

## C

Effective: September 1, 2003

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Education Code ([Refs & Annos](#))

Title 2. Public Education ([Refs & Annos](#))

Subtitle E. Students and Parents

▢ [Chapter 25](#). Admission, Transfer, and Attendance ([Refs & Annos](#))

▢ [Subchapter C](#). Operation of Schools and School Attendance

→ **§ 25.082. School Day; Pledges Of Allegiance; Minute Of Silence**

(a) A school day shall be at least seven hours each day, including intermissions and recesses.

(b) The board of trustees of each school district shall require students, once during each school day at each school in the district, to recite:

(1) the **pledge of allegiance** to the United States flag in accordance with 4 U.S.C. Section 4, and its subsequent amendments; and

(2) the **pledge of allegiance** to the state flag in accordance with Subchapter C, Chapter 3100, Government Code. [FN1]

(c) On written request from a student's parent or guardian, a school district shall excuse the student from reciting a **pledge of allegiance** under Subsection (b).

(d) The board of trustees of each school district shall provide for the observance of one minute of silence at each school in the district following the recitation of the **pledges of allegiance** to the United States and Texas flags under Subsection (b). During the one-minute period, each student may, as the student chooses, reflect, pray, meditate, or engage in any other silent activity that is not likely to interfere with or distract another student. Each teacher or other school employee in charge of students during that period shall ensure that each of those students remains silent and does not act in a manner that is likely to interfere with or distract another student.

CREDIT(S)

Added by [Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995](#). Amended by [Acts 2003, 78th Leg., ch. 126, §§ 1, 2, eff. Sept. 1, 2003](#).

[FN1] [V.T.C.A., Government Code § 3100.101 et seq.](#)

## HISTORICAL AND STATUTORY NOTES

2006 Main Volume

Section 3 of Acts 2003, 78th Leg., ch. 126 provides:

“This Act applies beginning with the 2003-2004 school year.”

### Prior Laws:

Acts 1905, 29th Leg., p. 263.

Rev.Civ.St.1911, art. 2903.

Vernon's Ann.Civ.St. art. 2906, subd. (a).

Acts 1969, 61st Leg., p. 2735, ch. 889, § 1.

[V.T.C.A., Education Code § 21.004.](#)

## LAW REVIEW COMMENTARIES

“Under God” does not need to be placed under wraps: The phrase “under God” used in the pledge of allegiance is not an impermissible recognition of religion. Walter Lynch, 41 Hous.L.Rev. 647 (Summer 2004).

## LIBRARY REFERENCES

2006 Main Volume

[Schools](#)  164.

Westlaw Topic No. 345.

[C.J.S. Schools and School Districts §§ 701, 782 to 783, 817.](#)

## RESEARCH REFERENCES

2011 Electronic Update

ALR Library

[110 ALR, Federal 211](#), Constitutionality of Regulation or Policy Governing Prayer, Meditation, or “Moment of Silence” in Public Schools.

Encyclopedias

[TX Jur. 3d Constitutional Law § 161](#), Establishment of Religion.

[TX Jur. 3d Constitutional Law § 162](#), Establishment of Religion--Tests for Determining Violation of Establishment of Religion Clause.

[TX Jur. 3d Constitutional Law § 166](#), Religious Activities in Public Places.

[TX Jur. 3d Schools § 4](#), Flying of United States and Texas Flags; Display of National Motto; Recitation of Pledge of Allegiance.

[TX Jur. 3d Schools § 401](#), Scholastic Session, Generally; School Day.

[TX Jur. 3d Schools § 404](#), Moment of Silence; Right to Pray.

#### Forms

[16 West's Texas Forms § 3:8](#), Support of Child.

[16 West's Texas Forms § 3:67](#), Temporary Orders.

[17 West's Texas Forms § 4.10](#), Decree in Suit to Declare Marriage Void.

[17 West's Texas Forms § 5.10](#), Annulment Decree.

[18 West's Texas Forms § 11.27](#), Order in Suit to Establish Paternity.

[16A West's Texas Forms § 3:128](#), Settlement Agreement--Composite Agreement.

[16A West's Texas Forms § 3:130](#), Decree of Divorce--Long Form.

[17B West's Texas Forms § 8.6](#), Petition to Modify in Court of Continuing Jurisdiction.

[17B West's Texas Forms § 8.13](#), Answer and Counterclaim to Petition to Modify.

[17B West's Texas Forms § 8.18](#), Order Modifying in Court of Continuing Jurisdiction.

[17B West's Texas Forms § 8.24](#), Order Modifying Out of State Order--Conservatorship, Possession or Access.

[18A West's Texas Forms § 15.37](#), Decree Granting Termination And/Or Conservatorship.

[18A West's Texas Forms § 16.12](#), Order Establishing the Parent-Child Relationship.


## UNITED STATES SUPREME COURT




Establishment and free exercise of religion, father's challenge to school district policy requiring student recitation of Pledge of Allegiance, prudential standing, legal custody with mother, see [Elk Grove Unified School Dist. v. Newdow](#), 2004, 124 S.Ct. 2301.




## NOTES OF DECISIONS

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### [1/2](#). Validity

Parents of minor children who attend public schools raised facial, rather than as-applied, Establishment Clause challenges to Texas **pledge of allegiance**, as amended to include the phrase “one state under God,” and a statute requiring students to recite the **pledge** daily, when they argued that the **pledge** impermissibly favored monotheistic over polytheistic beliefs, did not have a secular purpose or effect, impermissibly endorsed religious belief, and argued that the statute impermissibly coerced religious belief; relief sought by the parents was that the **pledge** be invalidated in its entirety, not merely that it not be applied to them or their children. [Croft v. Perry](#), C.A.5 (Tex.)2010, 624 F.3d 157. [Constitutional Law](#)  [1352](#)

Texas statute providing for the recitation by public school students of the pledges of allegiance to the flags of the United States and Texas, followed by a minute of silence for students to “reflect, pray, meditate, or engage in any other silent activity,” did not foster an excessive government entanglement with religion, for purpose of determining whether statute complied with Establishment Clause, by also requiring that teachers regulate student behavior to ensure silence and no distractions during the moment of silence; statute was neutral and simply instructed teachers to maintain discipline in their classrooms during the moment of silence. [Croft v. Governor of Texas](#), C.A.5 (Tex.)2009, 562 F.3d 735. [Constitutional Law](#)  [1350](#); [Constitutional Law](#)  [1352](#); [Schools](#)  [165](#)

Texas statute providing for the recitation by public school students of the pledges of allegiance to the flags of the United States and Texas, followed by a minute of silence for students to “reflect, pray, meditate, or engage in any other silent activity,” did not have the primary effect of advancing or inhibiting religion, for purpose of determining whether statute complied with Establishment Clause; by allowing school children to pursue “any other silent activity” during the moment of silence, statute allowed for children not to pray, and primary effect of statute was to foster patriotism and mandate a moment of quiet reflection. [Croft v. Governor of Texas](#), C.A.5 (Tex.)2009, 562 F.3d 735. [Constitutional Law](#)  [1350](#); [Constitutional Law](#)  [1352](#); [Schools](#)  [165](#)

Texas statute providing for the recitation by public school students of the pledges of allegiance to the flags of

the United States and Texas, followed by a minute of silence for students to “reflect, pray, meditate, or engage in any other silent activity,” had secular legislative purposes of fostering patriotism and providing for a period of thoughtful contemplation, as required to comply with Establishment Clause; the pledge and moment of silence requirements were introduced as a package to amend statute governing the start of every school day, these amendments left untouched separate statute stating that students had “an absolute right” to “silently pray or meditate in school,” and, though some legislators included the return to prayer as a statutory purpose, supporting legislators emphasized the need for an opportunity to begin the school day with patriotic pledges and a reflective moment as well as the importance of conforming the bill to Supreme Court precedent. [Croft v. Governor of Texas, C.A.5 \(Tex.\)2009, 562 F.3d 735. Constitutional Law 1350; Constitutional Law 1352; Schools 165](#)

Parents of school children had constitutional standing to bring suit raising Establishment Clause challenge to Texas statute providing for mandatory moment of silence to be observed in Texas schools; the children were enrolled in Texas public schools and were required to observe the moment of silence daily, and court could assume that parents were offended, else they would not have brought suit. [Croft v. Governor of Texas, C.A.5 \(Tex.\)2009, 562 F.3d 735. Constitutional Law 832](#)

Words “under God” in **Pledge of Allegiance** to Texas state flag did not coerce students into supporting or participating in religion or its exercise, as would violate Establishment Clause; statute adding the words to **pledge** provided an “opt-out” provision. [Croft v. Perry, N.D.Tex.2009, 604 F.Supp.2d 932, affirmed 624 F.3d 157. Constitutional Law 1352; Schools 165](#)

Texas statute mandating observance of one minute of silence following recitation of **pledge of allegiance** in all Texas schools did not foster excessive government entanglement with religion, for purposes of claim it violated First Amendment's Establishment Clause. [Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825, affirmed 562 F.3d 735. Constitutional Law 1350; Schools 165](#)

Primary effect of Texas statute mandating observance of one minute of silence following recitation of pledge of allegiance in all Texas schools, challenged as violative of First Amendment's Establishment Clause, was not the advancement of religion; students were already guaranteed the absolute right to pray in separate Education Code provision. [Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825, affirmed 562 F.3d 735. Constitutional Law 1350; Schools 165](#)

Texas statute mandating the observance of one minute of silence following recitation of pledge of allegiance in all Texas schools had a legitimate secular legislative purpose of allowing for all types of thoughtful contemplation that was supported by its legislative history and was sufficient to withstand first prong of *Lemon* test for whether statute violated First Amendment's Establishment Clause. [Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825, affirmed 562 F.3d 735. Constitutional Law 1350; Schools 165](#)

Although patriotism was admirable and critical value to impart to schoolchildren, it could not, as matter of law, function as proxy for secular purpose supporting, under First Amendment, presence of word “pray” in statute mandating observance of one minute of silence following recitation of pledge of allegiance in all Texas schools.

[Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825](#), affirmed [562 F.3d 735](#). [Constitutional Law](#) 1350; [Schools](#) 165

Switch from permissive to mandatory observance by Texas schools of moment of silence following recitation of the pledge of allegiance was not significant in analysis of whether the “moment of silence” requirement violated the Establishment Clause. [Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825](#), affirmed [562 F.3d 735](#). [Constitutional Law](#) 1350; [Schools](#) 165

### 1. Construction and application

Texas compulsory attendance laws did not create special custodial relationship giving rise to constitutionally rooted duty of school officials to protect students from private actors. [Doe v. Hillsboro Independent School Dist., C.A.5 \(Tex.\)1997, 113 F.3d 1412](#). [Schools](#) 89.2

#### 1.5. Purpose

Because of statutes already in place and lack of evidence of confusion in administration of those statutes, accommodation was implausible purpose for Texas legislature's adoption of mandatory moment of silence in schools of that state following pledge of allegiance; students had previously been granted the right to pray at any time, during any school activity. [Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825](#), affirmed [562 F.3d 735](#). [Schools](#) 165


For purposes of determining whether addition of the word “pray” to list of activities available to students during moment of silence Texas schools had to observe following recitation of pledge of allegiance affected the law's legislative purpose, prayer was implied option for Texas students during moment of silence under law existing prior to its passage; students had previously been granted the right to pray at any time, during any school activity, by separate provision of Texas Education Code. [Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825](#), affirmed [562 F.3d 735](#). [Schools](#) 165

### 2. Handicapped children

Under Texas law, general practice of providing seven-hour school day to nonhandicapped students does not apply to handicapped child whose admission, review, and dismissal committee has found shorter school day to be appropriate. [Christopher M. by Laveta McA. v. Corpus Christi Independent School Dist., C.A.5 \(Tex.\)1991, 933 F.2d 1285](#). [Schools](#) 148(2.1)

### 3. Admissibility of evidence

In ruling on cross-motions for summary judgment in suit challenging constitutionality of Texas statute that required observance of one minute of silence following recitation of pledge of allegiance in all Texas schools, district court would ignore statements in letter written by Commissioner of Texas Education Agency as evincing secular purposes for that statute, because letter's timing and context were suspect; letter was dated just one week before Governor of Texas filed response and cross-motion and more than three years after law's passage, purpor-

ted to remind Texas school administrators about requirements of **pledge** of **allegiance** portion of statute, expounded on statute's separate purposes of accommodating religion, encouraging thoughtful contemplation, and promoting patriotism, and failed to sufficiently address statute's purposes in context of how **pledges** and moments of silence should be implemented in classrooms. [Croft v. Governor of Texas, N.D.Tex.2008, 530 F.Supp.2d 825](#), affirmed [562 F.3d 735](#). [Federal Civil Procedure](#)  2545

V. T. C. A., Education Code § 25.082, TX EDUC § 25.082

Current through the end of the 2009 Regular and First Called Sessions of the 81st Legislature

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