

# FREEDOM FROM RELIGION *foundation*

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December 14, 2021

## SENT VIA EMAIL

The Hon. Andrew Brenner  
Chair  
Senate Primary and Secondary Education Committee  
1 Capitol Square  
Columbus, OH 42315

The Hon. Teresa Fedor  
Ranking Member  
Senate Primary and Secondary Education Committee  
1 Capitol Square  
Columbus, OH 42315

Re: Testimony in opposition to S.B. 248

Dear Senators:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to submit testimony in opposition to S.B. 248. FFRF is a national nonprofit organization with more than 35,000 members across the country, including about 1,000 members in Ohio and two chapters in the state. FFRF protects the constitutional separation between state and church, and educates about nontheism.

S.B. 248 would impose a mandatory, daily moment of silence onto Ohio public school students. Teachers are already free to offer a moment of silence if they determine that it would be beneficial for their students on a given day, and they are the right ones to make that call. Wresting control away from teachers is an improper overreach by the state, in conflict with the long-established tradition of local autonomy in public schools.

Further, this bill is an unconstitutional promotion of religion. More than 35 years ago, the U.S. Supreme Court considered a mandatory public school moment of silence and concluded that it ran afoul of the U.S. Constitution because the law

stated that the time was to be used for “meditation or voluntary prayer.” *Wallace v. Jaffree*, 472 U.S. 38, 41 (1985). As the Court explained, “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.” *Id.* at 60.

Similar to the Alabama law at issue in *Wallace v. Jaffree*, Ohio’s moment of silence law states that the moment of silence is “for prayer, reflection, or meditation upon a moral, philosophical, or patriotic theme.” Ohio Rev. Code Ann. § 3313.601. The only difference is that Ohio’s law suggests prayer first rather than second, making the endorsement even more clear. This runs squarely into Supreme Court precedent.

There can be no serious doubt that the primary intent of this bill is to inject religion into the public school day, which is an improper legislative purpose. Mandatory moment of silence bills are a trend around the country, and invariably they are described in terms of promoting religion.

In Florida, Governor Ron DeSantis signed a similar bill into law earlier this year, and said he viewed it as allowing students to “pray as they see fit,” describing the bill as a response to attempts to “push God out of every institution.”<sup>1</sup> Georgia went one step further, considering a bill that would have codified a prescribed, sectarian prayer to their public school moment of silence law, ending with “We ask these blessings through Jesus Christ our Lord.”<sup>2</sup> Just this week, South Dakota Governor Kristi Noem introduced a mandatory public school moment of silence bill. She stated the intent was to “restore protections for prayer in the classroom.”<sup>3</sup> All of these bills expose their respective states to litigation.

S.B. 248 is another bill in this line of open attempts to encourage students to pray. Any assertion that the bill is not motivated by an intent to promote religion is disingenuous.

In addition to being unconstitutional and running squarely into established Supreme Court precedent, the Committee should reject S.B. 248 because

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<sup>1</sup> Chandeliers Duster and Jamiel Lynch, *Florida governor signs new bill requiring K-12 public schools to hold moment of silence each day*, CNN (June 15, 2021).

<sup>2</sup> GA H.B. 547 (2021).

<sup>3</sup> WRAL.com, *Noem offers bill to create moment of silence in schools* (Dec. 13, 2021), available at [www.wral.com/noem-offers-bill-to-create-moment-of-silence-in-schools/20033274/?version=amp](http://www.wral.com/noem-offers-bill-to-create-moment-of-silence-in-schools/20033274/?version=amp).

encouraging students to pray sends a message to nonreligious students that they are disfavored. Public schools do not exist just for students who are members of the majority religion, and it is improper for the state to tell nonreligious students they should be praying to a god they do not believe in.

A survey released *today* found that non-religious Americans are the fastest growing segment of the U.S. population by religious identification — 37 percent of Americans are non-Christians, and this includes the 29 percent of Americans who now identify as religiously unaffiliated.<sup>4</sup> Younger Americans are not just religiously unaffiliated, they are largely atheist or agnostic. Another survey found that 21 percent of Americans born after 1999 are atheist or agnostic.<sup>5</sup>

Please respect students' rights of conscience, and the autonomy of public schools, by rejecting S.B. 248. Thank you for the opportunity to testify.

Sincerely,



Ryan D. Jayne  
Staff Attorney

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<sup>4</sup> Pew Research Center, “About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated,” (Dec. 14, 2021) at [www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/](http://www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).

<sup>5</sup> *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), <https://www.barna.com/research/atheism-doubles-among-generation-z/>.