

SUPREME COURT OF THE UNITED STATES

Nos. 83-812 AND 83-929

GEORGE C. WALLACE, GOVERNOR OF THE STATE
OF ALABAMA, ET AL., APPELLANTS

83-812

v.

ISHMAEL JAFFREE ET AL.

DOUGLAS T. SMITH, ET AL., APPELLANTS

83-929

v.

ISHMAEL JAFFREE ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(June 4, 1985)

JUSTICE WHITE, dissenting.

For the most part agreeing with the opinion of the Chief Justice, I dissent from the Court's judgment invalidating Alabama Code § 16-1-20.1. Because I do, it is apparent that in my view the First Amendment does not proscribe either (1) statutes authorizing or requiring in so many words a moment of silence before classes begin or (2) a statute that provides, when it is initially passed, for a moment of silence for meditation or prayer. As I read the filed opinions, a majority of the Court would approve statutes that provided for a moment of silence but did not mention prayer. But if a student asked whether he could pray during that moment, it is difficult to believe that the teacher could not answer in the affirmative. If that is the case, I would not invalidate a statute that at the outset provided the legislative answer to the question "May I pray?" This is so even if the Alabama statute is infirm, which I do not believe it is, because of its peculiar legislative history.

83-812 & 83-925—DISSENT

2

WALLACE : JAFFREE

I appreciate JUSTICE REHNQUIST's explication of the history of the religion clauses of the First Amendment. Against that history, it would be quite understandable if we undertook to reassess our cases dealing with these clauses, particularly those dealing with the Establishment Clause. Of course, I have been out of step with many of the Court's decisions dealing with this subject matter, and it is thus not surprising that I would support a basic reconsideration of our precedents.