

Background: Protesting the Pledge (1942)

The Supreme Court first took up the issue of requiring students to participate in a Pledge of Allegiance and flag salute in 1940. The case, *Minersville School District v. Gobitis*, involved young Jehovah's Witnesses who objected to the practice on religious grounds. Jehovah's Witnesses do not pledge allegiance to objects and images. [The high court ruled](#) 8-1 that students can be required to participate in the pledge and salute at school.

In the *Gobitis* majority opinion, Supreme Court Justice Felix Frankfurter wrote that the national interest in "cohesion" during a time of political turmoil and global war was more important than individual freedoms of expression and religion. He wrote that honoring the flag and country through the Pledge of Allegiance and salute were important "political responsibilities" required of all citizens and that it was within the school district's rights to impose such rules.

This ruling stood for only three years. In 1943, a Supreme Court with two new members reversed the previous position in *West Virginia State Board of Education v. Barnette*. Again, students who were Jehovah's Witnesses claimed a forced salute of the flag violated their religious beliefs. (The words "under God" were not added to the Pledge of Allegiance until 1954, but even without this religious language, many Jehovah's Witnesses felt that any participation in the school's mandatory pledge and salute violated their religious freedoms.) Marie and Gathie Barnett, sisters attending Slip Hill Grade School near Charleston, W.Va., were expelled for not saluting the flag. The school district considered students who refused to salute the flag to be insubordinate, and they were expelled from school until they agreed to comply with the district mandate. Marie and Gathie's father, Walter Barnett (the court misspelled the family's last name, which does not have an "e" at the end), sued the school district.

The Supreme Court [ruled 6-3 in favor of the students in 1943](#), and Justice Robert Jackson issued the majority opinion for the court. He wrote: "One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

In his concurring opinion, Justice Frank Murphy wrote that "the right of freedom of thought and of religion, as guaranteed by the Constitution against State action, includes both the right to speak freely and the right to refrain from speaking at all." Judge Frankfurter, the author of the *Minersville* court opinion three years earlier, dissented. He said the court should support the school district's ability to make laws that achieve "a legitimate legislative end, namely, the promotion of good citizenship."

Since then, courts have continued to wrestle with the question of how the pledge is handled in schools. [A lawsuit](#) against the Elk Grove Unified School District in California in 2000 argued that the phrase "under God" was an endorsement of religion and violated the separation of church and state in public schools. The Establishment Clause of the First Amendment prohibits the government from establishing a national religion and has been interpreted to mean public schools cannot promote any one religion. Although the lawsuit reached the Supreme Court in 2004, [the court avoided making a decision](#) about whether the pledge was constitutional. Instead, the court dismissed the case because the parent who filed the lawsuit did not have custody of his child at the time and therefore did not have standing to argue his child's rights were violated. A similar lawsuit in New Jersey in 2014 argued the pledge violated the right of atheists in public schools, but [a Superior Court judge in 2015 dismissed the case](#), saying inclusion of the phrase "under God" does not establish a state religion and that students are not required to participate in reciting the pledge.

Suggested further reading

- West Virginia State Board of Education v. Barnette. Oyez. www.oyez.org/cases/1940-1955/319us624
- “West Virginia v. Barnette: The freedom to not pledge allegiance.” Constitution Center. June 14, 2017. <https://constitutioncenter.org/blog/west-virginia-v.-barnette-the-freedom-to-not-pledge-allegiance>
- West Virginia State Board of Education v. Barnette. Findlaw. <https://caselaw.findlaw.com/us-supreme-court/319/624.html>
- Alley, Robert S. (1999). The Constitution & Religion: Leading Supreme Court Cases on Church and State. Amherst, NY: Prometheus Books.
- Sandmann, Warren (2003). "West Virginia State Board of Education v. Barnette". In Parker, Richard A. (ed.). Free Speech on Trial: Communication Perspectives on Landmark Supreme Court Decisions. Tuscaloosa, AL: University of Alabama Press. pp. 100–115.
- “Family sues Monmouth County school over 'under God' in pledge.” Associated Press via NJ.com. April 21, 2014. http://www.nj.com/monmouth/index.ssf/2014/04/family_sues_monmouth_county_school_over_under_god_in_pledge.html
- Minersville School District v. Gobitis. Oyez. <https://www.oyez.org/cases/1940-1955/310us586>
- Elk Grove United School District v. Newdow. Oyez. <https://www.oyez.org/cases/2003/02-1624>
- Greenhouse, Linda. “8 Justices Block Effort to Excise Phrase in Pledge.” New York Times. June 15, 2004. <https://www.nytimes.com/2004/06/15/us/8-justices-block-effort-to-excise-phrase-in-pledge.html>
- Giordano, Rita. “Judge tosses suit over saying 'under God' in Pledge of Allegiance.” Philadelphia Inquirer. Feb. 7, 2015. http://www.philly.com/philly/news/local/20150207_Judge_tosses_suit_over_saying_under_God_in_Pledge_of_Allegiance.html