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 STEVENS delivered the opinion of the Court.

At an early stage of this litigation, the constitutionality of three Alabama statutes was questioned: (1) § 16-1-20, enacted in 1978, which authorized a one-minute period of silence in all public schools "for meditation";[1] (2) § 16-1-20.1, enacted in 1981, which authorized a period of silence "for meditation or voluntary prayer";[2] and (3) § 16-1-20.2, enacted in

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[1] Alabama Code § 16-1-20 (Supp. 1984) reads as follows:

"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."

Appellees have abandoned any claim that § 16-1-20 is unconstitutional. See Brief for Appellees 2.

[2] Alabama Code § 16-1-20.1 (Supp. 1984) provides:

"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

1982, which authorized teachers to lead "willing students" in a prescribed prayer to "Almighty God . . . the Creator and Supreme Judge of the world."[8]

At the preliminary-injunction stage of this case, the District Court distinguished § 16-1-20 from the other two statutes. It then held that there was "nothing wrong" with § 16-1-20,[9] but that § 16-1-20.1 and 16-1-20.2 were both invalid because the sole purpose of both was "an effort on the part of the State of Alabama to encourage a religious activity."[10] After the trial on the merits, the District Court did not change its interpretation of these two statutes, but held that they were constitutional because, in its opinion, Alabama has the power to establish a state religion if it chooses to do so.[11]

The Court of Appeals agreed with the District Court's initial interpretation of the purpose of both §§ 16-1-20.1 and 16-1-20.2, and held them both unconstitutional.[12] We have

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shall be observed for meditation or voluntary prayer, and during any such period no other activities shall be engaged in."

[8] Alabama Code § 16-1-20.2 (Supp. 1984) provides:

"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 homeroom 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 councils of our government, in the sanctity of our homes and in the classrooms of our schools in the name of our Lord. Amen."

[9] The court stated that it did not find any potential infirmity in § 16-1-20 because "it is a statute which prescribes nothing more than a child in school shall have the right to meditate in silence and there is nothing wrong with a little meditation and quietness." *Jaffree v. James*, 544 F. Supp. 727, 732 (SD Ala. 1982).

[10] *Ibid.*

[11] *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104, 1125 (SD Ala. 1983).

[12] *Jaffree v. Wallace*, 705 F. 2d 1526, 1535–1536 (CA11 1983).

already affirmed the Court of Appeals' holding with respect to §16-1-20.2.[4] Moreover, appellees have not questioned the holding that §16-1-20 is valid.[5] Thus, the narrow question for decision is whether §16-1-20.1, which authorizes a period of silence for "meditation or voluntary prayer," is a law respecting the establishment of religion within the meaning of the First Amendment.[6]

I

Appellee Ishmael Jaffree is a resident of Mobile County, Alabama. On May 25, 1982, he filed a complaint on behalf of three of his minor children; two of them were second-grade students and the third was then in kindergarten. The complaint named members of the Mobile County School Board, various school officials, and the minor plaintiffs' three teachers as defendants.[7] The complaint alleged that the appellees brought the action "seeking principally a declaratory judgment and an injunction restraining the Defendants and each of them from maintaining or allowing the maintenance of regular religious prayer services or other forms of religious observances in the Mobile County Public Schools in violation of the First Amendment as made applicable to states by the Fourteenth Amendment to the United States Constitution."[8] The complaint further alleged that two of the children had been subjected to various acts of religious indoctrination "from the beginning of the school year in September, 1981";[9] that the defendant teachers had "on a daily basis" led their classes in saying certain prayers in unison;[10] that the

[4] *Wallace v. Jaffree*, 466 U. S. —— (1984).

[5] See n. 1, *supra*.

[6] The Establishment Clause of the First Amendment, of course, has long been held applicable to the States. *Everson v. Board of Education*, 330 U. S. 1, 15–16 (1947).

[7] App. 6–7.

[8] *Id.*, at 4.

[9] *Id.*, at 7.

[10] *Ibid.*

minor children were exposed to ostracism from their peer group class members if they did not participate;[5] and that Ishmael Jaffree had repeatedly but unsuccessfully requested that the devotional services be stopped. The original complaint made no reference to any Alabama statute.

On June 4, 1982, appellees filed an amended complaint seeking class certification,[6] and on June 30, 1982, they filed a second amended complaint naming the Governor of Alabama and various State officials as additional defendants. In that amendment the appellees challenged the constitutionality of three Alabama statutes: §§ 16-1-20, 16-1-20.1, and 16-1-20.2.[7]

On August 2, 1982, the District Court held an evidentiary hearing on appellees' motion for a preliminary injunction. At that hearing, State Senator Donald G. Holmes testified that he was the "prime sponsor" of the bill that was enacted in 1981 as § 16-1-20.1.[8] He explained that the bill was an "effort to return voluntary prayer to our public schools . . . it is a beginning and a step in the right direction."[9] Apart from the purpose to return voluntary prayer to public school, Senator Holmes unequivocally testified that he had "no other purpose in mind."[10] A week after the hearing, the District Court entered a preliminary injunction.[11] The court held that appellees were likely to prevail on the merits because the enactment of §§ 16-1-20.1 and 16-1-20.2 did not reflect a clearly secular purpose.[12]

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[5] *Id.*, at 8–9.
[6] *Id.*, at 17.
[7] *Id.*, at 21. See nn. 1, 2, and 3, *supra*.
[8] *Id.*, at 47–49.
[9] *Id.*, at 50.
[10] *Id.*, at 52.
[11] *Jaffree v. James*, 544 F. Supp. 727 (SD Ala. 1982).
[12] See *Lemon v. Kurtzman*, 403 U. S. 602, 612–613 (1971). Insofar as relevant to the issue now before us, the District Court explained:

"The injury to plaintiffs from the possible establishment of a religion by the State of Alabama contrary to the proscription of the establishment

In November 1982, the District Court held a four-day trial on the merits. The evidence related primarily to the 1981–1982 academic year—the year after the enactment of § 16–1–20.1 and prior to the enactment of § 16–1–20.2. The District Court found that during that academic year each of the minor plaintiffs' teachers had led classes in prayer activities, even after being informed of appellees' objections to these activities.*

In its lengthy conclusions of law, the District Court reviewed a number of opinions of this Court interpreting the

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clause outweighs any indirect harm which may occur to defendants as a result of an injunction. Granting an injunction will merely maintain the status quo existing prior to the enactment of the statutes . . . .

"The purpose of Senate Bill 8 [§ 16–1–20.2] as evidenced by its preamble, is to provide for a prayer that may be given in public schools. Senator Holmes testified that his purpose in sponsoring § 16–1–20.1 was to return voluntary prayer to the public schools. He intended to provide children the opportunity of sharing in their spiritual heritage of Alabama and of this country. *See* Alabama Senate Journal 921 (1981). The Fifth Circuit has explained that 'prayer is a primary religious activity in itself . . .' *Karen B. v. Treen*, 653 F. 2d 897, 901 (5th Cir. 1981). The state may not employ a religious means in its public schools. *Abington School District v. Schempp*, [374 U. S. 203, 224] (1963). Since these statutes do not reflect a clearly secular purpose, no consideration of the remaining two parts of the *Lemon* test is necessary.

"The enactment of Senate Bill 8 [§ 16–1–20.2] and § 16–1–20.1 is an effort on the part of the State of Alabama to encourage a religious activity. Even though these statutes are permissive in form, it is nevertheless state involvement respecting an establishment of religion. *Engle v. Vitale*, [370 U. S. 421, 430] (1962). Thus, binding precedent which this Court is under a duty to follow indicates the substantial likelihood plaintiffs will prevail on the merits." 544 F. Supp., at 786–787.

* The District Court wrote:

"Defendant Boyd, as early as September 16, 1981, led her class at E. R. Dickson in singing the following phrase:

"'God is great, God is good,'

"'Let us thank him for our food,

"'bow our heads we all are fed,

"'Give us Lord our daily bread.'

Establishment Clause of the First Amendment, and then embarked on a fresh examination of the question whether the First Amendment imposes any barrier to the establishment of an official religion by the State of Alabama. After reviewing at length what it perceived to be newly discovered historical evidence, the District Court concluded that "the establishment clause of the first amendment to the United States Constitution does not prohibit the state from establishing a religion."[8] In a separate opinion, the District Court dismissed appellees' challenge to the three Alabama statutes because of a failure to state any claim for which relief could be granted. The court's dismissal of this challenge was

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[8] "Amen."

"The recitation of this phrase continued on a daily basis throughout the 1981-82 school year.

. . . . .

"Defendant Pixie Alexander has led her class at Craighead in reciting the following phrase.

"'God is great, God is good,

"'Let us thank him for our food.'

"Further, defendant Pixie Alexander had her class recite the following, which is known as the Lord's Prayer:

"'Our Father, which art in heaven, hallowed be Thy name. Thy kingdom come. Thy will be done on earth as it is in heaven. Give us this day our daily bread and forgive us our debts as we forgive our debtors. And lead us not into temptation but deliver us from evil for thine is the kingdom and the power and the glory forever. Amen.'

"The recitation of these phrases continued on a daily basis throughout the 1981-82 school year.

. . . . .

"Ms. Green admitted that she frequently leads her class in singing the following song:

"'For health and strength and daily food, we praise Thy name, Oh Lord.'

"This activity continued throughout the school year, despite the fact that Ms. Green had knowledge that plaintiff did not want his child exposed to the above-mentioned song." *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp., at 1107-1108.

[9] *Id.*, at 1125

also based on its conclusion that the Establishment Clause did not bar the States from establishing a religion.*

The Court of Appeals consolidated the two cases; not surprisingly, it reversed. The Court of Appeals noted that this

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*Jaffree v. James, 554 F. Supp. 1130, 1132 (SD Ala. 1983). The District Court's opinion was announced on January 14, 1983. On February 11, 1983, JUSTICE POWELL, in his capacity as Circuit Justice for the Eleventh Circuit, entered a stay which in effect prevented the District Court from dissolving the preliminary injunction that had been entered in August 1982. JUSTICE POWELL accurately summarized the prior proceedings:

"The situation, quite briefly, is as follows. Beginning in the fall of 1981, teachers in the minor applicants' schools conducted prayers in their regular classes, including group recitations of the Lord's Prayer. At the time, an Alabama statute provided for a one-minute period of silence 'for meditation or voluntary prayer' at the commencement of each day's classes in the public elementary schools. Ala. Code § 16-1-20.1 (Supp. 1982). In 1982, Alabama enacted a statute permitting public school teachers to lead their classes in prayer. 1982 Ala. Acts 735.

"Applicants, objecting to prayer in the public schools, filed suit to enjoin the activities. They later amended their complaint to challenge the applicable state statutes. After a hearing, the District Court granted a preliminary injunction. *Jaffree v. James*, 544 F. Supp. 727 (1982). It recognized that it was bound by the decisions of this Court, *id.*, at 731, and that under those decisions it was 'obligated to enjoin the enforcement' of the statutes, *id.*, at 733.

"In its subsequent decision on the merits, however, the District Court reached a different conclusion. *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104 (1983). It again recognized that the prayers at issue, given in public school classes and led by teachers, were violative of the Establishment Clause of the First Amendment as that Clause had been construed by this Court. The District Court nevertheless ruled that the United States Supreme Court has erred.' *Id.*, at 1126. It therefore dismissed the complaint and dissolved the injunction.

"There can be little doubt that the District Court was correct in finding that conducting prayers as part of a school program is unconstitutional under this Court's decisions. In *Engel v. Vitale*, 370 U. S. 421 (1962), the Court held that the Establishment Clause of the First Amendment, made applicable to the States by the Fourteenth Amendment, prohibits a State from authorizing prayer in the public schools. The following Term, in *Murray v. Curlett*, decided with *Abington School District v. Schempp*, 374

Court had considered and had rejected the historical arguments that the District Court found persuasive, and that the District Court had misapplied the doctrine of *stare decisis*.[7] The Court of Appeals then held that the teachers' religious activities violated the Establishment Clause of the First Amendment.[8] With respect to § 16-1-20.1 and § 16-1-20.2, the Court of Appeals stated that "both statutes advance and encourage religious activities."[9] The Court of Appeals then quoted with approval the District Court's finding that § 16-1-20.1, and § 16-1-20.2, were efforts "to encourage a religious activity. Even though these statutes are permissive in

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U. S. 203 (1963), the Court explicitly invalidated a school district's rule providing for the reading of the Lord's Prayer as part of a school's opening exercises, despite the fact that participation in those exercises was voluntary.

"Unless and until this Court reconsiders the foregoing decisions, they appear to control this case. In my view, the District Court was obligated to follow them." *Jaffree v. Board of School Commissioners of Mobile County*, 459 U. S. 1214, 1214–1216 (1983).

[7] The Court of Appeals wrote:

"The *stare decisis* doctrine and its exceptions do not apply where a lower court is compelled to apply the precedent of a higher court. *See* 20 Am. Jur. 2d *Courts* § 183 (1965).

"Federal district courts and circuit courts are bound to adhere to the controlling decisions of the Supreme Court. *Hutto v. Davis*, [454 U. S. 370, 375] (1982) . . . . Justice Rehnquist emphasized the importance of precedent when he observed that 'unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.' *Davis*, [454 U. S. at 375]. *See Also, Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, [460 U. S. 533, 535] (1983) (the Supreme Court, in a per curiam decision, recently stated 'Needless to say, only this Court may overrule one of its precedents')." *Jaffree v. Wallace*, 705 F. 2d, at 1532.

[8] *Id.*, at 1533–1534. This Court has denied a petition for a writ of certiorari that presented the question whether the Establishment Clause prohibited the teachers' religious prayer activities. *Board of School Commissioners of Mobile County, Alabama v. Jaffree*, 466 U. S. —— (1984).

[9] 705 F. 2d, at 1535.

form, it is nevertheless state involvement respecting an establishment of religion.'"[8] Thus, the Court of Appeals concluded that both statutes were "specifically the type which the Supreme Court addressed in *Engle* [v. *Vitale*, 370 U. S. 421 (1962)]."[9]

A suggestion for rehearing en banc was denied over the dissent of four judges who expressed the opinion that the full court should reconsider the panel decision insofar as it held § 16–1–20.1 unconstitutional.[10] When this Court noted probable jurisdiction, it limited argument to the question that those four judges thought worthy of reconsideration. The judgment of the Court of Appeals with respect to the other issues presented by the appeals was affirmed. *Wallace* v. *Jaffree*, 466 U. S. —— (1984).

II

Our unanimous affirmance of the Court of Appeals' judg-

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[8] *Ibid.*

[9] *Ibid.* After noting that the invalidity of § 16–1–20.2 was aggravated by "the existence of a government composed prayer," and that the proponents of the legislation admitted that that section "amounts to the establishment of a state religion," the court added this comment on § 16–1–20.1:

"The objective of the meditation or prayer statute (Ala. Code § 16–1–20.1) was also the advancement of religion. This fact was recognized by the district court at the hearing for preliminary relief where it was established that the intent of the statute was to return prayer to the public schools. *Jaffree*, 544 F. Supp. at 731. The existence of this fact and the inclusion of prayer obviously involves the state in religious activities. *Beck* v. *McElrath*, 548 F. Supp. 1161 (MD Tenn. 1982). This demonstrates a lack of secular legislative purpose on the part of the Alabama Legislature. Additionally, the statute has the primary effect of advancing religion. We do not imply that simple meditation or silence is barred from the public schools, we hold that the state cannot participate in the advancement of religious activities through any guise, including teacher-led meditation. It is not the activity itself that concerns us, it is the purpose of the activity that we shall scrutinize. Thus, the existence of these elements require that we also hold section 16–1–20.1 in violation of the establishment clause." *Id.*, at 1535–1536.

[10] *Jaffree* v. *Wallace*, 713 F. 2d 614 (CA11 1983) (*per curiam*).

ment concerning § 16-1-20.2 makes it unnecessary to comment at length on the District Court's remarkable conclusion that the Federal Constitution imposes no obstacle to Alabama's establishment of a state religion. Before analyzing the precise issue that is presented to us, it is nevertheless appropriate to recall how firmly embedded in our constitutional jurisprudence is the proposition that the several States have no greater power to restrain the individual freedoms protected by the First Amendment than does the Congress of the United States.

As is plain from its text, the First Amendment was adopted to curtail the power of Congress to interfere with the individual's freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience.[8] Until the Fourteenth Amendment was added to the Constitution, the First Amendment's restraints on the exercise of federal power simply did not apply to the States.[9] But when the Constitution was amended to prohibit any State from depriving any person of liberty without due process of law, that Amendment imposed the same substantive limitations on the States' power to legislate that the First Amendment had always imposed on the Congress' power. This Court has confirmed and endorsed this elementary proposition of law time and time again.[10]

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[8] The First Amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[9] See *Permoli* v. *Municipality No. 1 of the City of New Orleans*, 3 How. 589, 609 (1845).

[10] See, e. g., *Wooley* v. *Maynard*, 430 U. S. 705, 714 (1977) (right to refuse endorsement of an offensive state motto); *Terminiello* v. *Chicago*, 337 U. S. 1, 4 (1949) (right to free speech); *Board of Education* v. *Barnette*, 319 U. S. 624, 637–638 (1943) (right to refuse to participate in a ceremony that offends one's conscience); *Cantwell* v. *Connecticut*, 310 U. S. 296, 303 (1940) (right to proselytize one's religious faith); *Hague* v.

Writing for a unanimous Court in *Cantwell* v. *Connecticut*, 310 U. S. 296, 303 (1940), Justice Roberts explained:

> ". . . We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion."

Cantwell, of course, is but one case in which the Court has identified the individual's freedom of conscience as the central liberty that unifies the various clauses in the First

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CIO, 307 U. S. 496, 519 (1939) (opinion of Stone, J.) (right to assemble peaceably), *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 707 (1931) (right to publish an unpopular newspaper), *Whitney* v. *California*, 274 U. S. 357, 373 (Brandeis, J., concurring) (right to advocate the cause of communism), *Gitlow* v. *New York*, 268 U. S. 652, 672 (1925) (Holmes, J., dissenting) (right to express an unpopular opinion), *cf. Abington School District* v. *Schempp*, 374 U. S. 203, 215, n. 7 (1963), where the Court approvingly quoted *Board of Education* v. *Minor*, 23 Ohio St. 211, 253 (1872), which stated:

"The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government."

Amendment.* Enlarging on this theme, THE CHIEF JUSTICE recently wrote:

> "We begin with the proposition that the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all. See *Board of Education* v. *Barnette*, 319 U. S. 624, 633–634 (1943); *id.*, at 645 (Murphy, J., concurring). A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts. The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.' *Id.*, at 637.
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> . . . . .
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> "The Court in *Barnette*, *supra*, was faced with a state statute which required public school students to participate in daily public ceremonies by honoring the flag both with words and traditional salute gestures. In overruling its prior decision in *Minersville District* v. *Gobitis*, 310 U. S. 586 (1940), the Court held that 'a ceremony so touching matters of opinion and political attitude may [not] be imposed upon the individual by official authority

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*For example, in *Prince* v. *Massachusetts*, 321 U. S. 158, 164 (1944), the Court wrote:

"If by this position appellant seeks for freedom of conscience a broader protection than for freedom of the mind, it may be doubted that any of the great liberties insured by the First Article can be given higher place than the others. All have preferred position in our basic scheme. *Schneider* v. *State*, 308 U. S. 147, *Cantwell* v. *Connecticut*, 310 U. S. 296. All are interwoven there together. Differences there are, in them and in the modes appropriate for their exercise. But they have unity in the charter's prime place because they have unity in their human sources and functionings."

See also *Widmar* v. *Vincent*, 454 U. S. 263, 269 (1981) (stating that religious worship and discussion "are forms of speech and association protected by the First Amendment").

under powers committed to any political organization under our Constitution.' 319 U. S., at 636. Compelling the affirmative act of a flag salute involved a more serious infringement upon personal liberties than the passive act of carrying the state motto on a license plate, but the difference is essentially one of degree. Here, as in *Barnette*, we are faced with a state measure which forces an individual, as part of his daily life—indeed constantly while his automobile is in public view—to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable. In doing so, the State 'invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.' *Id.*, at 642." *Wooley* v. *Maynard*, 430 U. S. 705, 714–715 (1977).

Just as the right to speak and the right to refrain from speaking are complimentary components of a broader concept of individual freedom of mind, so also the individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority. At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Mohammedism or Judaism.[*] But when the underlying princi-

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[*] Thus Joseph Story wrote

"Probably at the time of the adoption of the constitution, and of the amendment to it, now under consideration [First Amendment], the general, if not the universal sentiment in America was, that christianity ought to receive encouragement from the state, so far as was not incompatible with the private rights of conscience, and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation." 2 J. Story, Commentaries on the Constitution of the United States § 1874, p. 593 (1851) (footnote omitted).

In the same volume, Story continued:

ple has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all." This conclusion derives support not only from the interest in respecting the individual's freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the

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"The real object of the amendment was, not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating christianity, *but to exclude all rivalry among christian sects, and to prevent any national ecclesiastical establishment, which should give to a hierarchy the exclusive patronage of the national government. It thus cut off the means of religious persecution, (the vice and pest of former ages,) and of the subversion of the rights of conscience in matters of religion, which had* been trampled upon almost from the days of the Apostles to the present age . . ." *Id.*, § 1877, at 594 (emphasis supplied).

"Thus, in *Everson v. Board of Education*, 330 U. S., at 15, the Court stated:

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."

Id., at 18 (the First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers"); *Abington School District v. Schempp*, 374 U. S., at 216 ("This Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another"); *id.*, at 226 ("The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of the government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality"); *Torcaso v. Watkins*, 367 U. S. 488, 495 (1961) ("We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs").

product of free and voluntary choice by the faithful,[8] and from recognition of the fact that the political interest in forestalling intolerance extends beyond intolerance among Christian sects—or even intolerance among "religions"—to encompass intolerance of the disbeliever and the uncertain.[9] As

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[8] In his "Memorial and Remonstrance Against Religious Assessments, 1785," James Madison wrote, in part:

"1. Because we hold it for a fundamental and undeniable truth, 'that Religion or the duty which we owe to our Creator and the [Manner of discharging it, can be directed only by reason and] conviction, not by force or violence.' The Religion then of every man must be left to the conviction and conscience of every man, and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. . . . We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance.

. . . . . .

"3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?" The Complete Madison 299–301 (S. Padover ed. 1953).

See also *Engel v. Vitale*, 370 U. S. 421, 435 (1962) ("It is neither sacrilegious nor antireligious to say 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 for religious guidance").

[9] As the *Barnette* opinion explained, it is the teaching of history, rather than any appraisal of the quality of a State's motive, that supports this duty to respect basic freedoms:

Justice Jackson eloquently stated in *Board of Education* v. *Barnette*, 319 U. S. 624, 642 (1943):

> "If there is any fixed star in our constitutional constellation, it is 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 State of Alabama, no less than the Congress of the United States, must respect that basic truth.

III

When the Court has been called upon to construe the breadth of the Establishment Clause, it has examined the criteria developed over a period of many years. Thus, in *Lemon* v. *Kurtzman*, 403 U. S. 602, 612–613 (1971), we wrote:

"Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the uniformity of the graveyard." 319 U. S., at 640–641. See also *Engel* v. *Vitale*, 370 U. S., at 431 ("a union of government and religion tends to destroy government and to degrade religion").

"Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education* v. *Allen*, 392 U. S. 236, 243 (1968), finally, the statute must not foster 'an excessive government entanglement with religion.' *Walz* [v. *Tax Commission*, 397 U. S. 664, 674 (1970)]."

It is the first of these three criteria that is most plainly implicated by this case. As the District Court correctly recognized, no consideration of the second or third criteria is necessary if a statute does not have a clearly secular purpose.* For even though a statute that is motivated in part by a religious purpose may satisfy the first criterion, see, *e. g.*, *Abington School Dist.* v. *Schempp*, 374 U. S. 203, 296–303 (1963) (BRENNAN, J., concurring), the First Amendment requires that a statute must be invalidated if it is entirely motivated by a purpose to advance religion.*

In applying the purpose test, it is appropriate to ask "whether government's actual purpose is to endorse or disapprove of religion."* In this case, the answer to that

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*See *supra*, n. 22.

*See *Lynch* v. *Donnelly*, 465 U. S. ——, —— (1984), *id.*, at —— (O'CONNOR, J., concurring), *id.*, at —— (BRENNAN, J., joined by MARSHALL, BLACKMUN and STEVENS, JJ., dissenting). *Mueller* v. *Allen*, 463 U. S. 388, ——–—— (1983), *Widmar* v. *Vincent*, 454 U. S., at 271; *Stone* v. *Graham*, 449 U. S. 39, 40–41 (1980) (*per curiam*); *Wolman* v. *Walter*, 433 U. S. 229, 236 (1977).

*Lynch v. *Donnelly*, 465 U. S., at —— (O'CONNOR, J., concurring) ("The purpose prong of the *Lemon* test asks whether government's actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid").

question is dispositive. For the record not only provides us with an unambiguous affirmative answer, but it also reveals that the enactment of § 16–1–20.1 was not motivated by any clearly secular purpose—indeed, the statute had no secular purpose.

IV

The sponsor of the bill that became § 16–1–20.1, Senator Donald Holmes, inserted into the legislative record—apparently without dissent—a statement indicating that the legislation was an "effort to return voluntary prayer" to the public schools.* Later Senator Holmes confirmed this purpose before the District Court. In response to the question whether he had any purpose for the legislation other than returning voluntary prayer to public schools, he stated, "No, I did not have no other purpose in mind."* The State did not present

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*The statement indicated, in pertinent part:

"Gentlemen, by passage of this bill by the Alabama Legislature our children in this state will have the opportunity of sharing in the spiritual heritage of this state and this country. The United States as well as the State of Alabama was founded by people who believe in God. *I believe this effort to return voluntary prayer to our public schools for its return to us to the original position of the writers of the Constitution, this local philosophies and beliefs hundreds of Alabamians have urged my continuous support for permitting school prayer. Since coming to the Alabama Senate I have worked hard on this legislation to accomplish the return of voluntary prayer in our public schools and return to the basic moral fiber.*" App. 50 (emphasis added).

Id., at 52. The District Court and the Court of Appeals agreed that the purpose of § 16–1–20.1 was "an effort on the part of the State of Alabama to encourage a religious activity." *Jaffree v. James*, 544 F. Supp., at 782; *Jaffree v. Wallace*, 705 F. 2d, at 1535. The evidence presented to the District Court elaborated on the express admission of the Governor of Alabama (then Fob James) that the enactment of § 16–1–20.1 was intended to "clarify [the State's] intent to have prayer as part of the daily classroom activity," compare Second Amended Complaint ¶ 32(d) (App. 24–25); with Governor's Answer to ¶ 32(d) (App. 40), and that the "expressed legislative purpose in enacting Section 16–1–20.1 (1981) was to 'return voluntary prayer to public schools.'" compare Second Amended Complaint ¶¶ 32(b) and (c) (App. 24) with Governor's Answer to ¶¶ 32(b) and (c) (App. 40).

evidence of any secular purpose.*

The unrebutted evidence of legislative intent contained in the legislative record and in the testimony of the sponsor of § 16-1-20.1 is confirmed by a consideration of the relationship between this statute and the two other measures that were considered in this case. . The District Court found that the 1981 statute and its 1982 sequel had a common, nonsecular purpose. The wholly religious character of the later enactment is plainly evident from its text. When the differences

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*Appellant Governor George C. Wallace now argues that § 16-1-20.1 "is best understood as a permissible accommodation of religion" and that viewed even in terms of the *Lemon* test, the "statute conforms to acceptable constitutional criteria." Brief for Appellant Wallace 8, see also Brief for Appellants Smith et al. 39 (§ 16-1-20.1 "accommodates the free exercise of the religious beliefs and free exercise of speech and belief of those affected"), *id.*, at 47. These arguments seem to be based on the theory that the free exercise of religion of some of the State's citizens was burdened before the statute was enacted. The United States, appearing as *amicus curiae* in support of the appellants, candidly acknowledges that "it is unlikely that in most contexts a strong Free Exercise claim could be made that time for personal prayer must be set aside during the school day." Brief for United States as *Amicus Curiae* 10. There is no basis for the suggestion that § 16-1-20.1 "is a means for accommodating the religious and meditative needs of students without in any way diminishing the school's own neutrality or secular atmosphere." *Id.*, at 11. In this case, it is undisputed that at the time of the enactment of § 16-1-20.1 there was no governmental practice impeding students from silently praying for one minute at the beginning of each school day; thus, there was no need to "accommodate" or to exempt individuals from any general governmental requirement because of the dictates of our cases interpreting the Free Exercise Clause. See, e. g., *Thomas v. Review Board, Indiana Employment Security Div.*, 450 U. S. 707 (1981); *Sherbert v. Verner*, 374 U. S. 398 (1963), see also *Abington School District v. Schempp*, 374 U. S., at 226 ("While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs"). What was missing in the appellants' eyes at time of the enactment of § 16-1-20.1—and therefore what is precisely the aspect that makes the statute unconstitutional—was the State's endorsement and promotion of religion and a particular religious practice.

between § 16–1–20.1 and its 1978 predecessor, § 16–1–20, are examined, it is equally clear that the 1981 statute has the same wholly religious character.

There are only three textual differences between § 16–1–20.1 and § 16–1–20: (1) the earlier statute applies only to grades one through six, whereas § 16–1–20.1 applies to all grades; (2) the earlier statute uses the word "shall" whereas § 16–1–20.1 uses the word "may"; (3) the earlier statute refers only to "meditation" whereas § 16–1–20.1 refers to "meditation or voluntary prayer." The first difference is of no relevance in this litigation because the minor appellees were in kindergarten or second grade during the 1981–1982 academic year. The second difference would also have no impact on this litigation because the mandatory language of § 16–1–20 continued to apply to grades one through six.* Thus, the only significant textual difference is the addition of the words "or voluntary prayer."

The legislative intent to return prayer to the public schools is, of course, quite different from merely protecting every student's right to engage in voluntary prayer during an appropriate moment of silence during the school day. The 1978 statute already protected that right, containing nothing that prevented any student from engaging in voluntary prayer during a silent minute of meditation.* Appellants have not identified any secular purpose that was not fully served by § 16–1–20 before the enactment of § 16–1–20.1. Thus, only two conclusions are consistent with the text of § 16–1–20.1: (1) the statute was enacted to convey a message of State endorsement and promotion of prayer, or (2) the statute was enacted for no purpose. No one suggests that the statute was nothing but a meaningless or irrational act.*

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*See n. 1, *supra*.

*Indeed, for some persons meditation itself may be a form of prayer. B. Larson, Larson's Book of Cults 82–85 (1982); C. Whittier, Silent Prayer and Meditation in World Religions 1–7 (Cong. Research Service 1982).

*If the conclusion that the statute had no purpose were tenable, it would remain true that no purpose is not a secular purpose. But such a

We must, therefore, conclude that the Alabama Legislature intended to change existing law* and that it was motivated by the same purpose that the Governor's Answer to the Second Amended Complaint expressly admitted, that the statement inserted in the legislative history revealed, and that Senator Holmes' testimony frankly described. The Legislature enacted §16-1-20.1 despite the existence of §16-1-20 for the sole purpose of expressing the State's endorsement of prayer activities for one minute at the beginning of each school day. The addition of "or voluntary prayer" indicates that the State intended to characterize prayer as a favored practice. Such an endorsement is not consistent with the established principle that the Government must pursue a course of complete neutrality toward religion.*

The importance of that principle does not permit us to treat this as an inconsequential case involving nothing more than a few words of symbolic speech on behalf of the political major-

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conclusion is inconsistent with the common-sense presumption that statutes are usually enacted to change existing law. Appellants do not even suggest that the State had no purpose in enacting §16-1-20.1.

*United States v. Champlin Refining Co., 341 U. S. 290, 297 (1951) (a "statute cannot be divorced from the circumstances existing at the time it was passed"), id., at 296 (refusing to attribute pointless purpose to Congress in the absence of facts to the contrary). United States v. National City Lines, Inc., 337 U. S. 78, 80–81 (1949) (rejecting Government's argument that Congress had no desire to change law when enacting legislation).

*See, e. g., Stone v. Graham, 449 U. S., at 42 (per curiam); Committee for Public Education v. Nyquist, 413 U. S. 756, 792–793 (1973) ("A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion"), Epperson v. Arkansas, 393 U. S. 97, 103 (1968), Abington School District v. Schempp, 374 U. S., at 215–222, Engel v. Vitale, 370 U. S., at 430 ("Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause"), Illinois ex rel. McCollum v. Board of Education, 333 U.S 203, 211–212 (1948), Everson v. Board of Education, 330 U. S., at 18.

ity.[8] For whenever the State itself speaks on a religious subject, one of the questions that we must ask is "whether the Government intends to convey a message of endorsement or disapproval of religion."[9] The well-supported concurrent findings of the District Court and the Court of Appeals—that § 16-1-20.1 was intended to convey a message of State-approval of prayer activities in the public schools—make it unnecessary, and indeed inappropriate, to evaluate the practi-

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[8] As this Court stated in *Engel* v. *Vitale*, 370 U. S., at 430.

"The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not."

Moreover, this Court has noted that: "[w]hether the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Id.*, at 431. This comment has special force in the public-school context where attendance is mandatory. Justice Frankfurter acknowledged this reality in *McCollum* v. *Board of Education*, 333 U. S. 203, 227 (1948) (concurring opinion):

"That a child is offered an alternative may reduce the constraint, it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children."

See also *Abington School District* v. *Schempp*, 374 U. S., at 290 (BRENNAN, J., concurring); cf. *Marsh* v. *Chambers*, 463 U. S. 783, 792 (1983) (distinguishing between adults not susceptible to "religious indoctrination" and children subject to "peer pressure"). Further, this Court has observed:

"That [Boards of Education] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *Board of Education* v. *Barnette*, 319 U. S., at 637.

[9] *Lynch* v. *Donnelly*, 465 U. S., at —— (O'CONNOR, J., concurring) ("The purpose prong of the *Lemon* test requires that a government activity have a secular purpose. . . . The proper inquiry under the purpose prong of *Lemon* . . . is whether the government intends to convey a message of endorsement or disapproval of religion").

cal significance of the addition of the words "or voluntary prayer" to the statute. Keeping in mind, as we must, "both the fundamental place held by the Establishment Clause in our constitutional scheme and the myriad, subtle ways in which Establishment Clause values can be eroded,"[9] we conclude that § 16–1–20.1 violates the First Amendment.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

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[9] *Id.*, at ——.