



Sub. H.B. 394*

124th General Assembly
(As Reported by S. Education)

Reps. Damschroder, Barrett, Calvert, Carey, Collier, Flowers, Hoops, Jolivette, Key, Latell, Latta, Lendrum, Metzger, Niehaus, Otterman, Patton, Roman, Schmidt, Seaver, Seitz, Setzer, Webster, White, Young, Callender, Reinhard, Fedor, Reidelbach, Faber, Aslanides, Manning, McGregor, Wolpert, Hughes, G. Smith, Olman, Gilb, Clancy, Carmichael, Hagan, Willamowski, Grendell, Kearns, Core, Fessler, Widowfield, Husted, Williams, DeWine, Schaffer, Raga, Schneider, Schuring, Evans, Buehrer, Distel, Cirelli, Peterson, Coates, Ogg, Rhine, Krupinski, Allen

BILL SUMMARY

- Permits school districts to provide for a daily period of silence for reflection or meditation on a moral, philosophical, or patriotic theme.
- Prohibits a pupil from being required to participate in any period of silence.
- Prohibits school boards from adopting any policy promoting or restricting the exercising of religious beliefs in primary or secondary schools.
- Permits school boards to limit the exercise or expression of religious beliefs to certain time periods.

CONTENT AND OPERATION

Under current law, a school district board cannot prohibit a classroom teacher from providing in the classroom reasonable periods of time for "programs or meditation upon a moral, philosophical, or patriotic theme." Current law also

** This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

prohibits a pupil from being "required to participate in [the] programs or meditations if they are contrary to the religious convictions of the pupil or [the pupil's] parents or guardians." (Sec. 3313.601.) The bill revises this current law by replacing the phrase "programs or meditation" with the word "activities."

In addition to this revision to current law, the bill expressly permits a city, local, exempted village, or joint vocational school district board to "provide for a period of silence each school day for reflection or meditation upon a moral, philosophical, or patriotic theme." Under the bill, no student may be required to participate in the period of silence.

Also, the bill prohibits any district board of education from adopting any policy or rule respecting or promoting an establishment of religion or prohibiting any student from the free, individual, and voluntary exercise or expression of the student's religious beliefs in any primary or secondary school. Under the bill, such exercise or expression may be limited to lunch periods or "other noninstructional time periods when students are free to associate."

COMMENT

Many states have laws establishing a moment of silence. Such legislation has been challenged as violating the First Amendment to the United States Constitution, prohibiting laws respecting an establishment of religion. Although the constitutionality of any specific laws can be determined only on a case-by-case basis, the primary test of any such legislation is a three-prong test established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the *Lemon* test, the statute must have a secular legislative purpose, its principal or primary effect must be one that neither advances nor inhibits religion, and the statute must not foster an excessive entanglement with religion.

For example, in *Wallace v. Jaffree*, 472 U.S. 38 (1985), the Supreme Court struck down an Alabama statute which authorized a one-minute silent period at the start of each school day which was to be used "for meditation or voluntary prayer." The *Wallace* majority concluded that the legislature's sole purpose in enacting the statute, as evidenced by statements from the prime sponsor of the legislation and the Governor of Alabama, was to return prayer to the Alabama schools, thereby endorsing religion in violation of the first prong of the *Lemon* test. After applying the *Lemon* test and distinguishing the *Wallace* case, a "moment of quiet reflection" recently was upheld by the Eleventh Circuit Court of Appeals in *Bown v. Gwinnett County School District*, 112 F.3d 1464 (11th Cir., May 6, 1997). The Court found that any possible religious motives for supporting the statute were not relevant given the clear secular purpose expressed in language of the statute and the history of the legislation.

Also, on October 29, 2001, the United States Supreme Court declined to hear a challenge to a Virginia statute that requires each school board of education to "establish the daily observance of one minute of silence in each classroom" (*Brown v. Gilmore*, 2001 U.S. LEXIS 10022). That statute provides that each student is to remain "seated and silent" so that any student "may, in the exercise of [the student's] individual choice, meditate, pray, or engage in any other silent activity" that does not interfere with other students' exercise of their individual choice. (Va. Code Ann. 22.1-203.) Earlier the U.S. Court of Appeals for the Fourth Circuit upheld the constitutionality of the Virginia statute (258 F.3d 265). The appeals court stated that the statute has "at least two purposes, one of which is clearly secular [to meditate] and one of which may be secular even though it addresses religion [to pray]." In analyzing this second purpose, the court characterized the statute as a "nonintrusive accommodation of religion that does not establish religion." (258 F.3d at 276-278.) The effect of the Supreme Court's action is to let stand the ruling of the appeals court. Although decisions of the Fourth Circuit Court of Appeals are not controlling in Ohio, they may be persuasive in courts that do rule on Ohio statutes.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-04-01	p. 878
Reported, H. Education	10-30-01	p. 1041
Passed House (97-2)	10-31-01	pp. 1065-1066
Reported, S. Education	---	---

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