent life.

This proposal is not intuitive, but it is perfectly clear, if one will but think it through. As political forces lie there is no prospect of repealing FOCA. Thus, a fight to do so would serve only lay down markers for subsequent debates which may or may not turn out well. Meanwhile, those who need immediate help will remain hard pressed. An alternative is needed. To the rescue come the very parties who will most vehemently oppose the new majority. Only a mole would fail to perceive that, as the current mandate takes shape, characteristic forms of opposition will emerge—including dramatic protests and demonstrations (and all the more so since the control of the logistical centers for mounting such events remains decisively in the hands of the opposition). I predict that not ten months beyond January 4, 1995 will elapse before the first signs of this response will be painfully evident. FOCA? If the law is generalized, consistent with good legislative practice, then every one of these pending protests will be subject to the draconian requirements of the FOCA. Suddenly, the interest of the opposition will join with the interests of the defenders of innocent life in a drive to mitigate the excesses of the law. Moreover, the general application of the law—even if it does not lead to repeal—will clearly re-establish an equilibrium in this struggle, so that at least the anti-abortion demonstrators will not be placed at a pronounced disadvantage.

As one of the earliest and most ardent defenders of the anti-abortion protesters right to protest, I do not now suggest extending FOCA as an unfriendly act. I can even imagine that there are members of Congress, ostensibly anti-abortion, for whom a positive vote on FOCA originally was an act of conscience. Such an individual could certainly introduce a resolution now, in good conscience, to do what should have

Can a Republican majority in Congress exercise any leadership on this question other than by means of acts of legislation? One may learn from the inspirations of James Madison and Thomas Jefferson in 1798. They turned to resolutions passed through state legislatures to reinforce popular resistance to unwarranted assertions of government authority. These resolutions did not and could not legally repeal the federal legislation to which Madison and Jefferson objected, but they did serve to sustain the resolve of ordinary citizens and to foster a political atmosphere in which the objectionable aspects of the existing laws had to be abandoned. Appropriately phrased resolutions summoning the citizens to a muscular expression of their rights, connected with pledges (or a "contract") to join in legal defenses of those citizens wherever their efforts would hale them into court, and a determination to file "friend of the court" briefs in defense of more reasonable interpretations of the Constitution before the Supreme Court would offer a method that is almost sure to succeed in proportion as the citizens really do wish to take back their government. It will be veto proof, and it will be free from the uncertainties of the Article V amending process. Furthermore, this approach can spawn initiatives which would enjoy a high likelihood of success within a two-year period, and it allows the new leadership to address itself as easily to Baptist ministers in inner-city Detroit as to evangelicals in suburban Dallas.

What is the downside? If Congress encourages parents to instruct their children to defy authority and pray in school, will that undermine the sense of law-abidingness we seek to encourage in children? I think not. It would be a mistake to see deliberate prayer in resistance to unwarranted proscriptions of prayer as a habit of law breaking. It is far rather a habit of submission to higher, legitimate authority, without which no habit of law-abidingness is worth anything more than a Nazi soldier's orders. The act of prayer itself is a recognition of the need for self-government, which lesson our students do not so easily learn in public schools these days. As submission to higher authority it conveys the proper lesson, that neither we nor our young people are the authors of our morality. By contrast, it instructs them quite directly of the relationship which ought to subsist between free, self-governing citizens and their government.

I believe, therefore, that it would be a serious mistake for the new Republican majority to propose a school prayer amendment to the Constitution. Since to do so would undermine lessons of self-government and a clear understanding of the role of government, such a move would make matters worse. Furthermore, the opposition that would be spawned by that move would necessarily deflect attention from the real issues on which the majority hopes to concentrate. Hence, it will have been a lost opportunity. Finally, there is a better way, calling for leadership and answering with prayers, not amendments. If you ask my advice on this question, it is short: No, pray; not now!

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been done originally. Nor could there much will to resist this move, without the opposition having to embrace explicitly and openly a party position as the law of the land. such a move would advance the cause far nearer the hoped for goal of recovery in this society than a school prayer amendment.

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