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California Three Rs

Rights, Responsibility, and Respect

*A Project of the California County Superintendents Educational
Services Association and The First Amendment Center*

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Pledge of Allegiance, Religious Liberty, & Public Schools

Dr. Margaret Hill, Director, California Three Rs Project

Educators may not have noticed that the long-running lawsuit, *Newdow v. Rio Linda Union School District*, challenging the First Amendment constitutionality of reciting the Pledge of Allegiance in public school classrooms came to a quiet close on March 11, 2010. As in the controversial Pledge ruling eight years earlier, the decision was made by a three-judge team of the 9th Circuit Court of Appeals. The 2010 team of judges was made up of two new members and a third who had been involved in the 2002 decision. The March ruling reversed the 2002 decision that the “one nation, under God” phrase in the Pledge was unconstitutional because it represented a state endorsement of religion. This time around, the court panel ruled 2-1 that there was no religious intent in the history and meaning of the Pledge. Writing for the majority, Federal Judge Carlos Bea stated:

“We hold that the Pledge of Allegiance does not violate the Establishment Clause because Congress’ ostensible and predominant purpose was to inspire patriotism and that the context of the Pledge - its wording as a whole, the preamble to the statute, and this nation’s history - demonstrate that it is a predominantly patriotic exercise. For these reasons, the phrase ‘one Nation under God’ does not turn this patriotic exercise into a religious activity...”

We hold that California Education Code § 52720 and the School District’s Policy of having teachers lead students in the daily recitation of the Pledge, and allowing those who do not wish to participate to refuse to do so with impunity, do not violate the Establishment Clause. Therefore, we reverse the decision of the district court holding the School District’s Policy unconstitutional and vacate the permanent injunction prohibiting the recitation of the Pledge by willing students.”

While the two-judge majority gave particular weight to congressional action in 2002 reaffirming the secular and civic purposes of the flag salute, the third judge did not and found that the 2002 ruling had been correct. He stated that the decision to reverse the finding of unconstitutionality meant that the majority of the panel had not taken into account the religious motives of the political leaders who had infused the “under God” phrase into the Pledge in 1954.

No matter which side you supported in this case, it will affect your public school and the ones your children attend. However, there is more latitude in how the results of this ruling will be implemented here in California than in many other states in the nation.

Though 43 states require public school students to recite the Pledge of Allegiance, California has encouraged a broader understanding of what it means to teach students to respect and honor the United States and its laws. California requires

the daily performance of “patriotic exercises” in all public schools; the statute states explicitly that reciting the Pledge fulfills this requirement but its recitation in classrooms is a local option. For primary schools, patriotic exercises are to take place at the beginning of the first class period at which a majority of students begin the school day. For secondary schools, the “governing body of the district maintaining the secondary school” decides the time and manner in which the patriotic exercises are to be conducted.

California law honors a fundamental First Amendment principle from the 1943 *West Virginia State Board of Ed. v. Barnette* Supreme Court ruling that public school students cannot be compelled to recite the Pledge of Allegiance. Schools must allow students to opt out for reasons of conscience; the Court’s compelled-speech doctrine requires as much. In other words, teachers must provide a patriotic exercise as part of their classroom activities, but, in alignment with *Barnette*, California law does not require that students participate in these exercises. Educ. §52720 (2005).

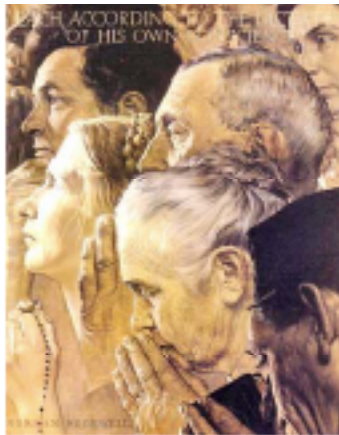
Sometimes teachers complain that students do not participate in the Pledge of Allegiance less out of religious belief than out of defiance. They often require students to stand respectfully while recital of the Pledge occurs. However, the 11th Circuit’s July 2008 opinion *Frazier v. Winn* found that a “standing at attention” clause in Florida school law violated the First Amendment. “That students have a constitutional right to remain seated during the Pledge is well established,” wrote the three-judge panel in a *per curiam* opinion.

Obviously, this is a challenging issue for schools. But it needs to be kept in mind that, since the challenge to the Pledge of Allegiance is rooted in the very freedoms for which schools want students to build respect, creating an understanding of these rights and how they developed over time is the real goal. As they develop policies around patriotic exercises, it is important for educational leaders to keep the purpose of the activity in mind, rather than focusing attention on students who don’t participate in the Pledge. National samplings have shown again and again that most Americans cannot name the liberties protected by the First Amendment. Ironically, this would indicate that mere reciting of a Pledge has not led to deep understanding “of the nation for which it stands.”

If students are our target audience, getting their input will create much better learning outcomes. Learning about the ideals of our nation and its constitutional freedoms; exploring the achievements of great Americans; evaluating events that have challenged and given meaning to us as a people; developing understanding of fundamental concepts such as fairness, justice, common good, rights, responsibilities, and respect, etc. would provide a much more meaningful patriotic exercise for most.

Adding the development of a daily patriotic exercise to their schedule would be an over-the-top demand for most over worked teachers. Nonetheless, there are several opportunities during the year to begin to think about alternate activities. The September 17 Constitution Day celebration required of all schools by federal law offers a great opportunity to generate at least a few new ideas and activities for your classroom that could be shared among colleagues and added to each year for Constitution Day. Both teachers and students can be involved. Dozens of books and resources are available at <http://ca3rsproject.org/pages/resource.html>. The exercises developed could be spread over multiple days or weeks based on a theme. Questions that students could address as a patriotic activity might include: *How would you explain to someone from another country the benefits of living in a society like the United States where* 1) people are free to criticize government leaders in the news, 2) people have freedom of belief and worship, 3) all people have the opportunity to go to school, etc. A couple of students could share their ideas with the rest of the class during the time that is used for the Pledge of Allegiance some days. Students could grapple with some of the big questions of government that now seem to dominate the daily news such as *What is the best balance between individual liberty and the needs of the larger society?* These questions and the student responses to them could be in the form of discussion, posters, bumper stickers, news headlines, radio spots, etc. As an alternate patriotic activity, students could develop a response to a national disaster such as the recent hurricanes, earthquakes, floods, or mine accidents. These activities would fit wonderfully with character education or service learning programs that many schools already do.

These options are worth a try, even if implemented only part of the time. Doing such activities in classrooms might even create a more patriotic generation of Americans...which is the point, after all.



San Joaquin COE, Orange CDOE, San Bernardino CSS, CSU San Bernardino,
Constitutional Rights Foundation, and the California 3Rs Project
Invite 4-12 Educators to

One Nation: Many Faiths – How Ideas of Religious Liberty Shaped America

THE MODERN ERA - A TAH PROJECT

June 21-25, 2010

Online and face-to-face follow-up activities during the year TRA
SECSS West End Educational Service Center
8265 Aspen, Rancho Cucamonga, CA 91730

It is not surprising that religious liberty was considered one of the four fundamental freedoms in America during World War II when this Norman Rockwell painting was done. Why was the U.S. unique in the world in supporting religious liberty through its constitution when many other places, notably Nazi Germany, did not? How did faith communities, religious minorities, and the Enlightenment philosophies of the Founders guide the nation to support freedom of conscience, arguably America's first liberty? What roles have religious communities played in American political and social reform movements, American foreign policy, protection of minority rights, and freedom of expression? This largely ignored story is fundamental to teaching America history and must be done in a balanced, academic manner. All participants receive books and resources, scholar sessions, lesson materials, and instructional strategy demonstrations designed to address the needs of all students and enhance the quality of H-SS instruction. Special support and additional stipend consideration provided for teacher teams from the same school. Substitute costs are reimbursed for institute sessions.

TIME: 8:00 a.m. - 4:00 p.m.

STIPEND: \$500 after summer session

\$250 after follow-up meetings and assessments

BONUS: \$300 in resources for the project evaluation

TOPICS

Ideas of Religious Liberty at the Time of the Constitution; Religious Freedom in the Constitution – No Religious Test & First Amendment; Religious Influences on Politics & Reform in 19th c.; Know Nothings & the Religious Sides of Discrimination - Irish & Chinese Immigrants; Utopian Societies, Manifest Destiny & the Mormons; Religion & Modernity 1880s-1920s, the KKK & Scopes Trial; Religious Liberty in Flag Salute Cases & FDR's Four Freedoms; Religion's Influence During the Cold War & Civil Rights Movements; Increasing Diversity of Religion in America after the Immigration Act of 1965; Court Interpretations of the First Amendment; Current Issues Related to Religion and Government

CONTACT: Margaret Hill, (909) 537-5459 mhill@csusb.edu

One Nation Institute

Name: _____ School: _____ District: _____

School Mailing Address: _____ City: _____ Zip: _____

Home Mailing Address: _____ City: _____ Zip: _____

Work Phone () _____ Cell/Home Phone: () _____ Fax: () _____

Email (required) _____ Grade level(s) _____

Mail or fax completed registration coupon to: CSU San Bernardino, Ed Leadership and Curriculum,

Attention - Margaret Hill, Director CA 3Rs Project and One Nation: Many Faiths Institute,

5500 University Parkway, San Bernardino, CA 92407-2397 Fax (909) 537-7173 DEADLINE: May 15, 2010

Common Ground Resources:

Finding Common Ground: A Guide to Religious Liberty in Public Schools by Charles C. Haynes and Oliver Thomas. First Amendment Center, 2007.

This book has guidelines on how to handle a wide range of issues related to religious liberty and public schools.

First Amendment Center: Religious Liberty http://www.firstamendmentcenter.org/rel_liberty/index.aspx

This is an up-to-the-minute resource with current issues and court cases. A PDF version of *Finding Common Ground* is available here.

For California Three Rs program information, contact...

Dr. Margaret Hill, Director, California 3Rs Project, Department of Educational Leadership & Curriculum, California State University San Bernardino, 5500 University Pkwy., San Bernardino, CA 92407
(909) 537-5459, mhill@csusb.edu

For First Amendment religious liberty information, contact...

Dr. Charles C. Haynes, Director, Religious Freedom Education Project at the Newseum, First Amendment Center, 555 Pennsylvania Avenue, NW, Washington D.C. 20001 Tel: 202/292-6293 chaynes@freedomforum.org

For information on teaching about world religions, contact...

Dr. Bruce Grelle, Director, Religion and Public Education Resource Center, Department of Religious Studies, California State University, Chico, 400 West First Street, Chico, CA 95929-0740,
(530) 898-4739, bgrelle@csuchico.edu

Sign up to receive the Three Rs Bulletin and program announcements electronically at mhill@csusb.edu or see <http://ca3rsproject.org/> for the CA3Rs Project Bulletin archive.

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