



AMERICAN ATHEISTS

September 29, 2017

Via Certified Mail & Email

Scott Smith
Superintendent, Bossier Parish Schools
410 Sibley Street
Benton, LA 71006

Dear Superintendent Smith:

The American Atheists Legal Center (AALC) has become aware of a letter you sent to parents of Bossier Parish students in which you indicate that student athletes will be disciplined if they choose to sit out the National Anthem. This letter has raised significant concerns that the First Amendment rights of students are not being protected by Bossier Parish Schools. The violation of a student's right to free speech would expose Bossier Parish Schools' officials, including school faculty and staff, to personal liability.

The AALC is part of American Atheists, a national nonprofit organization dedicated to the separation of religion and government and the equality of atheists. American Atheists is based in Cranford, New Jersey, and has more than 350,000 members and supporters across the country, including in Louisiana.

It is well established law that students “[do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). The Supreme Court has been as clear and forceful as possible on this issue:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 642 (1943). This case centered on religious objections to the Pledge of Allegiance by Jehovah's Witnesses, but the fact remains that students' right to abstain from patriotic displays, regardless of motivation,

has been clearly and specifically protected by the court for nearly 75 years. The right of students to abstain in a non-disruptive manner, such as kneeling, is among the most clearly settled issues the courts have addressed. Students choosing to abstain from such patriotic displays for religious reasons (including atheists who sit out the pledge due to objections to its religious content), to protest police brutality, or for any other reason, are equally protected.

Furthermore, retaliation against a private individual for the exercise of their constitutional rights itself amounts to a violation of those rights for which government officials can be held personally liable. *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002). The Fifth Circuit Court of Appeals has indicated that the right of students to abstain, in a non-disruptive manner, from participating in patriotic displays is “so clearly established” that teachers and administrators who infringe on that right are not entitled to immunity from civil liability. *Morgan v. Swanson*, 755 F.3d 757, 760 (5th Cir. 2014). And it is no defense that the message conveyed by the student caused animosity or upset in those who observed it. *Coates v. Cincinnati*, 402 U.S. 611, 615 (1971).

According to media reports, your letter stated, “It is a choice for students to participate in extracurricular activities, not a right.”¹ While that may be accurate, it is irrelevant. The right in question is the right to speak, which the First Amendment unambiguously protects from government intrusion. The decision to deny students a benefit provided by the school district based solely on the student’s decision to exercise her First Amendment right to free speech is censorship and a violation of the First Amendment.

Your letter also condescendingly pointed out that “freedom is not free.”² Setting aside the trite and vacuous nature of this statement, one of the prices of free speech is that we are often forced to tolerate the speech of others, even though we may vehemently disagree with their message. This is particularly true of a government official, such as yourself. You are likely to encounter private citizens who hold views that are at odds with your own. Regardless of how you may feel personally about a given issue, as a government official you are obligated not simply to tolerate such contrary points of view, but actively protect the right of the citizen to express them. If media reports of your letter are accurate, this is a duty that you have utterly failed to perform. You are not the owner of an NFL team and cannot, as President Trump suggested, “get that son of a b**** off the field right now.”

The AALC demands that you rescind Bossier Parish Schools’ policy regarding the National Anthem and inform the district’s students and parents that students will be permitted to express their views in a non-disruptive manner without fear of retribution.

¹ <http://www.shreveporttimes.com/story/sports/high-school/football/2017/09/27/bossier-city-national-anthem-punishment-protests-running-suspension/106050614/>

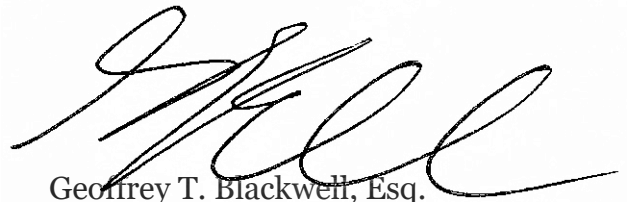
² <http://www.cnn.com/2017/09/29/health/louisiana-school-national-anthem-stand-mandate-trnd/index.html>

Your actions have already exposed your school district and you personally to civil liability. As the countless other demand letters you likely will receive regarding this matter will confirm, should you choose to ignore your obligations as a government official and retaliate against students exercising their most fundamental rights, the courts will not look on your actions favorably, regardless of the outrage expressed by the President of the United States at a political rally.

Please provide us, within five business days, confirmation that the Bossier Parish Schools and you understand your obligations under the constitution and have taken steps to remedy this situation.

Thank you for your immediate attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Blackwell', written over a light gray rectangular background.

Geoffrey T. Blackwell, Esq.
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