



# First Amendment Issues (You Might Get Wrong)

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## Taking a stand against...kneeling?



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## And it's happening here

**Southeast football player explains choice to take a knee during national anthem**

MARGARET REIST Lincoln Journal Star Updated 4 hrs ago (262)



Latest news

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**How is this different than the Pledge of Allegiance?**

003.12 Each public school district shall require each such district's schools to establish a period of time during the school day, when a majority of pupils is scheduled to be present, during which pupils will be led in the recitation of the Pledge of Allegiance in the presence of the flag of the United States of America, in grades kindergarten through twelve. Pupil participation in the recitation of the Pledge of Allegiance shall be voluntary. Pupils not participating in the recitation of the Pledge shall be permitted to silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate.

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**W. Va. State Bd. of Educ. V. Barnette, 319 U.S. 624 (1943)**

- Bd. policy made it a requirement to salute the flag
- "[I]nsubordinate" not to salute
- Students expelled until "compliance" and counted as truant
- Jehova's Witnesses quoted Exodus in objection:
  - Can't "bow down" to any "graven images"
- Court: "Here...we are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means. The issue here is whether this slow and easily neglected route to aroused loyalties constitutionally may be short-cut by substituting a compulsory salute and slogan."

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**W. Va. State Bd. of Educ. V. Barnette, 319 U.S. 624 (1943)**

- "[The] validity of the asserted power to force an American citizen publicly to profess any statement of belief or to engage in any ceremony of assent to one, presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question."
- "It may be doubted whether [Abraham] Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the State to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning."

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**W. Va. State Bd. of Educ. V. Barnette, 319 U.S. 624 (1943)**

- "National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether, under our Constitution, compulsion as here employed is a permissible means for its achievement."
- "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. If there are any circumstances which permit an exception, they do not now occur to us."

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**Frazier v. Alexandre (FL)**

- Frazier refused to stand for Pledge
- Verbal spat with teacher
- "You clearly have no respect! You are so ungrateful and so un-American! Do you know what's out there fighting that war? That flag you refuse to show respect to."

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**Frazier v. Alexandre (FL)**

- Principal directed Frazier to wait in the office until class was over
- Court: school's actions were unconstitutional
  - "No student must stand."
- Court ordered:
  - training for staff
  - reprimand for Alexandre
  - \$32,500 to Frazier

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### Student Participation

- **Holloman:** student can stand with fist in air
- **Myers:** “[S]chools do not have an affirmative obligation to encourage students who may object...to remain seated.”
- **Goetz:** Can’t require student to leave the room
- **Rabideau:** Administrator faced personal liability because law is “well established”

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### Student and Staff Prayer and Religious Activities

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### Prayer

- Bremerton HS(WA) assistant coach Joe Kennedy
- Post-game prayers w/ players at 50 yd. line for 7 years
- Told to stop engaging in overt, public religious displays on the football field while on duty as a coach, such as kneeling, bowing his head, or doing anything else that could remotely be seen as religious
- Followed directive for a few games, then prayed again
- Placed on paid administrative leave, then fired
- EEOC complaint, then lawsuit.
- 9/19/16 – Preliminary injunction denied.

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## Prayer

*Doe v. Duncanville ISD I and II* (5<sup>th</sup> Cir.)

- Group prayer at BB game led by coach
- Coach's direction of players was impermissible, state-sponsored coercive activity that violated the Establishment Clause (EC)
- Schools and officials may not lead, encourage, promote, or participate in prayers during school or extracurricular activities

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## Prayer

*Santa Fe ISD v. Doe*, 530 U.S. 290 (2000)

- 2 schools adopted policies
- District's policy permitting student-led, student-initiated prayer at football games violates EC
- FB game prayers were not private speech:
  - Public speech authorized by government policy
  - Took place on government property at government-sponsored school-related events
  - Involved both perceived and actual government endorsement of the delivery of prayer at important school events

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## Prayer

- Dissent noted the "disturbing" tone of the Court's opinion that "bristle[d] with hostility to all things religious in public life."
- People who disagree with *Santa Fe* grab hold of the following quote from it:
  - “Nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day.”

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**Related Staff Issues**

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**Serenity Prayers in Email**

- "God grant me the serenity..."
  - The "common vernacular, part of our national heritage" argument
  - The "wait, that's a school email address used to do school business" argument
- Forum analysis will likely apply to the teacher's rights
  - Look at your practices
  - "Trump 4 Prez" vs. Serenity Prayer
  - Swastika vs. Nebraska Football logo
  - Consider whether you **must** close the forum

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**Meet at the Pole**

You are invited to meet at the flag pole in front of the school and pray for our students, faculty and staff, administration, and school board members on Wednesday mornings. The first time will be this Wednesday September 14 at 7:30 A.M. Come when you can, stay as long as you can, pray silently or out loud.

- Staff participation issues
- Forum analysis
- Use of district resources

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### Cheerleading and Religion...

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### Kountze Indep. School District

- 4-year battle over banners at football games
  - "I can do all things through Christ, who strengthens me"
  - "If God is for us, who can be against us?"
  - "For it is God who is working in you, both to will and to act for his good purpose."
  - "But thanks be to God, which gives us victory through our Lord Jesus Christ."
- Freedom From Religion threatened to sue
- School stopped the banners
- Parents of the cheerleaders sued the school

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### Kountze Indep. School District

- School permitted banners the following year
- Parents refused to give up "moot" case
- Texas Supreme Court (Jan. 2016)
  - District might change its mind again
  - Lawsuit for past infringements can proceed
- Texas AG: can't have hostility toward religion
- "The separation of church and state has long been an elastic concept in East Texas." -*Slate*

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### Religious Ceremonies at School...




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### Bah Humbug!

- Concord Community Schools (IN) has had live Nativity scene as part of "Christmas Spectacular" for decades
- FFRF and ACLU sent warning letter last August, which the school ignored
- ACLU sued for violating 1<sup>st</sup> Amendment's EC
- Students now may opt out of performance or complete a related assignment

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## Bah Humbug!

**Complaint states:** "The Nativity scene and the story of the birth of Jesus are, of course, well-recognized symbols of the Christian faith. Their presence at the Christmas Spectacular is coercive, represents an endorsement of religion by the high school and the school corporation, has no secular purpose and has the principal purpose and effect of advancing religion."

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## Other Unique Speech Issues

**Iowa ACLU tells schools to vet guest speakers carefully after group hands out anti-gay, anti-Mormon materials**

An After School Satan Club could be coming to your kid's elementary school



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## Other Unique Speech Issues

"The School District is not required to maintain this open forum and is free to close it rather than allow FFRF to distribute materials," FFRF Staff Attorney Andrew Seidel wrote in a March 3 letter to the district. "We do not think schools should be a battleground for religious ideas. But when schools allow the Gideons to prey on children, their message of eternal damnation for any who don't believe in their God must be countered."



**Pro-Bible district changes mind about religion in school after being forced to hand out Satanic fliers**

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