

SUBJECT: Requiring pledges of allegiance and a minute of silence in public schools

COMMITTEE: Public Education — committee substitute recommended

VOTE: 6 ayes — Grusendorf, Branch, Dawson, Eissler, Griggs, Madden

0 nays

3 absent — Oliveira, Dutton, Hochberg

WITNESSES: For — William Bennett, K-12; Cindy Freeman; Melissa Halbert Goodrich, for Virginia Van Cleve, president, Daughters of the Republic of Texas; Lisa Johnson; Maria Martinez, Texas Citizen Action Network; Susan Paynter, Christian Life Commission and Baptist General Convention of Texas; Linda Schlueter, Texas Justice Foundation; Clayton Trotter; Peggy Venable, Citizens for a Sound Economy; Margaret Long Wallace

Against — Ruth Epstein, American Civil Liberties Union of Texas

BACKGROUND: Education Code, ch. 1 contains general provisions that apply to all tax-supported educational institutions, including a requirement that they fly the U.S. and Texas flags on all regular school days.

Sec. 25.082(b) allows a school district, at the beginning of the first class each school day, to provide a period of silence during which students may reflect or meditate. Sec. 25.901 grants public school students the right to pray or meditate silently and voluntarily in a nondisruptive manner. No one may encourage, require, or coerce students to pray or meditate or to refrain from doing so, during any school activity.

Sec. 28.002(h) states the primary purpose of the required curriculum as preparing students to be “thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage.”

DIGEST:

CSHB 793 would require the board of trustees of each school district to require students to recite the pledges of allegiance to the U.S. and Texas flags each school day at each school in the district. Students could be excused from these recitations upon written request from their parents or guardians.

Trustees also would have to provide for the observance of one minute of silence following the pledges of allegiance. Students could choose to reflect, pray, meditate, or engage in any other silent activity that would not interfere with or distract another students. Teachers or other school employees supervising students during that period would have to ensure that each student remained silent and did not interfere with or distract other students.

The bill would delete the specification that the period of silence must occur at “the beginning of the first class of each school day.”

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. Its provisions would apply beginning with the 2003-04 school year.

SUPPORTERS
SAY:

Public education involves more than imparting knowledge or memorizing facts. It also involves shaping character, teaching citizenship, and encouraging patriotism by extolling values that all Americans and Texans share. CSHB 793 would establish in law two common practices that would further these goals in schools. The five authors and 99 coauthors for the bill reflect its broad support.

The national and state pledges of allegiance embody core values deeply rooted in American civics and Texas history. Imparting such values to school children is an essential function of the state educational system in preparing young people to be responsible citizens and effective leaders. Reciting the pledges helps to instill these values, notwithstanding the opinion of some that two words in the U.S. pledge may be religious in nature.

Freedom of religious expression always has played a prominent role in our national life and continues to do so today. In 2000, the U.S. House of Representatives adopted a resolution encouraging the display of the national motto, “In God We Trust,” in public buildings. In November 2002, President

Bush signed P.L. 107-293, reaffirming both the motto and the pledge of allegiance. In 2001, the Texas State Board of Education (SBOE) adopted a resolution recognizing the motto's importance and encouraging schools to preserve students' constitutional rights to express their patriotism and faith, including voluntary prayer.

A sharply divided California federal appeals court (nine judges dissented) misconstrued the pledge of allegiance in its ruling earlier this year. The dissenters argued that mere voluntary acknowledgment of deity is insufficient to establish a religion, nor does it suppress anyone's beliefs. Any harm done by the phrase "under God" is so minuscule as to be insignificant in a First Amendment context, one judge wrote. Another judge contended that, if the pledge is a religious act, so is reciting the Constitution or singing the national anthem.

In a case dealing with a similar issue, the 10th U.S. Circuit Court of Appeals affirmed the efficacy of the national motto in an educational context (*Gaylor v. United States*, 74 F.3d 214 (10th Cir. 1996)). The court noted that the motto symbolizes religion's role in U.S. society and fosters patriotism. The court added that the motto does not advance religion so much as it provides a form of "ceremonial deism" that "cannot be reasonably understood to convey government approval of religious belief." The same holds true for the phrase "under God" in the pledge of allegiance. Requiring students to recite it daily delivers an appropriate lesson in citizenship that reinforces patriotism in furtherance of Texas schools' required curriculum.

Criticism that reciting the pledges in public schools elevates one faith over all others, or theism over unbelief, is misplaced. Rather, such public expressions reflect a deeply held national sentiment that students should be taught to understand and encouraged to express, if they so choose. Because reciting the pledges would not be mandatory, no student would have to participate or acknowledge agreement, so no one's rights would be infringed or beliefs denigrated. Students or parents who objected to the pledges could opt out easily by means of a written parental request.

The proposed minute of silence would emphasize reflection on the importance of each school day. It would suggest thoughtful contemplation or reverence without being sectarian. It would present prayer as an option that parents

could encourage and students could choose, but it would direct no one to pray. No one would lead students in meditation, pray aloud, or invoke any deity. Thus, the minute of silence would be neutral toward religion in general and unbiased in favor of any specific religion. Moreover, observing silence lends solemnity to the educational endeavor, promoting a sense of unity and a positive ethos that teachers and administrators should welcome. Similar laws have been upheld in other states.

Allowing students exclusively to choose whether to participate would undermine parental rights and authority and would render useless the parental excuse provision regarding the pledge. An opt-out provision for the minute of silence would be superfluous, because participation would be inherently passive and no activity would be prescribed. As long as they were not disruptive, students would have to do nothing other than be quiet during the minute of silence.

Flag pledges and silent observances are common at government-sanctioned events throughout the United States and have been part of school activities in Texas for generations. Consequently, their religious overtones are muted at best. Primarily, they promote public morality and advance civic literacy. Combined, the pledges and silence would take less than 90 seconds of class time — hardly a burdensome mandate but rather a brief opportunity to instill core values.

**OPPONENTS
SAY:**

CSHB 793 is unnecessary at best. Nothing in state law precludes reciting pledges to flags. Americans are guaranteed the right to pray, meditate, or reflect anywhere they wish. Texas law already allows moments of silence in public schools and ensures students' rights to pray while at school. At issue is whether a governmental entity — the state or a school board — may direct them to do so. By requiring pledges and minutes of silence, CSHB 793 would be overreaching and perhaps unconstitutional.

In recent years, some state and federal courts have ruled against the public use in governmental settings of written or spoken texts containing religious references. Although none of the decisions have applied to Texas, the most recent involved a public school and may well be decided by the U.S. Supreme Court. Concern and uncertainty over the legality of using such texts in the classroom is justifiable. CSHB 793 might create a federally unconstitutional

law, violating the principle of separation of church and state, without producing any tangible educational benefits.

On February 28, 2003, the 9th U.S. Circuit Court of Appeals in San Francisco upheld a three-judge panel's 2002 ruling that a school policy requiring recitation of the pledge of allegiance during class violated the First Amendment against government establishment of religion (*Newdow v. U.S. Congress* (No. 00-16423), 9th Cir. 2003)). The decision has yet to take effect in the nine western states within the court's jurisdiction, pending the defendants' notice of intent to appeal to the U.S. Supreme Court.

The full court struck down a California law similar to what CSHB 793 would propose in part — a mandatory daily classroom pledge in which individual students were not compelled to participate. The majority held that the school district's policy "impermissibly coerces a religious act." The court found the pledge's reference to the United States as a nation "under God" to be a profession of belief in monotheism that is not neutral toward religion. According to the majority opinion, the coercive effect is pronounced given the age and impressionability of schoolchildren and schools' norm-setting function, and this effect extends to students who merely observe the rituals. This would be especially true of a minute of silence, a stated purpose of which is to provide an opportunity for prayer, not merely to make students be quiet and reflect.

The state should not mandate how school districts teach patriotism, nor should it attempt to inculcate reverence for deity, belief in a supreme being, or other religious values. This bill would usurp the discretion of school boards and abrogate students' right to choose.

CSHB 793 would add two more tasks to the scores of demands placed on educators. It represents an attempt to address perceived societal ills through education policy — in this case, by forcing schools to teach national loyalty, state pride, and religious piety. The educational mission is being broadened so much that schools are losing sight of their primary duties.

Flag pledges and silent meditation do little, if anything, to enhance the educational environment. Mandating student participation, especially in a minute of silence, would present teachers and principals with another set of

potential discipline problems. It would consume valuable class time and create more paperwork. Explaining and enforcing a minute of silence among large, diverse student bodies that may be less predisposed to such observances could prove problematic for many teachers and administrators and could alienate some students.

OTHER
OPPONENTS
SAY:

Excusing participation in one of the required observances but not both would be unfair and perhaps discriminatory. Students and/or parents who do not approve of silent meditation or prayer during school should be allowed to opt out of the minute of silence. Exempting only students opposed to pledges of allegiance would give more weight to their beliefs and preferences than to those of students opposed to the minute of silence.

Students have individual rights of their own and should be able to choose for themselves whether to recite the pledges, rather than requiring their parents to choose for them.

If pledging allegiance and observing silence truly are to be voluntary, they should occur before class in separate areas, not in classrooms during the regular school day where students are captive audiences.

CSHB 793 is silent as to how teachers and administrators should introduce or conduct the minute of silence. The bill should specify or suggest appropriate language that could not be construed to promote religion. Also, the bill should give trustees more latitude in deciding which observances to conduct at which grade levels. For example, a minute of silence in kindergarten could be virtually impossible.

NOTES:

As filed, HB 793 would have mandated that students stand, if physically able, during the minute of silence and that the minute of silence precede the pledges of allegiance.

The companion bill, SB 83 by Wentworth, identical to CSHB 793, passed the Senate by 27-4 (Barrientos, Estes, Gallegos, Hinojosa) on April 9 and was reported favorably, without amendment, by the House Public Education Committee on May 1, making it eligible to be considered in lieu of HB 793. Two floor amendments were offered during Senate debate. An amendment by Sen. Hinojosa that would have deleted “pray” from the optional activities in

which students could engage during the minute of silence failed by voice vote. An amendment by Sen. Whitmire that would have sunsetted the bill's provisions on June 1, 2005, failed by 14-16.

HB 87 by McClendon and HB 167 by Homer also would require observance of one minute of silence during the school day. HB 422 by King would require recitation of the U.S. pledge of allegiance. HB 640 by Bohac would require observance of one minute of silence and recitation of the U.S. pledge of allegiance. All four bills have been referred to the House Public Education Committee.

On April 9, the House approved HB 575 by Miller, et al., which would allow educators to read from or display several historical documents, including the national motto and pledge of allegiance. The bill was referred to the Senate Education Committee on April 14.

HB 219 by Hope, et al., allowing public schools and state colleges and universities to display the national motto, passed to engrossment in the House on April 22 and was referred to the Senate Education Committee on April 28.