



AMERICAN ATHEISTS

September 8, 2015

Via email

Tim Wyrosdick, Superintendent
5086 Canal St.
Milton, FL 32570

Floyd Smith, Principal
5317 Glover Ln.
Milton, FL 32570

RE: Violation of student's constitutional rights

Dear Mr. Wyrosdick and Mr. Smith,

The parents of a student at Hobbs Middle School have contacted American Atheists Legal Center regarding the violation of their child's constitutional rights under the authority of a teacher at your school and in your school district. The student has been forced by a teacher to continue to stand and participate in the daily ritual of the Pledge of Allegiance in the classroom in front of the student's classmates despite his request that he be allowed to remain seated. The teacher has refused to allow the student to remain seated and has wrongfully embarrassed and mistreated this student for exercising his constitutional right to opt out of the Pledge. Further, this student is autistic and identified as requiring special accommodation for his educational needs; the student is fearful of angering his teacher who has tried to persuade the student to change his mind about participating in the Pledge. When the parents contacted school officials on September 4, 2015, about this issue, they were told that Florida law supersedes the student's constitutional rights and the student must stand for the Pledge.

The U.S. Supreme Court settled the right of students to opt out of Pledge participation—including standing during its recitation—more than 70 years ago in *West Virginia State Bd. of Education v. Barnette*, 319 U.S. 624 (1943). Any requirement to force this student—or any other—to participate in Pledge rituals is an infringement upon that student's constitutional rights of conscience and freedom of speech and religion, and to continue to infringe on those rights would be actionable as a constitutional violation.

Florida law complies with this constitutional mandate under Florida Statute §1002.20(12), which states that “a public school student must be excused from reciting the Pledge of Allegiance upon written request by the student's parent, in accordance with the provisions of s. 1003.44.” Section 1003.44 states in part that “[e]ach student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting

the pledge. Upon written request by his or her parent, the student must be excused from reciting the pledge.”

Hobbs’ school officials have cited Section 1003.44 as the reason for forcing this student to stand for the Pledge. Part of the referenced section states “When the pledge is given, civilians must show full respect to the flag by standing at attention,”. However, the beginning of the statute also states “[e]ach district school board may adopt rules to require ... programs of a patriotic nature to encourage greater respect for the government of the United States and its national anthem and flag, **subject always to other existing pertinent laws of the United States** or the of the state.” (emphasis added). This particular sentence acknowledges that federal law supersedes Florida law. In the situation before us, the U.S. Supreme Court’s ruling in *Barnette* supersedes any part of Florida Statute §100.44 that may suggest a student has to stand for the pledge.

The student for personal reasons does not wish to participate in the Pledge rituals in any way. When this student informed his teacher, Ms. Bobbi Courey, that he did not want to participate in the pledge, she tried to convince him otherwise. She then forced him to stand with the other students. Ms. Courey did not excuse the student’s participation and so the student cooperated. The student’s parents then contacted the school officials about the issue. However, school officials informed the parents of the student that he would be forced to continue to stand for the pledge and that the Florida statute overrode the student’s constitutional rights.

The actions of this teacher subjecting this student to public humiliation for simply exercising his constitutional rights are outrageous. Further, that this student is autistic and that Ms. Courey tried to convince the student to change his mind is wrong and shows a complete lack of respect for the student’s personal beliefs and conscience. The school officials who spoke with the student’s parents were unsympathetic and unmoving in trying to accommodate the student—they were more concerned with getting the student to respect an object than respecting the student’s rights.

After learning of the above incidents and reviewing the Florida statutes, we believe the Santa Rosa County School District may be in violation of Florida law and violating students’ constitutional rights. We demand the following assurances: 1. in accordance with Florida statute § 1003.44, notices be placed in each classroom where the pledge is being recited that inform students of their rights not to participate—by saying or standing—in the pledge, and in classrooms where students cannot read or need special accommodation, oral or other means of communication be used to tell students of their constitutional rights not to participate; 2. that staff be instructed that under no circumstances should they attempt to persuade students to refrain from exercising the right to nonparticipation, question students about their nonparticipation, or characterize opting out as misconduct or wrong; and 3. that no disciplinary or other retaliatory measures of any kind be taken toward any student for nonparticipation in pledge rituals.

Since the Supreme Court’s ruling in *Barnette*, federal courts have irrefutably recognized the First Amendment right of students to remain silent and seated during the Pledge. In *Barnette*, the Supreme Court held that public school officials are forbidden under the First Amendment

from compelling students to salute the flag or recite the Pledge. 319 U.S. at 642. Notably, the Court was aware that the government might demand other “gestures of acceptance or respect: . . . a bowed or bared head, a bended knee,” *id.* at 632, and reiterated that the government may not compel students to affirm their loyalty “by word or act.” *Id.* at 642.

That “students have a constitutional right to remain seated during the Pledge is well established.” *Frazier v. Winn*, 535 F.3d 1279, 1282 (11th Cir. 2008) (per curiam), *cert. denied*, 558 U.S. 818 (2009) (finding that all public school students have the First Amendment right not to stand during the Pledge). *See also Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1274, 1278- 79 (11th Cir. 2004) (noting that the right to remain seated and silent during the Pledge is “clearly established”); *Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 417 (3d Cir. 2003) (“For over fifty years, the law has protected elementary students’ rights to refrain from reciting the pledge of allegiance to our flag. Punishing a child for non-disruptively expressing her opposition to recitation of the pledge would seem to be as offensive to the First Amendment as requiring its oration.”) (citation omitted); *Rabideau v. Beekmantown Cent. Sch. Dist.*, 89 F. Supp. 2d 263, 267 (N.D.N.Y. 2000) (“It is well established that a school may not require its students to stand for or recite the Pledge of Allegiance or punish any student for his/her failure to do so.”) (citing *Barnette*, 319 U.S. 624; *Russo v. Cent. Sch. Dist. No. 1*, 469 F.2d 623 (2d Cir. 1972)).

Indeed, the federal appellate courts have been unanimous in concluding that public school officials are prohibited from compelling students to stand during the Pledge. *See, e.g., Frazier*, 535 F.3d at 1282; *Holloman*, 370 at 1274-79; *Circle Sch. v. Pappert*, 381 F.3d 172, 178 (3d Cir. 2004); *Walker*, 325 F.3d at 417; *Lipp v. Morris*, 579 F.2d 834, 836 (3d Cir. 1978) (ruling that a state statute requiring students to stand during the Pledge was an unconstitutional compulsion of expression); *Goetz v. Ansell*, 477 F.2d 636, 637-38 (2d Cir. 1973) (holding that a student has the right to remain quietly seated during the Pledge and cannot be compelled to leave the room if he chooses not to stand); *Banks v. Bd. of Public Instruction*, 314 F. Supp. 285, 294-96 (S.D. Fla. 1970), *aff’d*, 450 F.2d 1103 (5th Cir. 1971) (concluding that a rule requiring students to stand during the Pledge was unconstitutional). *See also Newdow v. United States Cong.*, 328 F.3d 466, 489 (9th Cir. 2002) (noting that schools may not “coerce impressionable young schoolchildren to recite [the Pledge], or even to stand mute while it is being recited by their classmates.”).

Federal district courts and state courts have also consistently ruled that students have a constitutional right to remain silent and seated during the Pledge. *See Rabideau*, 89 F. Supp. 2d at 267; *Frain v. Baron*, 307 F.Supp. 27, 33-34 (E.D.N.Y. 1969) (enjoining school from “excluding [students] from their classrooms during the Pledge of Allegiance, or from treating any student who refuses for reasons of conscience to participate in the Pledge in any different way from those who participate.”); *State v. Lundquist*, 262 Md. 534, 554-55 (Md. 1971) (state statute requiring teachers and students to salute the flag during the Pledge violated the First Amendment freedom of speech clause). *Cf. Sheldon v. Fannin*, 221 F. Supp. 766, 768 (D. Ariz. 1963) (enjoining elementary school from suspending Jehovah’s Witness students solely because they silently refused to stand for the national anthem).

The student at Hobbs Middle School has the same constitutional rights as every citizen. The teacher and the school have no authority to question his reasons or motives. If the student does not wish to participate in the Pledge ritual, it is his constitutional right to do so. In *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506-07 (1969), the Supreme Court stated: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.” (citing *Barnette*, among other cases).

American Atheists is a national nonprofit with more than 270,000 supporters and members across the country, including in Florida. The mission of the American Atheists Legal Center is to protect the separation of religion and government and the rights of atheists and religious minorities.

We hope you will recognize the concerns we have raised and address them properly and promptly. Please respond within seven (7) days.

Sincerely,
Amanda Knief
National Legal & Public Policy Director
American Atheists