Pledge of Allegiance (Integrated A)

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Monday, September 16, 2002

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“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.” — Justice Robert Jackson in *West Virginia Board of Education v. Barnette* (1943)

The recitation of the Pledge of Allegiance has caused controversy that has reached the hallowed halls of the U.S. Supreme Court on several occasions, including the latest case that was dispatched by the justices in June 2004. Two major issues have arisen with respect to the recitation of the pledge in public schools: 1) whether students can be compelled to recite the pledge without infringing on their First Amendment rights and 2) whether the inclusion of the phrase “under God” — added in 1954 — violates the establishment clause.

### Compelled-speech issue

The compelled-speech issue seemed to have been resolved by the U.S. Supreme Court more than 60 years ago with its landmark 1943 decision *West Virginia Board of Education v. Barnette*. Despite the decision allowing to students to opt out of saying the pledge, children have been punished for refusing to stand during or to recite the Pledge of Allegiance. In March 1998, a 13-year-old Jehovah’s Witness in a Seattle middle school was forced to stand outside in the rain for 15 minutes for refusing to say the pledge. In April 1998, a 16-year-old student in San Diego was forced to serve detention for her failure to recite the pledge.

In the aftermath of the Sept. 11, 2001, terrorist attacks, a resurgence of patriotism has swept the nation. Public schools have helped fuel this patriotic zeal by placing an increased emphasis on the pledge. Several state legislatures have either considered or passed laws requiring the recitation of the Pledge of Allegiance. For example, Colorado passed a law in 2002 that required all public school students to recite the pledge unless they had a religious objection or had obtained parental permission to abstain from the oath. After Colorado’s American Civil Liberties Union chapter challenged the law in federal court, the Legislature in March 2004 enacted a revised statute to allow students to opt out of the pledge.

These examples are somewhat surprising given the decision in *Barnette*. In that case, the high court struck down a West Virginia law that penalized students and their parents if the children failed to salute the U.S. flag or recite the pledge. The students could be expelled for insubordination, while their parents could face a $50 fine and a 30-day jail term. A group of Jehovah’s Witnesses, who refused to comply with the law for religious reasons, challenged the statute.

Whether the Jehovah’s Witnesses would prevail was an open question. Looking at Supreme Court precedent, their position appeared bleak. That’s because in its 1940 decision *Minersville School District v. Gobitis*, the Court upheld a similar Pennsylvania flag-salute law. “The ultimate foundation of a free society is the binding tie of cohesive sentiment,” Justice Felix Frankfurter wrote for the majority.

### Colorado’s statute

In 2003, Colorado passed a law requiring daily recitation of the Pledge of Allegiance by students and teachers.
The only exceptions were for religious reasons or “if a parent or guardian of the student objects in writing to the recitation of the pledge on any grounds and files the objection with the principal of the school.”

Three students and six teachers, along with the ACLU, challenged the new law in federal court. The plaintiffs alleged in their complaint, *Lane v. Owens*, that the statute violated their “rights to be free from state-compelled expression.” In an oral ruling from the bench in August 2003, U.S. District Judge Lewis Babcock granted the plaintiffs a temporary restraining order. “It doesn’t matter whether you’re a teacher, a student, a citizen, an administrator, or anyone else, it is beyond the power of the authority of government to compel the recitation of the Pledge of Allegiance,” he wrote.

Babcock stayed the case until the end of the legislative session in 2004 to allow Colorado to amend the statute. The governor signed the revised law in March 2004. The law provides: “Any person not wishing to participate in the recitation of the Pledge of Allegiance shall be exempt from reciting the Pledge of Allegiance and need not participate.”

Mark Silverstein, legal director of the Colorado ACLU, told the First Amendment Center Online that the revised statute solved the law’s constitutional problems under *Barnette*.

“Colorado legislators said their aim was to instill respect for the ideals represented by the First Amendment,” he said. “We thought the law undermined those very goals because public expression of beliefs and ideals of liberty and justice should be voluntary, not coerced by forcing students to recite the Pledge of Allegiance.”

*Updated October 2009*

http://www.firstamendmentcenter.org/pledge-of-allegiance