Appignani Humanist Legal Center

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Dr. James Robinson
Superintendent, Manchester Local School District
james.robinson@manchester-panthers.org
6075 Manchester Rd.
Akron, OH 44319

Mr. James France
Principal, Manchester High School
james.france@manchester-panthers.org
437 W. Nimisila Rd.
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RE: Constitutional violation

Dear Dr. Robinson and Mr. France,

A student from Manchester High School has contacted our office to request assistance with regard to a serious constitutional violation that is occurring under the authority of your school and school district. The student, a freshman, has been mistreated by his school staff for exercising his constitutional right to opt out of the Pledge of Allegiance. As you should know, the right of students to opt out of Pledge participation was settled long ago by the United States Supreme Court in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). Consequently, any actions by your school or its agents infringing upon that right would be actionable as a serious constitutional violation.

The student in question does not wish to participate in the Pledge exercise in any manner. As such, he has remained seated during the recitation, but he reports that his homeroom teacher, Mrs. Melinda Christy, told him he was required to stand. When he objected and pointed out correctly that he should not be required to participate in the pledge exercise in any way (even citing the Supreme Court case that addresses the issue), he was sent to the office. There, unfortunately, the administration failed to defend his rights and incorrectly told him that he indeed must stand, with one administrator expressly stating that he did not care whether forcing the student to stand infringes on the student's constitutional rights. The student reports that his mother finally got involved, but that the administration resolved the issue only by saying that the student would now

be placed in the principal's office during the pledge each day. This forced removal of the student from the classroom, a humiliating and unjust punishment for merely asserting his right to not participate in the pledge exercise, is not acceptable.

Based on the above, we demand the following assurances: (1) That all students and teachers in your school district be advised that students may stay seated for any Pledge exercise at the school; (2) That teachers be instructed that under no circumstances should they attempt to persuade students to refrain from exercising the right to nonparticipation, question students as to the reason for nonparticipation, or characterize opting out as misconduct or otherwise wrongful; and (3) That no disciplinary or other retaliatory measures of any kind will be directed toward any student for nonparticipation in the Pledge exercise.

The American Humanist Association (AHA) is a national nonprofit organization with over 650,000 supporters and members across the country, including many in Ohio. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the First Amendment rights to free speech and religious liberty. Our legal center includes a network of cooperating attorneys from around the country, including Ohio, and we have litigated constitutional cases in state and federal courts from coast to coast.

"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." *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). 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. The Court was aware that the school district might demand other "gestures of acceptance or respect: . . . a bowed or bared head, a bended knee," *id.* at 632, but reiterated that the government may not compel students to affirm their loyalty "by word or *act*." *Id*. at 642 (emphasis added).

Since *Barnette*, the Supreme Court has consistently "prohibit[ed] the government from telling people what they must say." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). *See Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2252-53 (2015) ("[T]he First Amendment *stringently* limits a State's authority to compel a private party to express a view with which the private party disagrees."); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). For instance, in *Wooley*, the Court ruled that a "state measure which forces an individual, as part of his daily life—indeed constantly while his automobile is in public view—to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable" violates the First Amendment. *Id.* at 715.

In accordance with *Barnette* and its progeny, the lower federal courts have consistently recognized the First Amendment right of students to remain silent and seated during the Pledge. 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)); *c.f. Frudden v. Pilling*, 742 F.3d 1199, 1208 (9th Cir. 2014) (holding that forcing students to wear a school motto, "Tomorrow's Leaders," on school uniforms was unconstitutional compelled speech).

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 here does not deserve to be mistreated merely because he chooses to exercise his constitutional rights. Indeed, instead of rote recitation, he has given thoughtful consideration of the underlying issues raised by the exercise, and this should, if anything, earn him the respect of teachers. In *Tinker v. Des Moines Indep. Cmty. Sch. Dist*., 393 U.S. 503, 506-07 (1969), the Supreme Court famously declared: "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).

In *Banks*, the court applied *Tinker* to the act of refusing to stand for the Pledge and held: "The conduct of Andrew Banks in refusing to stand during the pledge ceremony constituted an expression of his religious beliefs and political opinions. His refusal to stand was no less a form of expression than the wearing of the black armband was to Mary Beth Tinker. He was exercising a right 'akin to pure speech.'" 314 F. Supp at 295. Importantly, not only do students have the right

to silently sit during the Pledge, but they also have a right to affirmatively protest the Pledge exercise. *See Holloman*, 370 F.3d at 1273-74 (raising fist during Pledge was protected speech even if fellow classmates found it objectionable and distracting). Referring to *Banks*, the Eleventh Circuit pointed out in *Holloman* that "its ruling was not based on Banks's First Amendment right to remain silent, *but his First Amendment right to affirmatively express himself*." 370 F.3d at 1273-74 (emphasis added).

We are most hopeful that you will recognize the concerns raised by this letter and address them properly. Please respond within seven (7) days. We thank you in advance for your attention to this matter.

Very truly yours,
Monica Miller, Esq.