

FREEDOM FROM RELIGION *foundation*

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November 10, 2014

SENT BY MAIL & EMAIL TO: bstephens@tusd.net

Brian R. Stephens, Ed.D.
Superintendent
Tracy Unified School District
1875 W. Lowell Avenue
Tracy, California 95376

RE: Students required to recite "under God" during Pledge of Allegiance

Dear Dr. Stephens:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a serious First Amendment violation that is occurring in the Tracy Unified School District (District). We have received numerous complaints from concerned local residents. FFRF is a national nonprofit organization with more than 21,500 members across the country including over 3,000 members in California. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that students in Shauna Baker's speech and debate class at West High School are charged with the responsibility of reading the daily announcements and the Pledge of Allegiance over the loudspeaker to everyone in the school. Reading the announcements is part of a graded assignment. It is reported that two students in the class, Juniors Adrianna Teboe and Derek Giardina, were disciplined for omitting the words "under God" when reading the pledge as part of this assignment. We understand that both students were marked down a grade and that Derek Giardina was sentenced to detention after he failed to include "under God" when reading the pledge a second time. Furthermore, Ms. Baker reportedly told Derek that if he did not say the pledge properly he would be suspended and kicked out of class.

We write to request that the District protect the rights of its students to conscientiously object to reciting the phrase "under God" while reading the Pledge of Allegiance by not interfering with a student who chooses to manifest dissent in a respectful manner.

It is unconstitutional for school officials to force students to recite the pledge itself, much less the phrase "under God." These students have not disrupted the participation of others in the exercise of the Pledge of Allegiance. Furthermore, students should not be singled out for exercising a conscientious objection to the words "under God." The phrase "under God" was added very belatedly to the pledge in the mid-1950s.¹ The addition of the phrase "under God" unfortunately

¹ In 1954, President Dwight Eisenhower approved House Joint Resolution 243, which amended the language to the Pledge of Allegiance, coined in 1893, by adding the words "under God." See Pub. L. No. 396, 83rd Cong., 2nd Sess. (1954). The religious amendment was intended to repudiate the "godlessness" of Communism during the Cold War.

turned a secular pledge into a prayer-like religious ritual. Pledging fealty to a divinity is an essential manifestation of religious worship.

The Supreme Court ruled over seventy years ago – even prior to the addition of religion in the pledge – that compelling a student to participate in the Pledge of Allegiance infringed upon a student’s First Amendment rights just as restricting speech does. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 633-34 (1943) (Murphy, J., concurring) (“I am unable to agree that the benefits that may accrue to society from the compulsory flag salute are sufficiently definite and tangible to justify the invasion of freedom and privacy that is entailed . . .”). The *Barnette* ruling assured students and officials that their beliefs would be protected. The Court stated,

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.

Id. at 642. Multiple courts have reiterated that students have a constitutional right not to be forced to participate in the Pledge of Allegiance and that any punishment administered in reaction to a student exercising that right violates the Constitution. *See Holloman v. Harland*, 370 F.3d 1252, 1268 (11th Cir. 2004) (stating that verbally chastising a student for “failing to salute the flag or expressing his opinion in a non-disruptive fashion” would violate the constitution as a matter of law); *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); *Goetz v. Ansell*, 477 F.2d 636, 637-38 (2d Cir. 1973) (holding that students have the right to remain seated during the Pledge of Allegiance); *Frain v. Baron*, 307 F. Supp. 27, 33-34 (E.D.N.Y. 1969) (holding that schools may not “[treat] any student who refuses for reasons of conscience to participate in the pledge in any different way from those who participate”).

In *Barnette* the Supreme Court made clear that a student’s right to conscientiously object to the Pledge of Allegiance is embodied in the First Amendment of the Constitution. 319 U.S. at 641. Thanks to the due process clause of the Fourteenth Amendment, California is beholden to our Bill of Rights and may not enact laws that curtail the freedoms protected therein. Students must not be singled out, rebuked, or otherwise penalized for following their freedom of conscience. Nor should students who participate in the pledge, or who volunteer to lead the class in the pledge or to recite it over the intercom, be rewarded or favored over students who do not participate. It is illegal to reprimand a student in any way for non-disruptively exercising his or her constitutional right to object to reciting the Pledge of Allegiance. This includes the right to stay seated during recitation.

Requiring a student to lead other students in the Pledge “as written” is no different than forcing them to participate. Either way, the school is forcing these students to say “under God” or be treated differently from those who do.

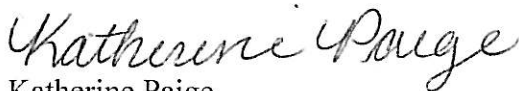
Moreover, “[i]t is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.” *Lee v. Weisman*, 505 U.S. 577, 596 (1992). Proof of government coercion is sufficient to prove an Establishment Clause violation. *Id.* at 604 (“Government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion.”) (Blackmun, J., concurring).

Requiring students to say the words “under God” or else face academic punishment is unconstitutionally coercive. It forces students to choose between adhering to their own personal beliefs and conforming to a government-sponsored religious message. The District cannot condition the benefit of a passing grade on a student’s willingness to express fealty to a divinity.

We understand that students who do not wish to read the full pledge as directed are offered an alternative assignment – to write a speech. Writing a speech requires far more work than simply reading the pledge. Therefore, the existence of an alternative in this case does not excuse the coercive nature of the practice, because students who choose to follow their own beliefs by omitting “under God” are then forced to complete a more complicated assignment than those students who include the phrase.

We ask that the District immediately investigate the situation at West High School. Ms. Baker and other teachers at West must be educated in this area of law and instructed that they may not single out or penalize students for exercising their right not to participate. This should include a public announcement to all students of their right to opt out of the pledge recitation, and an apology and other outreach to the students whose civil rights were violated and who were exposed to embarrassment for exercising those rights. Please respond in writing detailing the actions the District is taking to rectify this unconstitutional practice and to protect its students’ free speech and right of conscience.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Paige".

Katherine Paige
Legal Fellow