

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-812 & 83-929

TITLE GEORGE C. WALLACE, GOVERNOR OF ALABAMA, ET AL., Appellants v.
ISHMAEL JAFFREE, ET AL.,; and DOUGLAS T. SMITH, ET AL., Appellants
v. ISHMAEL JAFFREE, ET AL.

PLACE Washington, D. C.

DATE December 4, 1984

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IN THE SUPREME COURT OF THE UNITED STATES

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GEORGE C. WALLACE, :

GOVERNOR OF ALAMBAMA, ET AL., :

Appellants, :

V. : No. 83-812

ISHMAEL JAFFREE, ET AL.; :

and :

DOUGLAS T. SMITH, ET AL., :

Appellants, :

V. : No. 83-929

ISHMAEL JAFFREE, ET AL. :

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Washington, D.C.

Tuesday, December 4, 1984

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 o'clock a.m.

APPEARANCES:

JOHN S. BAKER, JR., ESQ., Baton Rouge, Louisiana;
on behalf of the appellants.

PAUL M. BATOR, ESQ., Deputy Solicitor General,
Department of Justice, Washington, D. C., as
amicus curiae in support of appellants.

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APPEARANCES: (Continued)

RONNIE L. WILLIAMS, ESQ., Mobile, Alabama; on behalf
of appellees.

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1 religion clauses.

2 This type of a statute involves none of the
3 circumstances that have concerned this Court in prior
4 cases. This kind of a statute does not endorse
5 religion, it does not endorse one religion over another,
6 it does not endorse belief over nonbelief. This kind of
7 a statute is perfectly neutral on its face. The statute
8 is one that does not coerce in any way; it coerces only
9 silence. It does not coerce any religious practice, it
10 does not coerce religious belief, it does not affirm
11 religious belief. It is in the nature of a statute
12 neutral in that it respects the consciences of all
13 students equally by allowing them either at their own
14 choice to say a prayer in silence or to say or simply to
15 meditate during this one moment, this one minute at the
16 beginning of the day.

17 In addition to Alabama, there are 23 other
18 states that have found that providing a moment of
19 silence is a reasonable way to accommodate the various
20 desires and needs of children in the public schools in a
21 way that the states have deemed to be consistent with
22 the case law in this Court.

23 QUESTION: Of course, some of those other
24 states didn't have your accompanying statutes, did they,
25 the ones that have been declared invalid.

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MR. BAKER: Alabama had several statutes --

QUESTION: -- had a package. Alabama had rather a package.

MR. BAKER: They were not passed as a package, Your Honor. They were passed in various years.

There was first of all a moment of silence statute passed in 1978. There was this statute which was passed in 1981. There was a prayer statute which was struck down by the Eleventh Circuit which was passed in 1982, but they were not presented as a package. They were lumped together in the course of litigation, Your Honor, yes.

The issue in this case --

QUESTION: Well, my only point is that your Alabama situation may be somewhat different from Massachusetts or some of the others which have just the single statute.

MR. BAKER: Your Honor, I think if you look at the legislative history in Massachusetts, you will find that there are certain parallels. Massachusetts started out with a moment of silence statute in 1966. They later amended that statute to add meditation or prayer, and later on they also attempted later on to amend the statute --

QUESTION: Is this true of all the other 36

1 states?

2 MR. BAKER: No, Your Honor, it is not true of
3 all the other states.

4 QUESTION: I didn't think it was.

5 MR. BAKER: The issue in this --

6 QUESTION: Mr. Baker, may I inquire of whether
7 the statute that Alabama already had providing for a
8 period of silence not to exceed a minute would have been
9 violated under state law by the use of that statute for
10 silent prayer?

11 MR. BAKER: No, it would not have, Your
12 Honor. In fact, the Appellee concedes that the 1978
13 statute which provided for a minute of silence simply
14 for meditation is perfectly constitutional.

15 Really, the difference between the Appellee
16 and ourselves in this case comes down to the word
17 "prayer" in the statute. First of all, the Appellee
18 proceeds --

19 QUESTION: May I ask one other question before
20 you get into your argument?

21 MR. BAKER: Justice Stevens, yes, sir.

22 QUESTION: As to the -- similar to Justice
23 O'Connor's question, the earlier statute, '78 statute,
24 says that teachers shall announce.

25 MR. BAKER: Yes, Your Honor.

1 QUESTION: Whereas this one, the second
2 statute, does not say that.

3 Does the first statute remain in effect? Is
4 there still a duty to announce?

5 MR. BAKER: Your Honor, the first statute is
6 still in effect, but the statutes are basically
7 self-executing in the sense that the State Board of
8 Education does not enforce the statutes. There are
9 several references to this in the opinion of the Court
10 of Appeals and in the lower court.

11 QUESTION: But in the earlier statute, the one
12 not challenged, the teacher was under an obligation, a
13 mandatory obligation to make this announcement. And is
14 that still true?

15 MR. BAKER: It is still true, Your Honor, but
16 just to add, the first statute was in fact originally
17 challenged by the Appellee in his Second Amendment
18 complaint. He later dropped that challenged and now
19 concedes the constitutionality of that first statute.

20 QUESTION: I understand.

21 MR. BAKER: The difference between the
22 Appellee and our own position on this question really
23 comes down to the significance of the word "prayer" in
24 the statute. As I have already said, the Appellee
25 concedes the constitutionality of the moment of silence

1 statute for meditation, and the Appellee also concedes
2 that students have a right to pray silently to
3 themselves at any time that they would wish to during
4 the school day.

5 Obviously, then, during this one minute of
6 silence, the students, even under the 1978 statute, the
7 statute providing only for silent meditation, the
8 student would have the right during that minute to pray
9 silently. In other words, the effect under either
10 statute, under the 1978 statute or the 1981 statute, is
11 the same as far as the classroom goes.

12 The difference comes down to that one-word
13 prayer in the statute, but certainly it cannot be
14 unconstitutional simply to insert in a statute a
15 statement that it is constitutional -- what is
16 constitutionally permissible. In other words, the
17 statute merely informs students that one of the purposes
18 that they can put this minute of silence to is that they
19 can use it to pray silently during that minute.

20 This opportunity for prayer is not, as the
21 Appellee has suggested, one of group prayer. We have
22 here none of the characteristics of group prayer. It is
23 not vocal prayer. No one student knows what another
24 student is saying, is thinking, or whether that student
25 is praying, whether the student is meditating, whether

1 the student is simply vegetating for that one minute.

2 Because no student knows what another student
3 is doing during that period of time, there is not the
4 problem of coercion that concerned this Court in earlier
5 cases. We do not have here a joint effort or joint
6 purpose as among the various students in the classroom
7 for that one minute. There is, in other words, no
8 communal effort. It does not involve any of the
9 characteristics that this Court discussed in Engel and
10 in Shemp, and we submit on this basis that this statute
11 is essentially different.

12 By providing an opportunity to pray, we submit
13 that the statute is in the line of cases including
14 Zorach where this Court has recognized that it is
15 perfectly consistent for states to in certain areas
16 accommodate the religious needs of our people. In this
17 area of accommodation, we find that the statute
18 accommodates those admittedly who have this desire to
19 pray, but it does so in a way that in no way interferes
20 with the free exercise of rights of anyone else in the
21 class. It does not present the problem of embarrassment
22 or excusing students as was a problem in the earlier
23 cases. The statute does in fact, as indicated, leave to
24 the teacher a certain discretion in the sense that this
25 statute is permissive. It says that a teacher may

1 implement this minute of silence.

2 This statute, however, is not inconsistent
3 with the notion that local school boards in their
4 independent areas would or could adopt regulations
5 dealing with the implementation of the statute. But the
6 sense of the statute is that this moment of silence
7 should be allowed for students who wish to have their
8 religious needs accommodated during the day.

9 We see no difference constitutionally between
10 a statute which is permissive, as this statute is in the
11 sense that it has the word "may" in it, as opposed to a
12 statute which is mandatory, as was indicated in one of
13 the questions.

14 We have from the 24 states that have moment of
15 silence statutes, we have a variety of language in those
16 statutes. In some of the states the decision is made by
17 the state legislature. In other states the decision is
18 made by the state school board or the local school
19 board. It may be made by the principal. It may be made
20 by the teacher.

21 In viewing these statutes in terms of the fact
22 that we have 24 states which have deemed this to be a
23 proper, reasonable way to accommodate, we have to take
24 into account the fact that there are various conditions
25 from state to state, and that the statute may in fact be

1 implemented in somewhat a different way in various
2 states depending upon the local needs.

3 QUESTION: May I ask you a question here, too,
4 because you point out there is a very narrow difference
5 between the two statutes in constitutional terms.

6 MR. BAKER: Yes, sir.

7 QUESTION: What is the practical difference
8 between the two? What has the legislature accomplished
9 by passing the second statute?

10 MR. BAKER: Your Honor, it was very clear from
11 the testimony of the sponsoring legislator here that he
12 was concerned that people did not understand that they
13 had a right to pray silently in the classroom, and many
14 people are under the impression apparently that students
15 no longer even have the right to pray silently.

16 What this statute does is to clarify that and
17 make it very clear on the face of the statute that this
18 is one of the uses to which the minute of silence can be
19 put. It does so in a way that is neutral because it at
20 the same time emphasizes the word "meditation" already
21 in the statute.

22 This statute, this opportunity to pray, was
23 struck down by the Eleventh Circuit on its face in this
24 case. The Eleventh Circuit recognized that the teacher
25 activity in Mobile, in the Mobile schools that were

1 challenged in the other part of the case were not
2 related to this statute. We thus have in this case no
3 real experience; there is nothing indicated on the
4 record in this case as to the implementation of this
5 kind of statute.

6 And we submit that at this point, that this
7 Court ought to allow and recognize the constitutionality
8 of this statute and allow for it to be implemented. We
9 recognize that any sort of statute which deals with the
10 area of prayer is one that is obviously a controversial
11 one, and there --

12 QUESTION: Mr. Baker, may I ask you another
13 question because I am still troubled by the narrow
14 difference between the two states. You say the idea of
15 the sponsor was to make sure that prayer was a
16 permissible activity pursuant to the statute.

17 MR. BAKER: Yes, Your Honor.

18 QUESTION: Is that -- is it your view that the
19 students in the classroom are aware of that purpose?

20 MR. BAKER: Aware of the purpose that that is
21 a --

22 QUESTION: That that's the difference between
23 the way it used to be before 1981 and the way it is
24 after 1981?

25 MR. BAKER: There's no indication in Mobile,

1 for instance, that either statute has ever been
2 implemented. In fact, the testimony in the record is to
3 the effect that neither statute has been implemented, so
4 that we have no experience in this record on either the
5 moment of silence statute or the meditation or prayer
6 statute.

7 QUESTION: So we don't know as a practical
8 matter whether there is a difference between the two in
9 their practical operation.

10 MR. BAKER: Not on this record we do not, Your
11 Honor.

12 This opportunity to pray, we submit to the
13 Court, is one that is consistent with this Court's cases
14 dealing with the notion of accommodation, and as this
15 Court recognized in Lynch v. Donnelly, the Constitution
16 affirmatively mandates accommodation, not merely a
17 tolerance of all religions, and forbids hostility
18 towards none. We submit that this kind of a statute is
19 that type of accommodation which accommodates those who
20 feel in conscience compelled to dedicate their day at
21 the opening with a brief moment of prayer, while at the
22 same time allowing other students to silently reflect
23 during that minute, and in no way does the statute
24 involve any sort of --

25 QUESTION: How about the student that doesn't

1 believe in prayer or meditation?

2 MR. BAKER: That student can simply stand
3 there for one minute, Your Honcr. During that minute he
4 is in no way embarrassed, he is in no way coerced to do
5 anything. The only coercion involved on the student
6 during that minute is that he engage in no activity.

7 QUESTION: But there is no accommodation for
8 him at all except that he can be standing there as an
9 individual?

10 MR. BAKER: Exactly, Your Honcr. He is simply
11 standing there during a moment of silence. That moment
12 of silence is obviously applicable to everyone. The
13 only group unity here is the unity of silence for one
14 minute.

15 QUESTION: May I ask why you say they will be
16 standing?

17 The statute doesn't say what the posture of
18 the people will be.

19 MR. BAKER: You are perfectly correct, Your
20 Honcr, you are perfectly correct. It could be that they
21 would be sitting during that period of time, depending
22 upon whatever the teacher's normal course of opening the
23 day would be, assuming Pledge of Allegiance and other
24 opening activities.

25 QUESTION: They would stand for the Pledge of

1 Allegiance, I suppose, and then maybe continue this, or
2 would the prayer come first, the moment of silence come
3 first?

4 MR. BAKER: The statute does not indicate any
5 order, Your Honor. That is left to the discretion of
6 the teacher as to how it would be implemented.

7 QUESTION: Would you be making the same
8 argument if the statute said not exceeding five
9 minutes?

10 MR. BAKER: Your Honor, the statute does deal
11 only with one minute and not five minutes. Certainly
12 the longer a statute goes, the more you get into the
13 question of how long is an appropriate time.

14 But when we compare this, for instance, to the
15 Zorach case where you release students for an hour a
16 week, it seems that one minute a day does not appear to
17 be unreasonable at all.

18 Thank you, Your Honor.

19 QUESTION: May I ask one other question?

20 Would the state's purpose be equally well
21 served by a statute that allowed this moment or two or
22 three moments immediately before school commenced so
23 that it would be totally optional as to whether to
24 attend or not?

25 MR. BAKER: Your Honor, I think that raises

1 the question of equal access, which is not this statute,
2 it is a different statute. I think that that kind of a
3 statute would be perfectly constitutional, but that is a
4 different issue, Your Honor.

5 QUESTION: My question was whether you think
6 the state's purpose would be equally well served by such
7 a statute.

8 MR. BAKER: That might be one of the ways to
9 serve it, and I think it would be constitutional, but I
10 think this is equally --

11 QUESTION: The question is whether you think
12 it would be equally well served by such a statute.

13 MR. BAKER: Your Honor, I think that is a
14 policy judgment for the legislature to make.

15 QUESTION: You are not willing to answer my
16 question, I guess, whether you as advocating the
17 constitutionality of this type of statute think that the
18 state's purpose would be equally well served by such a
19 statute.

20 MR. BAKER: I think there are some students
21 who want to start the main work of the day during a
22 minute of silence, and prior to class that is not
23 starting the main work of the day. So I think there is
24 a slightly different purpose, yes, Your Honor.

25 Thank you.

1 CHIEF JUSTICE BURGER: Mr. Bator?

2 ORAL ARGUMENT OF PAUL M. BATOR, ESQ.

3 AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

4 MR. BATOR: Mr. Chief Justice, and may it
5 please the Court:

6 I might start by supplementing the colloquy
7 about the relationship between these two statutes. The
8 new statute made three changes. It said that the
9 practice of the moment of silence is discretionary
10 rather than mandatory. The old statute applied only to
11 grades one through six, so this statute generalized the
12 moment of silence to all of the school grades. And
13 finally, the statute added the, what I think is really
14 the purely informational addendum, that it is one of the
15 appropriate uses of the moment of silence that so minded
16 students may use it for silent prayer.

17 QUESTION: Mr. Bator, if the teacher chooses
18 to have a moment of silence, must the teacher say what
19 it is for?

20 MR. BATOR: The statute doesn't specify, Your
21 Honor, and I think that it simply remains in the future
22 to see whether this teacher will make some explanation
23 of what it is all about. I don't --

24 QUESTION: Well, isn't it -- wouldn't the
25 issue change a little at least if the teacher had to

1 announce what it was for, or that it is discretionary?

2 MR. BATOR: We don't believe that it would
3 matter constitutionally.

4 QUESTION: Well, I know, I know you believe
5 that, but wouldn't the issue be -- wouldn't it have a
6 different, a little bit different ring to it?

7 MR. BATOR: Maybe. It seems to us the central
8 question here whether the teacher in some way respects
9 the spirit of the statute, which is to mandate and
10 establish one simple practice, a moment of absolute
11 stillness.

12 QUESTION: Also, may I ask, when this case
13 started, the attack was on the teachers' practices in
14 the school of having a prayer, wasn't it? Isn't that
15 right?

16 MR. BATOR: I think the original lawsuit
17 challenged what went on, what was alleged to go on in
18 some Alabama schools, which was vocal prayer.

19 QUESTION: Well, what is the case or
20 controversy between -- what was the case or controversy
21 with respect to the moment of silence statute? So far
22 as I can tell, it was never -- that the statute was
23 never applied in the school.

24 MR. BATOR: Well, Your Honor, the lawsuit was
25 brought to enjoin the state authorities --

1 QUESTION: Well, I know you just can't page
2 through a statute book and pick out some statute you
3 don't like and sue to enjoin it. You have to have a
4 case or controversy.

5 What was the case or controversy between this
6 plaintiff and the state or the school about this
7 statute?

8 MR. BATOR: The case or controversy, as I
9 understand it, Your Honor, was that the plaintiff said
10 that it violates the Constitution for the state --

11 QUESTION: Well, I know, but it had never been
12 applied to them.

13 MR. BATOR: Well, the suit was brought very
14 shortly after the new statute was passed and the
15 complaint was amended to challenge it.

16 The state of Alabama is now under an
17 injunction preventing it from enforcing the statute on
18 the ground that it violates the establishment clauses.
19 I mean, at that point there must be a case or
20 controversy with respect to whether that injunction may
21 continue in place.

22 QUESTION: Well, it may be that the District
23 Court made a mistake in saying there was a case or
24 controversy.

25 MR. BATOR: That may be, Your Honor, but the

1 District Court and the Eleventh Circuit concluded that
2 this statute is unconstitutional on its face, and it
3 is --

4 QUESTION: Well, were there allegations in the
5 complaint that the statute was about to put the statute
6 into operation?

7 MR. BATOR: I don't know, Your Honor, I don't
8 know, Your Honor.

9 QUESTION: Mr. Bator, there is no question
10 that the purpose of this, that it was not for silence,
11 or am I wrong, does the teacher have a right in the
12 public schools of Mobile to tell the children to shut up
13 for the next five minutes, and I don't want to hear a
14 sound out of you, without a statute? Can't they do that
15 without a statute?

16 MR. BATOR: It may be that they were free to
17 do that, but what this statute --

18 QUESTION: You say maybe?

19 Have you ever heard of a teacher that didn't
20 have that authority?

21 (General laughter.)

22 MR. BATOR: Your Honor, the statute
23 institutionalizes and puts the sanction of state policy
24 behind a practice.

25 QUESTION: The state policy is that you can

1 have a moment of silence for prayer.

2 MR. BATOR: The state policy is that you may
3 start the school day for a moment of silence within
4 which so minded students who are under a claim of
5 conscience have an opportunity to pray or meditate,
6 all --

7 QUESTION: Didn't they have that right before
8 the statute?

9 MR. BATOR: I suppose. I don't know what the
10 practice in the Alabama schools is, Justice Marshall.

11 QUESTION: Well, didn't the children in
12 Alabama have the right to pray silently before the
13 statute was passed?

14 MR. BATOR: Yes, Your Honor, it is the case
15 that without this statute, long before this statute,
16 after this statute, children have a right in the Alabama
17 schools to pray silently, and of course, in that sense
18 it is false to say what is always said, that it is this
19 statute that has brought prayer in to the Alabama
20 schools.

21 But what the Alabama legislature has
22 concluded, Justice Marshall, and 23 other states have,
23 is that the opportunity to pray is enhanced, made
24 easier, made somewhat more natural. A modern American
25 school is a very busy and a very noisy place. It is not

1 easy to find a moment of respite and serenity within
2 which those students --

3 QUESTION: Mr. Bator, let me just be sure I
4 understand the point you are making.

5 Is it made easier by the 1978 statute or by
6 the 1981 statute?

7 MR. BATOR: Either one, either one.

8 QUESTION: And you think the difference
9 between a moment of meditation and the wording in the
10 other is what creates this change.

11 MR. BATOR: No, Your Honor. We think that
12 what was in the new statute was already implicit in the
13 other, that there is --

14 QUESTION: And you said, when you mentioned
15 the three points -- and I want to be sure I get a chance
16 to ask you this -- that there was an informational
17 purpose to the new statute because it added the word
18 "prayer."

19 To whom in your view was that information
20 conveyed?

21 MR. BATOR: We think it became the public
22 policy of the state --

23 QUESTION: And there was information conveyed
24 to the students, to the teachers, or to the citizenry at
25 large?

1 MR. BATOR: It simply reaffirmed to the world
2 at large, to the schools --

3 QUESTION: No, you said there was a change.
4 You said the informational point was a difference, and I
5 want to know in your view to whom was that message
6 sent.

7 MR. BATOR: Your Honor, we think the message
8 was sent to everyone who looks at the statute or was
9 informed about it. The statute simply makes explicit
10 that one of the uses to which this moment of -- this
11 zone of privacy and silence and serenity --

12 QUESTION: Is it your view that that message
13 did or did not reach the students in the classroom?

14 MR. BATOR: We don't have a record, Your
15 Honor. I really, I really don't know.

16 QUESTION: I am just trying to understand what
17 your point was about this informational purpose of the
18 statute.

19 MR. BATOR: Your Honor, the point I was
20 addressing when I was responding to Justice Marshall was
21 that quite aside from a formal moment of silence,
22 students may pray during snatches of inactivity during
23 the day --

24 QUESTION: Which they could have done under
25 the old statute.

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MR. BATOR: What the --

QUESTION: But you are saying this statute is different because of its informational content, and I don't understand your argument.

MR. BATOR: Without the old statute, without the new statute, without any statute. What this statute does, what these two statutes do is to formalize a practice. It is a very simple, it is really a very inoffensive practice; we're all used to it, we have all been asked occasionally to fall silent for a minute, to remember something, to dedicate ourselves, and within that, the with to enhance, to accommodate the opportunity for students who are under a claim of conscience to bring silent prayer as part of their activities in school.

I think I want to return to Justice Marshall's question because this is absolutely crucial to us. What this statute does is add an additional opportunity. It enhances the freedom. It is not that easy, it is not that unembarrassing, it is not that natural for students to find a moment of serenity. I mean, what the moment of silence does is to create silence. That is what it does.

QUESTION: Yes, but Mr. Bator, the question is whether the new statute and the difference between the

1 new and the old, is subject to attack or not, and you
2 are -- all of your arguments would apply to the earlier
3 statute.

4 MR. BATOR: We think there is no
5 constitutionally relevant distinction between the two
6 statutes.

7 QUESTION: Do you think that the new statute
8 accomplished any significant legislative purpose, and if
9 so, what?

10 MR. BATOR: Yes. It expanded the operation of
11 the formal moment of silence from grades one through six
12 to grades one through twelve. It made a change in the
13 administrative structure because it said the teacher has
14 some discretion. Then the statute adds what was already
15 the case. How can it be unconstitutional for Alabama
16 simply to say what was already the fact, which is that
17 in this uncoerced, neutral atmosphere, a brief moment of
18 stillness, within this small zone of privacy, it is
19 permissible for so minded students to dedicate their day
20 to God.

21 What this does is expand the freedom of all
22 the students in a way that is wholly inoffensive. This
23 is a modest gesture of generosity toward students who
24 are under a claim of conscience.

25 QUESTION: On the point that was raised in

1 some of the earlier questions, Mr. Bator, is there any
2 mechanism by which the State of Alabama could have
3 applied to some Court for a construction of this statute
4 in order to enable the state to instruct its teachers?

5 MR. BATOR: Your Honor, I don't know whether
6 there is a formal mechanism available, and maybe there
7 might have been. But in this case, where the state is
8 now under injunction against even putting the statute
9 into operation, the situation seems to us to be -- the
10 confrontation is here before this Court, at least under
11 the judgment of the Eleventh Circuit.

12 Thank you, Your Honor.

13 QUESTION: Mr. Bator, that judgment or
14 injunction does not extend to the earlier statute, I
15 take it.

16 QUESTION: No.

17 MR. BATOR: No, Your Honor, it doesn't, but we
18 don't -- we don't think it can be the law that it is all
19 right to knock down a constitutional statute because
20 there is another constitutional statute which to some
21 extent covers the same ground.

22 CHIEF JUSTICE BURGER: Mr. Williams?

23 CRAL ARGUMENT OF RONNIE L. WILLIAMS, ESQ.

24 ON BEHALF OF APPELLEES

25 MR. WILLIAMS: Mr. Chief Justice, and may it

1 please the Court:

2 I think what has become clear here is that
3 this is not a case about accommodation. I think the
4 prior opinions of this Court has made clear that to
5 accommodate the free exercise rights of individuals and
6 citizens of this nation, there must be a burden placed
7 upon those rights by the government.

8 Here the state has shown no burden placed upon
9 the rights of young children in the Alabama public
10 school system prohibiting the free exercise of their
11 religious rights. I think as has been pointed out, the
12 earlier statute, the 1978 statute that provides for a
13 moment of silent meditation, adequately provides time
14 for reflection, introspection, meditation, whatever a
15 child feels a need to engage in.

16 There was no need for this new statute, the
17 1981 statute, but simply the major part, the major
18 change simply added the word "prayer." I think it is a
19 a clear attempt on the part of the state to promote
20 religion, to promote religious practice, and one of the
21 most basic of religious practices, and that is prayer.

22 The whole idea behind the accommodation
23 doctrine was to assure that a person fares no worse for
24 being religious than a nonreligious person subject to
25 the same governmental activity.

1 There has been no showing here, and I will
2 point out that the record is clear, there is no
3 hindrance to any child from praying during their period
4 of time of meditation under the 1978 statutes. Senator
5 Holmes, the sponsor of that particular statute, of the
6 new statute, the 1981 statute, testified in District
7 Court that it was his purpose to return prayer to
8 Alabama public schools, that is constituents had advised
9 him that they felt a need to have prayer in school.

10 Now, the new statute was impermissive, and if
11 there is going to be any type of accommodation, how do
12 you accommodate when you allow a teacher the discretion
13 to make the determination of whether or not that statute
14 will be applied or not.

15 QUESTION: Mr. Williams, let me ask you for a
16 moment about the case in controversy problem which
17 Justice White raised with your opponent.

18 The District Court's opinion, I see, says that
19 your clients' suit was initiated in order to challenge
20 certain prayer activities initiated by his children's
21 public school teacher.

22 Now, was that the 1982 statute that had
23 actually been put into effect at that time?

24 MR. WILLIAMS: No, initially, when this case
25 first started, the activity being complained about was

1 teacher-led group, vocal prayer in the public school
2 system. Later, as the case progressed, this complaint
3 was amended when it became clear because of other people
4 coming forward, that other religious activity was taking
5 place in the public school system as well, including
6 silent prayer, Bible reading over the public address
7 system, just a variety of religious activity.

8 The District Court did not allow plaintiff to
9 get into the details of all that -- those activities, so
10 the main focus of the case became the teacher-led
11 prayer, the recently enacted Bob James Prayer, and this
12 new silent meditation or prayer statute.

13 QUESTION: Then it was enjoined before it
14 could actually be put into effect, the '82 statute.

15 MR. WILLIAMS: No, the '82 statute was already
16 in effect.

17 QUESTION: And what, people were acting under
18 it?

19 MR. WILLIAMS: Well, that was the indication
20 that we had received.

21 Now, there was no evidence produced at trial
22 because -- let me back up one moment. This case was
23 amended once again to allege class allegations because
24 other citizens of Mobile were coming forward to complain
25 about this type of activity, silent prayer, Bible

1 reading, just a variety of activity. It was brought as
2 a class. The District Court would not certify it as a
3 class, would not allow any testimony other than on the
4 particular two statutes, the Bob James statute, the new
5 medication statute, and the teacher-led prayer.

6 So there is -- the record is basically clean
7 of any actual testimony regarding the implementation of
8 the silent meditation or prayer statute.

9 As I was about to say about the accommodation,
10 you do not accommodate someone when there is no burden.
11 Any student had the right, in fact still has the right
12 since the 1978 statute has not been -- as a fact, has
13 not been repealed. That statute is still good law. I
14 disagree with counsel that Appellees concede the
15 constitutionality of that particular statute. We simply
16 did not challenge it. The legislative history of that
17 particular statute was unclear. There is nothing to
18 indicate what the purpose of that particular statute
19 was, what the effect of it was, and whether or not there
20 was any entanglement, which is the three-part test that
21 has been used by this Court repeatedly in these types of
22 cases, establishment clause cases.

23 So that particular statute was not challenged
24 by the Appellees.

25 The 1982 statute -- the 1981 silent meditation

1 or prayer statute was a different matter. The only
2 major change, as I suggested earlier, was the addition
3 of the word "prayer," and I think that is very important
4 because it shows the clear purpose on the part of the
5 state to bring prayer back to the public schools.

6 QUESTION: Mr. Williams, do you take the
7 position that the earlier statute is invalid on its
8 face, unconstitutional on its face?

9 MR. WILLIAMS: The '78 statute?

10 QUESTION: Yes.

11 MR. WILLIAMS: No, I do not take that
12 position. In fact, I am not sure I have a position on
13 that particular statute at all, based on the fact that
14 there has just been no information --

15 QUESTION: Well, I know officially you
16 haven't, but I am asking you whether you believe it is
17 valid, facially, the earlier statute?

18 MR. WILLIAMS: I think I would take the
19 position that it is valid on its face, just a simple
20 moment of silence for meditation to do whatever you
21 will, which may include prayer as well. I think when
22 the state went further to add or to suggest, and when we
23 talk about impressionable children, young children in
24 elementary schools, some who look up to their teachers,
25 who idolize their teachers, I think you are allowing the

1 state to promote religion as opposed to accommodate
2 someone's free exercise rights.

3 I think that is exactly what has happened in
4 this situation. I think that is why, as the record
5 would suggest in this case, there was so much turmoil
6 within the Mobile public school system. The record of
7 this case I think indicates the turmoil that has come
8 about because of this case.

9 The Governor of the State of Alabama
10 introduced his own statute suggesting prayer in, I
11 guess, a direct response to the filing of this complaint
12 in District Court. This is no attempt to accommodate
13 the rights of young children in the Alabama public
14 school system. This is simply a blatant attempt to do I
15 guess through the back door what cannot be done through
16 the front door.

17 QUESTION: Mr. Williams, suppose the teacher
18 said at the opening of the class, we now have a moment
19 when we will all remain silent to collect your thoughts
20 and think about why you are here in school, any problems
21 with that?

22 MR. WILLIAMS: A moment of silence just to
23 think about why we are here in school? I see no
24 problems with that at all.

25 QUESTION: Mm-hmm. Aren't they free to do

1 just that?

2 MR. WILLIAMS: They are, indeed.

3 I think the difference here -- well, in fact,
4 they are free to pray silently on their own without
5 establishing or without the teacher saying anything at
6 all.

7 I think the difference here is by the teacher
8 suggesting that in addition to meditating on whatever
9 subject, that you also may pray, imposes --

10 QUESTION: Is she telling them any more than
11 the First Amendment guarantees to every person in this
12 country, man, woman and child?

13 MR. WILLIAMS: Well, I'm not so sure that
14 that's the job of the teacher or the government to
15 explain each and every law.

16 QUESTION: Well, aren't we supposed to be
17 teaching the children about the Constitution and about
18 freedom of press and freedom of speech?

19 MR. WILLIAMS: Certainly, I think that would
20 be fine in a subject matter context, in a curriculum
21 context, but during a moment of silence, every day, day
22 in and day out, when the school bell rings, I think that
23 is more than just teaching children about what the First
24 Amendment stands for, what its protections and
25 prohibitions are. I think it goes much further. I

1 think it, as I said earlier, the states stepped across
2 that line of neutrality. It is not longer -- the state
3 is no longer being neutral. It is basically explaining
4 one aspects of the Constitution, and putting special
5 emphasis on prayer, which offends the Constitution.

6 I think it would be appropriate if the teacher
7 wanted to, say, Monday discuss the First Amendment,
8 Tuesday the Second Amendment, and so on and so forth,
9 but --

10 QUESTION: Do you think -- do you think the
11 teacher could tell the children, you may meditate, but
12 you may not pray silently?

13 MR. WILLIAMS: No, I don't think a teacher --
14 I think that would be a violation of the Constitution as
15 well, stepping across the line of neutrality the other
16 way, showing a preference to the nonbeliever or possibly
17 some other religious groups that do not have prayer as
18 part of their religious tenet.

19 I think as suggested by this Court, and held
20 by this Court in all of its prior decisions, that the
21 state must maintain total neutrality in the areas of
22 religious conscience and religious belief, not --

23 QUESTION: Mr. Williams --

24 MR. WILLIAMS: -- discouraging one.

25 QUESTION: May I ask you a question?

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MR. WILLIAMS: Certainly.

QUESTION: What establishment of religion do you think this statute proposes?

MR. WILLIAMS: I think principally I would have to say the Christian religion as to a religion that is being established.

QUESTION: The Christian religion?

MR. WILLIAMS: Well --

QUESTION: What was your answer? I didn't hear.

MR. WILLIAMS: I did say Christian religion, yes.

QUESTION: How many religious faiths are practiced in Alabama?

MR. WILLIAMS: I'm sorry?

QUESTION: Do you know how many religious faiths are practiced in Alabama?

MR. WILLIAMS: No, I do not know the total number.

QUESTION: There would be hundreds, wouldn't there?

MR. WILLIAMS: Certainly. I would think so.

QUESTION: Any particular one of those furthered by this statute?

MR. WILLIAMS: I think religion generally is

1 being furthered by this statute.

2 QUESTION: This big -- the First Amendment
3 doesn't say that. The First Amendment says Congress
4 shall make no law respecting an establishment of
5 religion. That was written with the Church of England
6 in mind.

7 So I return to my question, does this statute
8 further any establishment of religion?

9 MR. WILLIAMS: I would say yes in the sense
10 that --

11 QUESTION: Which one?

12 MR. WILLIAMS: Well, I couldn't identify them
13 all, but I was about to say that any religion --

14 QUESTION: It furthers all of them?

15 MR. WILLIAMS: Pardon me?

16 QUESTION: It furthers several hundred
17 establishments.

18 MR. WILLIAMS: Those that deal with prayer or
19 have prayer as part of their religious worship
20 exercises, I would --

21 QUESTION: Do you think that is consistent
22 with the language of the First Amendment?

23 MR. WILLIAMS: No, I do not. I believe that
24 as this Court has held in past cases that it is not the
25 business of the government, period, to be involved in

1 religious matters, even promoting a belief in all
2 religions or a belief in no religion.

3 QUESTION: On the other hand, the government
4 certainly has a duty to, as you have already recognized,
5 to make sure that people have their right to exercise
6 whichever religion they prefer.

7 Could you construe this statute as having that
8 as a primary purpose.

9 MR. WILLIAMS: No, because I think --

10 QUESTION: Go right ahead. I would be
11 interested in your response.

12 MR. WILLIAMS: Well, if Alabama simply had a
13 silent meditation or prayer statute, no other statute,
14 quite possibly -- no, I don't think even -- I don't even
15 think in that situation. I do not feel that this
16 statute serves those purposes. I think the moment of
17 silence serves adequately any needs of any student.
18 They are not just that particular statute, but even
19 without that statute, a child has the right to silently
20 pray.

21 So I don't think the government has to take
22 any step at all to encourage or influence a child to
23 pray.

24 QUESTION: As sort of a practical matter, do
25 you think many children of school age are going to be

1 thinking about prayer when they have this moment of
2 silence, or will they be thinking about the next
3 athletic contest or the next date or the next party or
4 whatever?

5 There is no compulsion of any kind to think
6 about anything. You could doze.

7 MR. WILLIAMS: That is correct. In fact, the
8 danger is that a teacher who, as I suggested earlier,
9 may be basically taking the role of a parent in the
10 classroom, someone that the child looks up to, may
11 influence some children to pray, and I think that is the
12 danger of allowing this type of statute to remain on the
13 books.

14 QUESTION: Mr. Williams, let me ask you a
15 question about one of your responses to Justice Powell.

16 I think, at least I gathered from your answer
17 that you feel that either the First Amendment or
18 something else allows a student to pray of his own free
19 will without any statute.

20 Supposing the schools in Mobile open with math
21 class, and that the first thing the teacher does when
22 the bell rings is say, John Smith, what's eight times
23 nine? Well surely John Smith doesn't have any
24 constitutional right to pray at that point. He's
25 supposed to be trying to answer the question.

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MR. WILLIAMS: That is correct.

QUESTION: So this kind of constitutional right to pray at any moment is always subject to the overriding concerns of the educational program of the school, I suppose, unless there is some sort of a statute that says there is a moment at the beginning when you can pray or do something else.

MR. WILLIAMS: Well, a teacher, certainly during a period of time in which the student is not actually engaged in the pursuit of knowledge, I would think that he could take time to silently pray, but I don't think a child has a constitutional right to, when a teacher asks him what is five plus four, to ask the teacher for a brief moment to go and pray and then come back and respond to the question.

(General laughter.)

MR. WILLIAMS: It may happen.

I think what is clear though is that no evidence was offered as to any secular purpose regarding the second statute, the 1981 silent meditation or prayer statute. The sole witness, Senator Holmes, the sponsoring legislator on this particular bill, testified that it was his main purpose, I mean, his only purpose was to return prayer to the Alabama public schools. There was no secular purpose, and I think that even

1 under the --

2 QUESTION: Mr. Williams, can I ask you a
3 question about the difference between the two statutes
4 again, as a practical matter? How do we know that the
5 children of Mr. Jaffree, when they go to school, will
6 encounter any different practice by the teacher, whether
7 one or both statutes are in effect?

8 Does the statute cause anything different to
9 happen in the classroom of the people who are parties to
10 this lawsuit than if the statute were not on the books?

11 MR. WILLIAMS: I think so, and not just to
12 the -- Mr. Jaffree's minor children in school. I think
13 all children who are subjected day in and day out to the
14 teacher suggesting that they can pray, not just --

15 QUESTION: Well, how do we know the teacher is
16 going to suggest that? The statute doesn't require the
17 testimony to say a word about prayer.

18 MR. WILLIAMS: No. The statute --

19 QUESTION: Could not the teacher comply with
20 the new statute by continuing to follow whatever
21 practice he or she followed under the old statute?

22 MR. WILLIAMS: That is correct.

23 QUESTION: Then how does the new statute hurt
24 your clients?

25 MR. WILLIAMS: I think it is public

1 perception, and I think with the fanfare of this whole
2 thing, I think with having a statute that provides for
3 meditation and then turning right around a few years
4 later and having a very similar statute but simply
5 adding prayer, I think gives perception to those who are
6 interested --

7 QUESTION: Do you think that makes your case
8 or controversy?

9 MR. WILLIAMS: I think what makes the case or
10 controversy is that this is not the business of the
11 state at all to be engaged in promoting religion.

12 QUESTION: Well, I know, but as Justice
13 Stevens asked you, how does it hurt? How can you show
14 that this statute hurts your client, unless, unless the
15 children have actually been in school and in class and
16 the teacher has actually followed this new statute?

17 MR. WILLIAMS: To my knowledge --

18 QUESTION: Nobody knows if it has ever been
19 applied yet, do you?

20 MR. WILLIAMS: Well, it is not on the record.
21 We do know it has been applied.

22 As far as Mr. Jaffree's children, no, we do
23 not have any knowledge as to whether or not the statute
24 has actually been applied in those children's
25 classrooms.

1 QUESTION: Well, in the long run, Mr.
2 Williams, to go back to that point, is the teacher
3 telling the students if they do so any more than what
4 the Constitution guarantees, that is, that they may
5 indulge in a few moments of silent prayer if they want
6 to?

7 MR. WILLIAMS: Yes, I think that the teacher
8 may in effect be telling a child no more, or the class
9 no more than what the Constitution provides, but I think
10 by the teacher, a state through the teacher engaging in
11 that behavior suggests more to some students than
12 possibly to others, may suggest that prayer is the
13 preferred activity during this one moment of
14 meditation. I see --

15 QUESTION: What if the teacher tells them
16 while you are in the classroom you may not whisper or
17 speak to the other students, you will only speak when
18 you are called upon, but when you go out on the
19 playground or out in the hall, then the Constitution
20 guarantees you the right of freedom of speech?

21 Anything wrong with that?

22 MR. WILLIAMS: No, I see nothing wrong with
23 that, but there is no --

24 QUESTION: There is no religious aspect to
25 that, of course, but --

1 MR. WILLIAMS: You've got it. And it would
2 not require the state to take a position one way or the
3 other. Also, in the Alabama situation, I see --

4 QUESTION: In either situation of these two
5 postulated statements, a statement of what the
6 Constitution of the United States guarantees, is it
7 not?

8 MR. WILLIAMS: That's correct.

9 QUESTION: You may speak, you may pray.

10 MR. WILLIAMS: A teacher is speaking of things
11 that the Constitution do -- does provide, but I think
12 the danger, or the difference is that one statute
13 prohibits the teacher or prohibits the state from
14 engaging in that type of activity.

15 QUESTION: Suppose under the first statute,
16 just the moment of silence statute, without the word
17 "prayer" in it, just meditation --

18 MR. WILLIAMS: Yes.

19 QUESTION: Which I think you indicated
20 previously you thought was facially valid.

21 MR. WILLIAMS: That is correct.

22 QUESTION: Suppose the teacher does say, we
23 are now going to have a meditation, a minute of
24 meditation. Everybody be silent and meditate if you
25 want to, and a hand goes up, may we pray during this

1 time. May the teacher say yes, you may pray as well as
2 meditate?

3 MR. WILLIAMS: I would think so. I would
4 think any time a child inquires about even protected
5 areas, the teacher has a duty to respond.

6 QUESTION: Well, isn't that the state -- then
7 isn't the state involving itself in religion by saying
8 yes, you may pray as well as meditate?

9 MR. WILLIAMS: Well, I think as --

10 QUESTION: And after all, that's all the
11 statute does is say you may pray as well as meditate.

12 MR. WILLIAMS: No, I think when it becomes
13 part of a statute, part of a law, and something that is
14 supposed to be done, that it is impermissible.

15 QUESTION: Well, it doesn't say you are
16 supposed to. It still -- the teacher doesn't need to do
17 anything.

18 MR. WILLIAMS: That is correct, but by the
19 statute, but having the statute itself suggests that
20 wherever a teacher does do it, that teacher will be
21 suggesting or implying that prayer is the preferred
22 activity. If that was not the case, that simply to say
23 you have a moment to meditate for whatever purpose you
24 wish to use that time for, there's nothing wrong with
25 that.

1 QUESTION: Mr. Williams, the Internal Revenue
2 Code provides special exemptions for churches and
3 religions, and local statutes provide exemption from
4 property taxation for churches.

5 Would you consider that those types of
6 legislative provisions are compatible with your
7 position, or would you hold, if you had the opportunity
8 to do so, that all of those statute are invalid?

9 MR. WILLIAMS: No, I think those statutes are
10 perfectly consistent with the constitutional --

11 QUESTION: You think they do not promote
12 religion to the same extent, perhaps a far greater
13 extent than this little statute that you are debating
14 here today?

15 MR. WILLIAMS: I think, as this Court has held
16 in prior cases, incidental benefits to religion does not
17 necessarily constitute --

18 QUESTION: Is there incidental benefit to
19 being tax exempt?

20 MR. WILLIAMS: Well, if all nonprofit --

21 QUESTION: I'd like to enjoy it.

22 (General laughter.)

23 QUESTION: Well, didn't the District judge say
24 that he thought that this Court had been completely
25 misguided in all of these cases, that is, the provision

1 of textbooks for Catholic schools, the provision of
2 transportation to Catholic schools and all the other
3 fringe benefits, he thought this Court was just dead
4 wrong, didn't he, and said so.

5 MR. WILLIAMS: Yes, the District judge did say
6 that. I do not agree with that opinion. I think --

7 QUESTION: But you don't agree with the
8 District judge on that.

9 MR. WILLIAMS: No, I don't. But if I could
10 make one more point about the question that was just
11 raised, the incidental benefit to the religion, I think
12 to exclude religion from, say, tax exempt statutes would
13 be showing some type of hostility. If you are going to
14 exempt other nonprofit organizations from the tax rules,
15 then to turn around and tax churches and other religious
16 entities, I think you would be showing some form of
17 hostility, and I think it still crosses the line of
18 neutrality.

19 So I would see -- I would see absolutely
20 nothing wrong with that incidental benefit to religion.

21 QUESTION: Mr. Williams, do you think that
22 every statute that is worded in the terms of this one
23 would be invalid facially regardless of the evidence
24 surrounding the purpose of its adoption?

25 MR. WILLIAMS: That's a difficult question.

1 The Alabama situation is, in my mind, a lot clearer than
2 other states, but I would venture, my opinion would be
3 that if you are saying that by giving children a moment
4 of silence for meditation to do whatever they will, I do
5 not think there is a need for adding the word "prayer,"
6 and I think even those statutes in other states would
7 also be constitutionally infirm.

8 QUESTION: Your answer then is that you think
9 that a statute worded as this one would be
10 constitutionally invalid regardless of the evidence
11 surrounding the intention of its adoption.

12 MR. WILLIAMS: Yes. I think if the perception
13 among the citizens of a particular state is that by
14 singling out one particular activity in addition to
15 meditation, but one specific activity that can be
16 engaged in during that what, that one moment involves
17 the state in religious matters.

18 QUESTION: Is that consistent with your
19 response to Justice White's question that it would be
20 constitutionally valid for a teacher to inform the
21 students that they may use the moment to pray?

22 MR. WILLIAMS: I think it would be
23 consistent. I think my response was that a child, or
24 the teacher should be responsive to any question from a
25 student. You do not have the routine, although this

1 statute is impermissive, but you do not have the
2 possibility, I guess, of every day a student asking the
3 same question, can we pray. The teacher announces a
4 moment of silence for meditation, and I think throughout
5 that school year you would not have someone in that same
6 class asking that same question. I think once that
7 question is asked and once it is answered by the teacher
8 on one occasion, assuming this takes place in the same
9 class with the same people, I think the teacher has
10 satisfied that inquiry and there is no need to dwell on
11 that subject. But to each day have a teacher to remind
12 the students that you can pray during this moment of
13 silence I think is going too far.

14 And I would just like to repeat, I think I may
15 have glossed over the point earlier, but particularly
16 when you have impressionable minds, you have a captive
17 audience, I think it is even more important, and this
18 Court has saw fit to see it that way as well, that it is
19 even more important to protect young people from this
20 type of behavior, from the state involving itself in
21 religion.

22 Adults obviously can pick and choose between
23 beliefs, philosophies and whatever. Young children do
24 not have that capability to ferret out what they feel is
25 unacceptable and to -- or what is consistent with what

1 they are being taught at home. That was precisely the
2 situation with the Jaffree family. The children were
3 being taught one thing at home and something else in the
4 public school room, and it is just not the business of
5 the state to engage in that type of activity.

6 Thank you.

7 CHIEF JUSTICE BURGER: Very well.

8 Do you have anything further, Mr. Baker?

9 ORAL ARGUMENT OF JOHN S. BAKER, JR., ESQ.

10 ON BEHAIF OF APPELLANTS -- Rebuttal

11 MR. BAKER: Just briefly, Your Honor.

12 We would like to emphasize that there is a
13 case in controversy here because in the second amended
14 petition, the appellee did allege that the statute was
15 being used, and it was under that that there was praying
16 going on in the schools.

17 We have a situation --

18 QUESTION: Do you want to indicate the
19 paragraph you are talking about?

20 MR. BAKER: Yes, Your Honor. It is on page 25
21 of the Joint Appendix, Paragraph 32(f). He makes that
22 allegation.

23 We have a situation now, Your Honor, where we
24 have a statute conceded to be valid regarding a minute
25 of silence, and a teacher now is facing the dilemma when

1 he or she announces that minute of silence whether he or
2 she as to do as the Chief Justice suggested, namely,
3 inform the students that they cannot pray because of the
4 situation where she is fearing or he is fearing the
5 possibility of a lawsuit here for violating the
6 injunction against the minute of silence for meditation
7 or prayer.

8 QUESTION: Mr. Baker, let me just be sure I
9 understand your reference to 32(f) there, which reads
10 that pursuant to the grant of authority contained in
11 16-1-20.1, Defendants, and they name the teachers, have
12 led their classes in religiously based prayer
13 activities.

14 Is that a fair description of what this
15 statute authorizes?

16 MR. BAKER: No, Your Honor.

17 QUESTION: Well, then, how do we -- so you
18 don't admit that is a correct allegation.

19 How does that save it from being no case or
20 controversy then?

21 Would you -- does this or does this not
22 reflect what the statute intends?

23 MR. BAKER: No, it is not the intent of the
24 statute, but to the extent that the Appellee has tried
25 to narrow the issue under this statute just to the issue

1 of prayer, one could make the allegation pursuant to
2 subparagraph (f) that by using this minute of silence to
3 allow prayer, that it constitutes an exercise, and the
4 Appellee has made the allegation in his brief that this
5 does constitute a religious exercise.

6 QUESTION: Under your view, does anything
7 different happen under the statute under attack in this
8 case than happened under the prior statute?

9 MR. BAKER: When you say the prior statute, do
10 you mean the '82 one or the --

11 QUESTION: No, the '78 one.

12 MR. BAKER: '78? The effect is no different,
13 Your Honor.

14 QUESTION: Well, then, where is the case or
15 controversy?

16 MR. BAKER: The case or controversy goes to
17 the face of the statute and the word "prayer" in there,
18 and the problem for the teacher as to whether they can
19 allow silent prayer, as indicated by --

20 QUESTION: Well, nothing in the '78 statute
21 forbade them from allowing silent prayer, did it?

22 MR. BAKER: But the dilemma for the teacher is
23 whether they have an affirmative duty now to state that
24 this minute in response to a question can or cannot be
25 used for prayer.

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Thank you, Your Honor.

CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 11:01 a.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Anderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

83-812-GEORGE C. WALLACE, GOVERNOR OF ALABAMA, ET AL., Appellants v. ISHMAEL JAFFREE, ET AL.; and
83-929-DOUGLAS T. SMITH, ET AL., Appellants v. ISHMAEL JAFFREE, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)

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