



October 19, 2012

Sent via electronic mail

Re: Pledge of Allegiance Policy

Dear Chairperson Butkus,

We were astonished to learn that the Region 15 Board of Education is considering amending its policies to require students to recite the Pledge of Allegiance. It is well-established that students have the constitutional right to refuse to participate in the Pledge of Allegiance. Accordingly, we request that you reject this proposed policy change.

This proposed policy change would violate Connecticut statute and U.S. legal precedent. Connecticut General Statutes § 10-230(c) contains the following proscription:

Each local and regional board of education shall develop a policy to ensure that time is available each school day for students in the schools under its jurisdiction to recite the "Pledge of Allegiance". The provisions of this subsection shall not be construed to require any person to recite the "Pledge of Allegiance".

(Emphasis added.)

In West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), the United States Supreme Court struck down a resolution that declared students' refusal to salute the flag to be an act of insubordination punishable by expulsion. The Court ruled that requiring students to recite the Pledge of Allegiance is compelled speech and as such violates the First Amendment. Pursuant to Barnette, students' recitation of the Pledge must be voluntary. This legal precedent has withstood numerous attempts by school boards that have tried to make the Pledge mandatory or punish students who choose not to participate. In 1997, in a lawsuit brought by this organization, the United States District Court for the District of Connecticut held that "[u]nder the First Amendment, a student may not be compelled to participate in the Pledge of Allegiance." Byars v. City of Waterbury Board of Education, Civil No. 3:97CV00604, 10 (May 27, 1997-attached). As recently as 2004, Justice Rehnquist reiterated that the recitation of the pledge cannot be compelled. Elk Grove Unified School District v. Newtow, 542 U.S. 1 (2004).

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In light of Connecticut law and long standing legal precedent, we respectfully ask you to reject the proposed amendment to make the Pledge of Allegiance mandatory and to refrain from adopting any policy that would punish or discipline students for exercising their First Amendment right to not participate in the reciting of the Pledge.

Sincerely,

A handwritten signature in black ink, appearing to read "David McGuire". The signature is fluid and cursive, with a large initial "D" and "M".

David McGuire
Staff Attorney

Martin B. Margulies
Cooperating Attorney

American Civil Liberties
Union Foundation
Of Connecticut

Cc: Board of Education Members (via e-mail)
Board Attorney (via e-mail)

DJM/jjs