

The Newest “*Barnette* Sister”

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On Wednesday, January 27, 2010, a 13-year-old girl refused to join her teacher and classmates at Roberto Clemente Middle School in Germantown, Maryland, in standing to say the Pledge of Allegiance. The teacher responded by yelling at the girl, directing her to stand. When the girl continued to refuse, he sent her to the school office. The next morning, she again refused to stand for the Pledge. The teacher then called a school security officer, who escorted the girl to the office. She then, for a period of time, stopped attending school. When her mother contacted an assistant principal, she was told that her daughter had to apologize for her “defiance.”¹

Not in the United States. The girl and her family got legal help from the American Civil Liberties Union of Maryland.² As their lawyer knew—as all U.S. lawyers know—the Supreme Court of the United States decided in 1943, while the U.S. and its allies were fighting a world war for human freedom, that the First Amendment to the U.S. Constitution protects a student’s right to follow her conscience about whether to participate in a public school flag salute and pledge of allegiance.

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¹ See, e.g., Jenna Johnson, *Pledge of Allegiance Dispute Results in Md. Teacher Having to Apologize*, WASH. POST, Feb. 24, 2010, available at www.washingtonpost.com/wp-dyn/content/article/2010/02/23/AR2010022303889.html.

² See Letter from Deborah A. Jeon, Legal Director, & Ajmel Quereshi, Skadden Fellowship Attorney, ACLU of Maryland, to Mrs. Khadija F. Barkley, Acting Principal, Roberto Clemente Middle School, Feb. 5, 2010, available at www.aclu-md.org/aPress/Press2010/Pledge.pdf; see also ACLU Media Release, Feb. 23, 2010, available at www.aclu-md.org/aPress/Press2010/022309_Pledge.html.

The decision was *West Virginia State Board of Education v. Barnette*.³ The “Barnette” sisters, Gathie and Marie Barnett (the Court misspelled their family name), were young Jehovah’s Witnesses. They believed that the Bible forbade them to worship graven images, and they were sent home from elementary school when they refused to participate in a flag salute.⁴ The Supreme Court, in an opinion by Justice Jackson that was renowned at the time and has become an American classic, explained the unconstitutionality of such compelled orthodoxy.

In 2010, the Maryland school district already knew this. Its policy, which the teacher violated, is clear and law-abiding. The school district has apologized to the girl and her family.⁵

When the Supreme Court of the United States heard oral argument in the *Barnette* case on Thursday, March 11, 1943, the Barnett sisters were not present—they were, pursuant to the lower court’s decision in their favor (which the Supreme Court ultimately affirmed), already back in school. I hope that the Maryland girl is too, and that her experiences have taught anew some of these American fundamentals:

[W]e apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous, instead of a compulsory routine, is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ

³ 319 U.S. 624 (1943), available at www.law.cornell.edu/supct/html/historics/USSC_CR_0319_0624_ZS.html

⁴ See generally Bennett Boskey, Gathie Barnett Edmonds, Marie Barnett Snodgrass, et al., *Recollections of West Virginia State Board of Education v. Barnette*, 81 ST. JOHN’S LAW REVIEW 755 (2007), available at www.stjohns.edu/media/3/ba6c47f96b5142de9ac88a8bc8d43a26.pdf.

⁵ See Letter from Khadija F. Barkley, Acting Principal, Roberto Clemente Middle School, to Students, Staff, and Parents, Feb. 23, 2010, available at www.montgomeryschoolsmd.org/schools/clementems/files/PDFs/09-10/finalcommunity%20letter11.pdf.

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is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

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.⁶

⁶ *West Virginia St. Bd. of Ed. v. Barnette*, 319 U.S. at 641-42.