

Liberty Counsel

State Laws Regarding Moment of Silence in Public Schools

OVERVIEW:

As of summer 2002, only thirteen states had a valid school moment of silence law.

1. **Required versus allowed.** Though some statutes require moments of silence and others only allow for them, that seems irrelevant to the constitutionality of moment of silence statutes. The Virginia state statute was recently upheld even though it required a moment of silence. The 4th Circuit found no material distinction between a statute that required it and a statute that allowed it, explaining that “both are mandatory minutes of silence for the students implicated, but neither is coercive in that the affected students are left to choose how they will use the minute of silence.” *Brown v. Gilmore*, 258 F.3d at 281 (4th Cir. 2001).

2. **Inclusion of the word “prayer” in statutory language.** In *Brown*, the 4th Circuit stated that the inclusion of the word “pray” would not inherently make a moment-of-silence statute unconstitutional. The Court actually stated that “to require a ban on the use of religiously related terms would manifest a hostility to religion that is plainly inconsistent with the religious liberties secured by the Constitution.” 258 F.3d at 282. Additionally, the New Jersey statute that was declared unconstitutional did not even include the word prayer.

3. **Secular purpose.** Both the New Jersey statute and a section of the Alabama state statute, the only moment-of-silence statute reviewed by the Supreme Court, were struck down under a *Lemon* analysis because the court failed to find any legitimate secular purpose. However, multiple Supreme Court justices stated that they would uphold a similar statute if a valid secular purpose could be found. *Wallace v. Jaffree*, 472 U.S. 38 (1985)(reviewing the Alabama statute). Secular purposes could include maintaining order and discipline, helping students to focus, or creating time for peace and reflection, especially in the light of increased school violence. Though any legislative purpose that is not a sham should pass – especially since deference is to be given to the legislature on review – it seems important that a legitimate secular purpose be very clear at the time of the drafting of the legislation.

BREAKDOWN BY STATES:

1. Alabama

Ala. Code § 16-1-20. Period of silence for meditation at beginning of first class in public schools.

At the commencement of the first class each day in the first through the sixth grades in all public schools, the teacher in charge of the room in which each such class is held shall announce that a period of silence, not to exceed one minute in duration, shall be observed for meditation, and during any such period silence shall be maintained and no activities engaged in.

** *Wallace v. Jaffree*, 472 U.S. 38 (1985), Justice Stevens writing,

(1) upheld Ala. Code §16-1-20 as stated above

(2) declared unconstitutional Ala. Code §16-1-20.1 (enacted 1981), which provided:

“At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed for meditation or voluntary prayer, and during any such period no other activities shall be engaged in.”

The court found that the statute failed the first prong of the *Lemon* test (“a secular purpose”) based on a sponsoring legislator’s comment that it was passed as an attempt to return prayer to public schools. Chief Justice Burger, dissenting, found a secular purpose of clearing up “a widespread misunderstanding that a schoolchild is legally *prohibited* from engaging in silent, individual prayer once he steps inside a public school building.”

(3) declared unconstitutional Code §16-1-20.2 (enacted 1982), which provided:

“From henceforth, any teacher or professor in any public educational institution within the state of Alabama, recognizing that the Lord God is one, at the beginning of any home room or any class, may pray, may lead willing students in prayer, or may lead the willing students in the following prayer to God: “Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools in the name of our Lord. Amen.”

Since the decision:

- Ala. Code §16-1-20.1 was repealed by Act 98-381, p. 715 §2, effective April 27, 1998.
- Ala. Code §16-1-20.3 and .4 were enacted, effective August 25, 1993, clarifying the right to “Student-initiated voluntary prayer” and providing for a “Period of quiet reflection” at school events, respectively.

2. Alaska - none

3. Arizona

Ariz. Rev. Stat. § 15-342. Discretionary powers

The governing board may: . . . 21. Require a period of silence to be observed at the commencement of the first class of the day in the schools. If a governing board chooses to require a period of silence to be observed, the teacher in charge of the room in which the first class is held shall announce that a period of silence not to exceed one minute in duration will be observed for meditation, and during that time no activities shall take place and silence shall be maintained.

4. Arkansas -none

5. California - none

6. Colorado - none

7. Connecticut - none

8. Delaware

Del. Code Ann. tit. 14, § 4101A Use of schools for First Amendment purposes.

(b) During the initial period of study on each school day all students in the public schools in Delaware may be granted a brief period of silence, not to exceed 2 minutes in duration, to be used according to the dictates of the individual conscience of each student. During that period of silence no other activities shall take place.

9. **Washington, D.C.** - none

10. **Florida** - none

11. **Georgia** - none

12. **Hawaii** - none

13. **Idaho** - none

14. **Illinois** - none

15. **Indiana** - none

16. **Iowa** - none

17. **Kansas** - none

18. **Kentucky**

Ky. Rev. Stat. Ann. §158.175 Recitation of Lord's Prayer and Pledge of Allegiance; Instruction in Proper Respect for and Display of the Flag; Observation of Moment of Silence or Reflection

(1) As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, the board of education of a local school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, including the freedom of religion symbolized by the recitation of the Lord's prayer.

.....

(5) At the commencement of the first class of each day in all public schools, the teacher in charge of the room may announce that a moment of silence or reflection not to exceed one (1) minute in duration shall be observed.

19. **Louisiana** - none

20. **Maine** - none

21. **Maryland** - none

22. Massachusetts

Mass. Gen. Laws Ann. ch. 71 § 1A. Period of silence

At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for personal thoughts, and during any such period, silence shall be maintained and no activities engaged in.

** *Gaines v. Anderson*, 421 F. Supp 337 (D.Mass. 1976). This suit was brought following the 1973 insertion of the words "or prayer" into the statute, causing the statute to read as follows:

At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for *meditation or prayer*, and during any such period silence shall be maintained and no activities engaged in. [emphasis added]

However, the Court found that the moment of silence provision did not violate the First Amendment.

** *Kent v. Commissioner of Education*, 402 N.E.2d 1340 (Mass. 1980). The statute was amended again in 1979 to read as follows:

"At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of prayer may be offered by a student volunteer, and during any such period an excusal provision will be allowed for those students who do not wish to participate."

The Court found that the prayer provision violated the First Amendment and struck down the statute. In May of 1980, the legislature returned the provision to its original reading.

It was amended to its current reading in 1985, substituting "personal thoughts" for "meditation or prayer."

23. Michigan - none

24. Minnesota

Minn. Stat. § 121A.10. Moment of silence

A moment of silence may be observed.

25. Mississippi - none

26. Missouri - none

27. Montana - none

28. Nebraska - none

29. Nevada - none

30. New Hampshire - none

31. New Jersey

N.J. Rev. Stat. Ann. § 18A:36-4. Period of silence (*HELD UNCONSTITUTIONAL*)

Principals and teachers in each public elementary and secondary school of each school district in this State shall permit students to observe a 1 minute period of silence to be used solely at the discretion of the individual student, before the opening exercises of each school day for quiet and private contemplation or introspection.

** *May v. Cooperman*, 572 F.Supp. 1561 (D.C.N.J. 1983) and 578 F.Supp. 1308 (D.C.N.J. 1984)(response to motion for reconsideration of denial of attorney fees). The District Court held the above moment of silence provision to be unconstitutional..

** The N.J. legislature appealed to the 3rd Circuit, which affirmed that the moment of silence provision was unconstitutional because it lacked a secular purpose and dismissed the appeal from the award of attorney fees. *See May v. Cooperman*, 780 F.2d 240 (3rd Cir., 1985).

** The case was then appealed to the Supreme Court as *Karcher v. May* by the New Jersey Senate and Assembly who had been allowed to intervene in the proceedings. The opposing parents moved to dismiss the appeal for lack of jurisdiction since the original legislators had withdrawn from the appeal.

- A decision on jurisdiction was postponed for a hearing on the merits. *See* 479 U.S. 1062
- The Supreme Court (Justice O'Connor writing) dismissed the appeal because the intervening officers of the legislature had gone out of office by the time of the appeal. *See* 484 U.S. 72 (1987).
- However, under Federal Rule of Appellate Procedure, since the authority of intervening legislators to pursue an appeal passed to their successors in office, the controversy did not become moot due to "circumstances unattributable to any party." Thus since no valid member of the New Jersey legislature (the losing side) decided to pursue the appeal, the Circuit court decision was not vacated.

• **New Mexico - none**

• **New York - none**

• **North Carolina**

N.C. Gen. Stat. § 115C-47. Powers and duties generally

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

.....
(29) To Authorize the Observance of a Moment of Silence.--To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and non-school time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may

engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

- **North Dakota**

N.D. Cent. Code §15.1-19-03.1 Recitation of prayer -- Period of silence -- Pledge of allegiance.

1. A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the school day to the same extent a student may voluntarily speak or participate in secular speech.
2. A school board, school administrator, or teacher may not impose any restriction on the time, place, manner, or location of any student-initiated religious speech or prayer which exceeds the restriction imposed on students' secular speech.
3. A school board may, by resolution, allow a classroom teacher to impose up to one minute of silence for meditation, reflection, or prayer at the beginning of each school day.

- **Ohio**

Ohio Rev. Code Ann. §3313.601 Prohibition Against Barring Programs or Meditation

<Note: See also following version of this section, eff. 8-1-02>

No board of education shall prohibit a classroom teacher from providing in his classroom reasonable periods of time for programs or meditation upon a moral, philosophical, or patriotic theme. No pupil shall be required to participate in such programs or meditations if they are contrary to the religious convictions of the pupil or his parents or guardians.

Ohio Rev. Code Ann. §3313.601 Moment of Silence; Prohibitions (LATER EFFECTIVE DATE)

<Note: See also preceding version of this section, in effect until 8-1- 02>

The board of education of each school district may provide for a moment of silence each school day for prayer, reflection, or meditation upon a moral, philosophical, or patriotic theme. No board of education, school, or employee of the school district shall require a pupil to participate in a moment of silence provided for pursuant to this section. No board of education shall prohibit a classroom teacher from providing in the teacher's classroom reasonable periods of time for activities of a moral, philosophical, or patriotic theme. No pupil shall be required to participate in such activities if they are contrary to the religious convictions of the pupil or the pupil's parents or guardians.

No board of education of a school district shall adopt any policy or rule respecting or promoting an establishment of religion or prohibiting any pupil from the free, individual, and voluntary exercise or expression of the pupil's religious beliefs in any primary or secondary school. The board of education may limit the exercise or expression of the pupil's religious beliefs as described in this section to lunch periods or other non-instructional time periods when pupils are free to associate.

- **Oklahoma**

Okla. Stat. tit. 70, §24-152 allows for a moment of silence in schools in honor of veterans on Veterans Day

- **Oregon** - none

- **Pennsylvania** - none

- **Rhode Island**

R.I. Code R. 16-12-3.1 Period of silent meditation.

At the opening of every school day in all grades in all public schools the teacher in charge of the room in which each class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for meditation, and during this period silence shall be maintained and no activities engaged in.

- **South Carolina** - none

S.C. Code Ann. § 59-1-443. Schools shall provide minute of mandatory silence at beginning of each school day.

All schools shall provide for a minute of mandatory silence at the beginning of each school day.

- **South Dakota** - none

- **Tennessee**

Tenn. Code Ann. § 49-6-1004. Moment of silence; prayer

(a) In order for all students and teachers to prepare themselves for the activities of the day, a period of silence of approximately one (1) minute in duration shall be maintained in each grade in public schools at the beginning of each school day. At the opening of the first class each day, it is the responsibility of each teacher in charge of each class to call the students to order and announce that a moment of silence is to be observed. The teacher shall not indicate or suggest to the students any action to be taken by them during this time, but shall maintain silence for the full time. At the end of this time, the teacher shall indicate resumption of the class in an appropriate fashion, and may at that time make school announcements or conduct any other class business before commencing instruction.

(b) It is lawful for any teacher in any of the schools of the state which are supported, in whole or in part, by the public funds of the state, to permit the voluntary participation by students or others in prayer. Nothing contained in this section shall authorize any teacher or other school authority to prescribe the form or content of any prayer.

(c) Notwithstanding the provisions of subsections (a) and (b), nonsectarian and nonproselytizing voluntary benedictions, invocations or prayers, which are initiated and given by a student volunteer or student volunteers may be permitted on public school property during school-related noncompulsory student assemblies, school-related student sporting events, and school-related commencement ceremonies. Such permission shall not be construed to indicate any support, approval or sanction by the state or any governmental personnel or official of the contents of any such benedictions, invocations or prayers or to be the promotion or establishment of any religion, religious belief or sect.

** *Beck v. McElrath*, 548 F.Supp. 1161 (D.C.T.N. 1982). The District Court held unconstitutional the moment of silence provision because it lacked a secular purpose. The provision in effect at the time was cited at Tenn. Code Ann. § 49-192 and read as follows:

At the commencement of the first class of each day in all grades in all public schools, the teacher in charge of the room in which such class is held shall announce that a period of silence not to exceed one minute of duration shall be observed for meditation or prayer or personal beliefs and during any such period, silence shall be maintained.

However, the decision was vacated and the appeal dismissed. *See Beck v. Alexander*, 718 F.2d 1098 (6th Cir. 1983)(unpublished decision).

- **Texas** - none

- **Utah** - none

- **Virginia**

Va. Code Ann. § 22.1-203. Daily observance of one minute of silence

In order that the right of every pupil to the free exercise of religion be guaranteed within the schools and that the freedom of each individual pupil be subject to the least possible pressure from the Commonwealth either to engage in, or to refrain from, religious observation on school grounds, the school board of each school division shall establish the daily observance of one minute of silence in each classroom of the division. During such one-minute period of silence, the teacher responsible for each classroom shall take care that all pupils remain seated and silent and make no distracting display to the end that each pupil may, in the exercise of his or her individual choice, meditate, pray, or engage in any other silent activity which does not interfere with, distract, or impede other pupils in the like exercise of individual choice. The Office of the Attorney General shall intervene and shall provide legal defense of this law.

** *Brown v. Gilmore*, 258 F.3d 265 (4th Cir. 2001). The court in a 2-1 decision upheld the moment of silence law as constitutional under a *Lemon* analysis. They found that the statute had been enacted with the secular legislative purpose of providing a moment of peace and reflection necessary in light of the increase in school violence, and found that it had been implemented according to specific state “Guidelines Concerning Religious Activities in the Public Schools” in a way that had no unconstitutional effects.

- **Washington** - none

- **West Virginia** - none

- **Wisconsin** - none

- **Wyoming** - none