



## School Prayer/Pledge Of Allegiance

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### Background

Prayer and the pledge of allegiance in public schools remain controversial legal issues. Since the mid-twentieth century, the federal courts have placed limits upon state power to require or even permit these popular cultural practices. Two landmark Supreme Court decisions in the 1960s banned prayer in public school, and subsequent decisions have mostly strengthened the ban. By comparison, the courts have held since the 1940s that the pledge of allegiance is permissible, provided that it is voluntary. Massive public dissatisfaction with these constraints is ongoing.

Prayer was a common practice in colonial American schools, which were often merely offshoots of a local Protestant church. Along with Bible study, this tradition continued after U. S. independence and flourished well into the nineteenth century. But historical forces changed education. As [IMMIGRATION](#) multiplied the ethnic and religious identities of Americans, modernization efforts led by education reformers like Horace Mann gradually minimized religious influences in schools. Although this secular reform swept cities, where diverse populations often disagreed on what religious practice to follow in schools, much of the United States retained school prayer.

As the twentieth century brought legal conflicts, the stage was set for even more far-reaching changes. From 1910 onward, lawsuits challenged mandatory Bible reading in public schools on the ground that students should not be forced to practice a faith other than their own. By the mid-century, social and religious tensions had pushed [LITIGATION](#) through the federal courts. Subsequently, the Supreme Court ruled repeatedly that school prayer, Bible reading, and related religious practices are violations of the First Amendment. The decisions stand as critical modern mileposts in the contest between federalism and states' rights:

- The Supreme Court first ruled against public school prayer in the 1962 case of *Engle v. Vitale*. The decision struck down a New York State law that required public schools to begin the school day either with Bible reading or recitation of a specially-written, nondenominational prayer.
- One year later, in *Engle v. Vitale* (1963), the Supreme Court struck down voluntary Bible readings and recitation of the Lord's Prayer in public schools.
- In 1980, in *Stone v. Graham*, the Supreme Court ruled against a Kentucky law that required the posting of the Ten Commandments in all public school classrooms.
- In 1981, the Supreme Court ruled in *Widmar v. Vincent* that a state university could not prohibit a religious group from using facilities that were made open for use by organizations of all other kinds. Congress responded three years later with the Equal Access Act, guaranteeing religious student groups the same rights of access to school facilities as other student groups.

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- In the 1980s and 1990s, some states enacted so-called "moment of silence" or "minute of silence" laws with the intent of allowing students to conduct private prayer or spiritual reflection in the classroom. Although the Supreme Court found an early Alabama law unconstitutional in *Wallace v. Jaffrey* (1985), subsequent laws have generally survived legal challenges.
- In 1992, in *Lee v. Weisman*, the Supreme Court ruled that school officials violated the First Amendment by inviting clergy to give an invocation and a benediction at a public high school graduation.
- In *Santa Fe Independent School District v. Doe* (2000), the Supreme Court ruled against a Texas school district policy of facilitating prayers over the public address system at football games and holding popular elections to choose the student selected to deliver the prayer.

The Pledge of Allegiance is one of the nation's most honored secular symbols, viewed by many in the same light as the National Anthem. Written in 1892 by the socialist Francis Bellamy, the Pledge of Allegiance first appeared in a national family magazine, *Youths' Companion*, and later was modified by Congress and President Dwight D. Eisenhower in 1954 to include a reference to God. Many public schools featured the pledge as part of the school day throughout the mid-twentieth century.

Legal controversy in public schools grew out of a dispute over religious freedom. In the 1930s, West Virginia mandated compulsory saluting of the flag and recitation of the pledge. After members of Jehovah's Witnesses objected on religious grounds, students were expelled from school. The Supreme Court first upheld the state law but reversed itself three years later in *West Virginia State Board of Education v. Barnette* (1943). The court held that schools may not coerce or force students into reciting the pledge, observing the existence of an individual right of conscience to sit silently while others recited. Most schools responded by making the pledge voluntary.

Much less than the prayer controversy, contemporary legal challenges involving the pledge have been sporadic. Yet they are still passionate. High-profile cases in the late 1990s involved lawsuits against schools that instituted mandatory requirements and punished students who did not comply. Interest in the issue intensified again in 2001 following terrorist attacks upon the United States, which prompted states and school districts to revive long-dormant laws requiring students to recite the pledge.

## School Prayer

### ***Constitutional Basis for Ban***

Since 1962, the Supreme Court's rejection of school prayer has rested upon its interpretation of the First Amendment. That interpretation has hardly varied, even in the face of public outrage, political opposition, and scholarly criticism. The court's decisions have remained largely consistent across several cases for four decades.

As one of the constitution's most powerful and sweeping guarantees of freedom, the First Amendment is generally thought to contain two contrasting principles with respect to religion. These are announced in the opening words of the amendment, which contains two clauses: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In constitutional law, the first clause is referred to as the Establishment Clause, and the second as the Free Exercise Clause.

Broadly general in their language, the two clauses say nothing more—and neither does the Constitution itself—about how to apply them. Thus their practical meaning is chiefly known through the ways courts interpret them in individual cases. Under the Establishment Clause, courts have generally held that

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government is forbidden to enact laws aiding any religion or creating an official religion. Under the Free Exercise Clause, courts have usually held that government is also forbidden to interfere with an individual's free exercise of religion, including the areas of belief, practice, and propagation.

Both principles require a position of government neutrality toward religion but of a different and seemingly contradictory kind. In practice, the two principles easily overlap. Advocates of school prayer have long argued that banning the practice is a violation of religious freedom guaranteed by the Free Exercise Clause. Opponents have argued that the rights to free exercise are outweighed by the prohibition laid out in the Establishment Clause. How the tension between these principles is resolved lies at the heart of the school prayer ban.

In school prayer cases, the Supreme Court has repeatedly given the Establishment Clause precedence. From the earliest case, *Engel v. Vitale*, which the Court reaffirmed in 1992, it has held that public school prayer is "wholly inconsistent" with the Establishment Clause. The majority opinion went out of its way to stress that the Court did not oppose religion itself. Instead, the opinion stated that "each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance."

### ***Types of Prayer Banned***

To date, the Supreme Court has never sanctioned any form of prayer spoken aloud in classrooms under the direction of officials in public schools. In a variety of decisions, it has repeatedly held or affirmed lower court rulings that several types of prayer are unconstitutional:

- Voluntary
- Mandatory
- Sectarian, as in the Lord's Prayer
- Non-sectarian or non-denominational, as in the state-authored prayer at issue in *Engel v. Vitale*
- Teacher or student-led classroom prayer
- Invocations or benedictions

From the start, these decisions have shown no tolerance for attempts to tailor prayers to make them more acceptable to a majority of citizens. In fact, the very first prayer case arose after the State of New York commissioned the writing of an original twenty-two word prayer that it determined would cover a broad spectrum of religious belief; the prayer was approved by Protestant, Catholic, and Jewish leaders who stated their goal was to avoid causing sectarian disputes. Yet the Supreme Court ruled that the prayer's non-denominational nature gave it no constitutional protection.

On Establishment Clause grounds similar to the prayer ban, the Supreme Court has also struck down related activities and practices involving religious worship in schools:

- Religious invocations at graduation ceremonies
- Prayers read by religious representatives
- Student-led prayers at assemblies and sporting events
- Posting of the Ten Commandments in schools

### ***Permissible Private Prayer and Secular Study of Religion***

Although the prayer ban has proven largely comprehensive, the Supreme Court has not banned religion from schools. Instead, it has held that context is critical in determining what is permissible and impermissible.

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The Supreme Court has never banned students from praying voluntarily and privately on their own, provided there is no state intervention. Students simply must do so without the guidance or **COERCION** of school authorities. Religious student groups may meet after school like other student clubs, as guaranteed by the federal Equal Access Act, and pray on their own.

Study of religion is also constitutionally permitted. Even in its earliest prayer cases, the Supreme Court noted that schools were free to discuss religion within the context of a secular course of instruction, such as, for instance, a history course.

Between 1971 and 1990 the Supreme Court used a three-part test to determine whether state programs involving religion were permitted under the Establishment Clause. Following the standard first announced in *Lemon v. Kurtzman* (1971), the Court upheld a challenged religious program if it met all three conditions:

- It has a secular purpose
- It has a primary effect that neither advances nor inhibits religion
- It does not excessively entangle government with religion

This test began losing validity in the 1990s as the Supreme Court refused to apply it. Shifts in the court's analytical approach did not signal a reversal on doctrine, however; in fact, in 1992, the majority upheld its original school prayer ruling of thirty years earlier, and subsequent decisions extended the ban to prayers at public school events. By 2001, the test for compliance with the Establishment Clause generally required that a school policy demonstrate a secular purpose that neither advances nor inhibits religion in its principal effect. Courts continued to carefully scrutinize such policies to see that they did not endorse, show favoritism toward, or promote religious ideas.

### ***Permissible "Minute of Silence"***

During the 1980s, school prayer advocates were in search of new approaches that might prove constitutional. The so-called moment of silence has proven the most successful strategy, despite an early setback in which Alabama's requirement that school children be required to observe a moment of silence each day was held unconstitutional by the Supreme Court in *Wallace v. Jaffrey* (1985).

However, states subsequently crafted laws that did survive constitutional review. One example is Virginia's minute of silence law, which requires children to begin the school day with a minute to "meditate, pray or engage in silent activity." In July 2001, a panel of the 4th U. S. Circuit Court of Appeals upheld the constitutionality of the law, noting that it "introduced at most a minor and nonintrusive accommodation of religion" and, because it allowed any type of silent reflection, served both religious and secular interests. The U. S. Supreme Court declined to hear an appeal in the case, thus upholding Virginia's law. Legal observers predicted the law's success would lead to more such legislation in other states; as many as 18 states already permit moments of silence under law.

### ***Congressional Action***

Responding to public demand for school prayer, federal lawmakers have occasionally sought a remedy of their own. Few advocates of school prayer believe legislation can survive JUDICIAL REVIEW. Thus, the chief proposal to enjoy perennial favor is the idea of a CONSTITUTIONAL AMENDMENT.

Following the first 1962 prayer ruling, lawmakers flooded Congress with such proposals but never passed any. Attempts were revived over the decades, with the most serious coming in the late 1990s. But constitutional amendments face difficult legal hurdles. Even before a proposed amendment can be sent for a state-by-state vote on RATIFICATION, it must pass by a two-thirds majority in the House of Representatives.

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Historically, lawmakers are significantly reluctant to tamper with the Constitution. Thus in June 1998, House members voted 224 to 203 in favor of a school prayer amendment, but that simple majority fell far short of the two-thirds majority needed for approval.

Another Congressional effort has borne some success for school prayer advocates. In 1984, with strong backing from conservative religious groups, Congress passed and President Ronald Reagan signed the Equal Access Act. The law requires any federally funded public secondary school to allow all school clubs, including religious organizations, equal access to facilities. As representatives of the state, teachers and officials are instructed not to encourage or solicit participation in these activities.

### ***Limits on Pledge of Allegiance***

In *West Virginia State Board of Education v. Barnette*, the Supreme Court ruled that requiring the Pledge of Allegiance in public schools violated the First and Fourteenth Amendments. The case grew out of West Virginia's passage of legislation requiring the pledge and flag-saluting. Lawmakers had intended them to be part of instruction on civics, history, and the Constitution, and they defined noncompliance as insubordination that was punishable by expulsion from school. Parents of expelled students were also subject to fines. After Jehovah's Witnesses students were expelled, their parents brought suit contending that the law infringed upon their religious beliefs, which they said required them not to engage in these secular practices.

The Supreme Court found two constitutional violations. The state law violated the Fourteenth Amendment's requirement of due process and the First Amendment's requirements of religious freedom and free speech upon the state. At heart, said the Court, were the principles of freedom of thought and government by consent. Critically, the majority observed a right of individuals to be free from official pressure to state a particular opinion, including that they honor their government. The opinion declared that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

The decision's practical effect is to permit voluntary recitation of the Pledge of Allegiance but to forbid mandatory requirements that students participate. The decision itself has not been challenged in court, but its requirements have not always been observed. In the 1990s, the American Civil Liberties Union (ACLU) repeatedly defended students in school districts who suffered reprisals for failing to participate in the Pledge of Allegiance. In 1998, for instance, the ACLU filed a federal lawsuit against the Fallbrook Union High School District of San Diego, California, after school officials required a dissenting student to stand silently during the pledge, leave the classroom, or face detention; settling the case out of court, the school district agreed to change its policy.

Although not officially required, presidents have traditionally led students in an annual nationwide Pledge of Allegiance. Schools may choose to participate, as many did when U. S. Secretary of Education Rod Paige urged participation in October 2001 following terrorist attacks upon the United States.

## **State and Local Laws**

Despite many Supreme Court rulings against public school prayer, the legal picture in states is far from uniform. In some states and cities, politicians and school officials have simply ignored the Court's prayer decisions. Some school districts continue to allow classroom prayer in the absence of any direct legal challenge. Still others invite litigation, seeing in each lawsuit an opportunity to press the judiciary to reconsider the four-decade-old ban. Thus while federal judicial decisions may say one thing, the practical reality is widely acknowledged to be another: ongoing litigation, for years, has been the norm, with school

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prayer lawsuits frequently seeing national legal organizations representing both sides in what originate as local disputes.

The situation for the Pledge of Allegiance in public schools is also mixed. Most states, in fact, still have decades-old laws relating to the pledge. Thirty-two states mention some form of school participation in their laws, while twenty states require students to recite it. Enforcement of the laws was irregular or non-existent; however, as the *Christian Science Monitor* observed in March 2001. Following the September 11, 2001, terrorist attacks upon the United States, however, outpourings of patriotism and strong renewed interest in having students recite the pledge pushed the issue back to the forefront, with some governments declaring they would use old laws and others vowing to pass new ones.

In 2001, states and cities with laws, policies, and practices under legal challenge, or which enacted new legislation, included the following:

**ALABAMA:** For over a quarter century, lawsuits have been fought over the state's school prayer laws. Contemporary battles date to 1992, when the Supreme Court struck a law mandating prayers led by clergy at public school graduation ceremonies. In response, state lawmakers passed the "Student-Initiated Prayer Law" requiring schools to allow students to initiate prayer at sporting events, assemblies, and graduations. That law has been contested ever since, with seesawing victories for both sides. In 1997, a district court judge ruled the law unconstitutional and issued a broad injunction against it. Amidst high tensions, Governor James Fob vowed to use the state national guard to protect school prayer. Then in 1999, the law's supporters won on appeal to the Eleventh Circuit. In 2000, the Supreme Court vacated the Eleventh Circuit and sent the case back to it for further [EXAMINATION](#), essentially restoring the force of the district court injunction. The case is still being contested.

**ILLINOIS:** In May of 2001, a U. S. district court ordered the Washington Community High School in Chicago not to use school-sanctioned prayers at a graduation ceremony. The order came in response to a lawsuit by the ACLU filed on behalf of the school's valedictorian and her parents.

**FLORIDA:** Since the early 1990s, lawsuits have contested the policy of the Jacksonville public school board to allow prayer at graduation ceremonies. In 1998, students and parents in the Duval County Public School District successfully sued to block the practice. The full Eleventh Circuit, however, declared that student-led prayers at graduation are constitutional. In 2000, the Supreme Court vacated the decision and sent it back to the appeals court for reconsideration.

**NEBRASKA:** In November of 2001, the Board of Education voted to require that schools follow the state's 1949 patriotism law. The law mandates that schools teach the lyrics to "The Star-Spangled Banner" and other patriotic songs, teach reverence for the flag, and discuss the dangers of communism.

**NEW YORK CITY:** In October of 2001, the New York City Board of Education adopted a resolution requiring all public schools to begin the school day, as well as all assemblies and events, with the Pledge of Allegiance.

**VIRGINIA:** The state requires public schools to begin each day with a minute of silence to be used by students for meditation or prayer, under a law upheld in July 2001 by a panel of the 4th U. S. Circuit Court of Appeals and declined review by the Supreme Court. The decision is binding only in Virginia, Maryland, West Virginia and the Carolinas. Beginning with the 2001 fall school year, Virginia state law also requires public schools to teach and start each day with the pledge; participation is optional.

**WISCONSIN:** Under a law effective September 1, 2001, the state requires schools in grades 1-12 to allow students to voluntarily recite the Pledge of Allegiance or sign the national anthem. The law states that children

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cannot be forced to participate. In the state capital of Madison, national controversy followed a late September decision by the city's school board to allow local schools only to use an instrumental version of the national anthem and barred them from using the pledge. In response to public outcry, the board rescinded the rule, thus implementing the state law.

### Additional Resources

*A Call for Mandatory Pledge in Schools.* Rein, Lisa, The Washington Post, January 25, 2001.

*Constitutional Amendments: 1789 to the Present.* Gale Group, Inc., 2000.

*Fighting the Establishment (Clause).* Bradley, Jennifer, The American Prospect, September 1, 1996. Available at: <http://www.prospect.org/print/V7/28/bradley-j.html>

*Religion in the Public Schools: A Joint Statement of Current Law.* The American Civil Liberties Union, 1996. Available at: <http://aclu.org/issues/religion/relig7.html>

*West Encyclopedia of American Law.* West Group, 1998.

### Organizations

#### ***American Civil Liberties Union (ACLU)***

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