



WALLACE v. JAFFREE
SUPREME COURT OF THE UNITED STATES
472 U.S. 38
June 4, 1985
[6 - 3]

Another attempt to get prayer “back” into public schools! Will it be successful?

**This case is important for a new strategy in the dissent...
perhaps telling of things to come.**

Issue: Whether an Alabama statute that authorizes a period of silence “for meditation or voluntary prayer” is an impermissible establishment of religion?

Held: Court of Appeals affirmed. The statute is unconstitutional.

Reasoning: The statute was not motivated by a clearly secular purpose — indeed, it had no secular purpose. A legislative attempt to return prayer to public schools is quite different from merely protecting every student’s right to engage in voluntary prayer during an appropriate moment of silence during the school day. Nothing in the Constitution as interpreted by this Court prohibits public school students from voluntarily praying at any time before, during or after the school day. The moment of silence statute for the purpose of “meditation” is not invalid. But, the addition of “voluntary prayer” to the statute indicates the State’s intention to characterize prayer as a favored practice. Such a course is not consistent with complete government neutrality toward religion.”

Please take note: (1) Nothing in the Constitution prohibits public school students from voluntarily praying at any time before, during or after the school day and (2) a “moment of silent meditation” is not prohibited. Would even 10% of our populace get that right?

Dissent: [Justice Rehnquist takes a new look at the Framer’s intent.] “The Establishment Clause has been unfortunately...freighted with Jefferson’s misleading ‘wall’

metaphor for nearly 40 years. His letter to the Danbury Baptists was written 14 years after the Bill of Rights was adopted. Madison's writings make it clear that the clause was meant to prohibit a 'national religion' and perhaps to prevent discrimination between sects. He did not see it as requiring neutrality on the part of government between religion and irreligion. He was definitely not concerned about whether government might aid all religions evenhandedly." [Rehnquist refers to the First Congress statute that retained a legislative chaplain and the Northwest Ordinance adopted by the First Congress that stated, "religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." He suggests we might want to look at an Eighteenth Century dictionary for the definition of "establishment": "The first American dictionary defined 'establishment' as 'the act of establishing...or ordaining, such as the episcopal form of religion in England.'] Our recent opinions have with embarrassing candor conceded that the 'wall of separation' is merely a 'blurred...barrier which is not wholly accurate and can only be dimly perceived.'" History must judge whether it was the Father of his Country (President Washington) in 1789 or a majority of the Court today, which has strayed from the meaning of the Establishment Clause.

Given Rehnquist's historical account of the Framers' intent, I do not necessarily disagree with his assertion that the "wall" has been falsely erected too high, too wide and too impenetrable. Perhaps the Establishment Clause was only intended to prohibit a "national church" (or, with the 14th Amendment, a "State run church") and to prohibit discrimination between sects. He argues that it was not intended to prefer irreligion over religion nor to prohibit nondiscriminatory aid to **all** religion and he may be correct. Of course, all that does is alter the "line drawing," heretofore known as "wall erecting." For, even if the Court eventually goes along with the Rehnquist principle, it will still be faced with drawing a line in the sand. In other words, WHEN DOES A GOVERNMENT "ESTABLISH" A STATE RUN CHURCH? WHEN DOES GOVERNMENT ACTION DISCRIMINATE BETWEEN SECTS? ANSWER: WHEREVER YOU "DRAW THE LINE" OR "BUILD THE WALL".

WOULD JUSTICE REHNQUIST PERMIT THE LORD'S PRAYER IN SCHOOLS, A CLEARLY CHRISTIAN BASED PRAYER? PERHAPS HE WOULD PERMIT ROTATING PRAYERS REPRESENTING CHILDREN OF ALL REPRESENTED FAITHS. IT IS FAIRLY CLEAR, HOWEVER, THAT HE WOULD HAVE NO PROBLEM DISCRIMINATING AGAINST ATHEISTS. AND, **IF THE IS THE PROPER HISTORICAL PERSPECTIVE OF THE FRAMERS' INTENT**, NEITHER WOULD I. NEVERTHELESS, WE ARE STILL LEFT WITH DETERMINING WHEN "SOME RELIGIONS ARE AIDED AS OPPOSED TO ALL RELIGION," ARE WE NOT?