

ACLU of Virginia

Six North Sixth Street, Suite 400 Richmond, Virginia 23219 (804) 644-8022

January 7, 2005

Mr. Richard A. Fleming, Chairperson
Spotsylvania County School Board
829 Lincoln Drive
Fredericksburg, VA 22407

RE: Proposed Policy to Allow Students to Remain Seated During Pledge of Allegiance

Dear Mr. Fleming:

I am writing to urge you to vote in favor of the proposed policy allowing students to sit in silent protest during daily recitations of the Pledge of Allegiance at Spotsylvania County Public Schools. It is my understanding that a final vote on this policy will take place at the January 10 meeting of the Spotsylvania School Board.

Although the existing policy-- which requires students to stand during the Pledge -- is invalid and unenforceable under the First Amendment of the U.S. Constitution and Virginia law, there are nonetheless important practical and principled reasons to fix it.

The practical reason is that school officials who are unaware of the invalidity of the policy may attempt to enforce it, thereby violating the constitutional rights of students and subjecting the school system to possible legal action. This is precisely what occurred at Ni Middle School during 2004, and there is no reason to believe that it will not occur again.

The principled reason for adopting a new policy is that school officials should embrace and support the same constitutional rights they ask educators to teach to students. It is nothing short of hypocritical to teach children that the First Amendment protects their right of free expression and then to eliminate that right in a particular context without a compelling reason for doing so.

It is instructive to look back at the legislative process that brought the mandatory Pledge of Allegiance to Virginia's public schools. The original bill, sponsored by Senator Warren E. Barry in the 2001 General Assembly, required students to stand and recite the Pledge unless they could articulate a religious objection documented by an "ecclesiastical officer." The ACLU of Virginia, with support from then Attorney General Mark Earley, spent much of the session educating legislators on the First Amendment rights of students. By final passage, the requirement that students articulate and document reasons for not reciting the Pledge had been removed, and the bill included language explicitly protecting every student's right to sit during recitations.

For your information, I have enclosed a brief legal memo explaining why you must vote in favor of the proposed policy. It is similar to the memo shared with legislators during the 2001 General Assembly session.

I thank you for your attention and leave you with a quote from the U.S. Supreme Court in the seminal case, *Barnette v. West Virginia*, that upheld the right of a student to refuse to recite the Pledge of Allegiance:

“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.”

Sincerely,

Kent Willis
Executive Director

cc: Spotsylvania County School Board