



VIA FACSIMILE, E-MAIL, AND U.S. MAIL

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I write on behalf of Osiris Siurano and Sandra Rodriguez, regarding school officials' harassment of their daughter, Enidris Siurano-Rodriguez, a 10<sup>th</sup> grader at Damascus High School, due to her unwillingness to stand during the school's daily recitation of the Pledge of Allegiance.

The facts of the situation, as we understand them, are as follows. Enidris, like her siblings, is an accomplished student at Damascus High School. In addition to her routine listing on the school's honor roll, Enidris is a talented musician who plays guitar, piano, and, most seriously, the violin. She participates in the school marching band, where she was the Captain of the Color Guard last season, and has volunteered as a Spanish tutor to other students in the school. In February of this year, she was the only student in all of Montgomery County selected to participate in the [American High School Honors Performance Series](#) at Carnegie Hall. She was also selected with three other students from Damascus High School to participate in the Student Emerging Leaders Program of Congressional Hispanic Caucus Institute. For personal reasons tied to her feelings about United States policy in Puerto Rico (where her family is from), Enidris has, since she was in the seventh grade, declined to stand during the daily recitation of the Pledge of Allegiance, and has instead sat quietly during this ritual.

Enidris' decision not to participate in the ritual expression of political allegiance occurred undisturbed until the middle of February of this year, when Deanna Jennings, who teaches Honors Biology during first period (when the Pledge is recited over the intercom), first noticed that Enidris had been quietly sitting during the Pledge, and directed her to stand.<sup>1</sup> On each

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<sup>1</sup> Although Ms. Jennings has been her first period teacher since the beginning of the second semester in January, it is not clear why Ms. Jennings had not commented on Enidris' decision not to participate in the Pledge until mid-February. It may be due to the fact that Ms. Jennings faces

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subsequent day (until April 8), Ms. Jennings specifically directed Enidris to stand for the Pledge, and Enidris has felt compelled to obey the direct instruction of her teacher, notwithstanding her personal objections to doing so.

The harassment directed toward Enidris escalated significantly on April 4, when she was pulled from her sixth period Advanced Placement Government class, and directed to report to the Principal's office. Assistant Principal Karen Rose confronted Enidris, demanding to know why she was sitting during the Pledge of Allegiance. Although this demand for an explanation was legally improper, Enidris explained that not participating in the Pledge is a way of showing her disagreement with United States government policies towards Puerto Rico, her family's native country. Enidris explained her view that the United States government imposes conditions on Puerto Rico, due to its status as a territory, that she views as undemocratic, citing as examples the fact that students in Puerto Rico must study English through high school, whether they want to or not, and that Puerto Rican businesses trading with the United States must use ships built in the U.S., owned by a U.S. citizen, and flagged in the U.S. for all maritime trade. In response, Mrs. Rose asserted that by defying her teacher's direction that she stand for the Pledge, Enidris was disrespecting military families and students from those families, an assertion that is both factually incorrect, and that flies in the face of school regulations regarding respect for diverse views.<sup>2</sup> Mrs. Rose also cruelly belittled Enidris' reasoning and background, ignorantly claiming that Enidris should feel grateful to be in the United States because if she were in Puerto Rico she would not be in school (which is simply not true), and would not have the rights she has here (which is ironic, since Puerto Ricans have fewer rights precisely because of their status as a United States territory, and because Mrs. Rose was simultaneously engaged in depriving Enidris of the very rights that she was attempting to extol). Mrs. Rose also opined that Puerto Rico would be much worse off were it not for the United States (a matter which one may debate, but which has nothing to do with Enidris' views about how Puerto Rico should be treated). Mrs. Rose also asked whether Enidris' parents spoke English, and stated that she would call them to see if they supported Enidris' actions.<sup>3</sup> Finally, Mrs. Rose concluded her uninformed diatribe by stating that while Enidris did not need to recite the Pledge, she needed to stand while it was said.

Enidris was, understandably, so upset by this encounter that she left crying, and stayed in the bathroom until her sister and friend found her and consoled her there. She was reduced to tears again on her way to her next class when her friends asked what had happened and she had to recount the incident.

After Enidris recounted Mrs. Rose's full remarks to her parents later that evening, Mr. Siurano sent an email to Mrs. Rose, and to Mr. Domergue, stating that they were aware that Enidris did not participate in the Pledge, that they supported her desire to express her views, did not agree that she should be removed from class while the Pledge was recited, and stating their view that doing so would be illegal.

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the flag during the Pledge, and thus has her back to the students in the class, and so did not notice Enidris' election not to stand or participate for several weeks.

<sup>2</sup> Regulation JFA-RA, § IV.F.1(b)(2) states "[s]tudents have a responsibility to . . . respect different opinions and the right of each person to hold and express an individual viewpoint."

<sup>3</sup> Both of her parents do, in fact, speak English perfectly well, and both are college-educated biologists. The assumption that her parents do not speak English is offensive. Mrs. Rose did, in fact, speak to Enidris' mother by phone the same afternoon, and after repeating many of the belittling comments about how Enidris should be grateful to be in the United States, stated that if she continued to refuse to stand during the Pledge, she would be removed from class while it was recited.

The next day, on April 5, Ms. Jennings again directed Enidris to stand while the Pledge was recited. Reinforced with the knowledge that such a directive was improper, and with her parents' support, Enidris silently declined to comply with her teacher's improper directive, and remained seated. When the Pledge was completed, Eric Brenneman, a Biology teacher in the classroom across the hall, who had been observing Enidris from the doorway during the Pledge, motioned for her to come into the hallway to speak. Mr. Brenneman asked why she didn't stand for the pledge. Enidris explained to Mr. Brenneman that standing went against her beliefs and views. Mr. Brenneman replied that her beliefs did not matter, that refusing to stand is disrespectful to everyone else and to the country, and that Enidris should stop this behavior. He said that it is not that hard to stand while the Pledge is recited, with her hand on her heart. In a clearly improper attempt at intimidation, he also told her not to get into a battle such as this because she could not win, and told her he had had students removed from his class for the same reason.<sup>4</sup>

In response to Mr. Siruano's email, Mrs. Rose called him on April 8 and attempted to explain her remarks to Enidris and his wife. Mr. Siurano replied that he knew very well what she had said, that he did not appreciate it, and reiterated the couple's support for Enidris and her expression of her views. Mrs. Rose also stated that the school would not remove Enidris from class during the Pledge. There was, however, no apology for the school's shocking treatment of their daughter, no acknowledgement that the school's actions had been improper, or of Enidris' right to sit quietly during the Pledge without harassment or retaliation.

The law is crystal clear that a public school cannot embarrass or harass a student for maintaining a respectful silence during 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," the Supreme Court ruled famously in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

While the *Barnette* case concerned religious objections to the flag salute by a family of Jehovah's Witnesses, the Court made clear that its holding that compulsory "affirmation of belief and . . . attitude of mind" *id.* at 633, are forbidden by the First Amendment is not limited to those with religious objections.

Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views hold such a compulsory rite to infringe constitutional liberty of the individual. It is not necessary to inquire whether non-conformist beliefs will exempt from the duty to salute unless we first find power to make the salute a legal duty.

*Id.* at 634-35. Decades ago, the Maryland Court of Appeals reached the same conclusion. *State v. Lundquist*, 262 Md. 534, 554 (1971) (statute that required all students, except those with religious objections, to stand and recite the Pledge of Allegiance in unison violates First Amendment). And the Maryland statute concerning patriotic exercises now recognizes the individual's right to decline to participate. Md. Code, Educ. § 7-105(d) (exempting "any student

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<sup>4</sup> Mr. Brenneman's assertion that other students have been coerced into standing for the Pledge against their will is supported by the fact that since the April 4 incident, other students have reported to Enidris that teachers have told them that they have to stand while the Pledge is recited, and they were too intimidated to contest the instruction.

or teacher who wishes to be excused” from participation in the recitation of the Pledge of Allegiance).

Furthermore, the right to express oneself by not participating in the Pledge includes the right to remain seated while others stand. In cases involving students who remain seated during the pledge, courts have made the natural extension of *Barnette's* rule that a school cannot enforce uniformity of thought “by word or act,” 319 U.S. at 642. “That students have a constitutional right to remain seated during the Pledge is well established.” *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1282 (11th Cir. 2008); see also *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1274, 1278 (11th Cir. 2004) (noting that the right to remain seated and silent during the Pledge is clearly established); *Lipp v. Morris*, 579 F.2d 834, 835 (3rd Cir. 1978) (*per curiam*) (standing during the Pledge “is an unconstitutional requirement that the student engage in a form of speech”); *Goetz v. Ansell*, 477 F.2d 636, 638 (2nd Cir. 1973) (standing for the Pledge “can no more be required than the Pledge itself”); *Banks v. Board of Public Instruction*, 314 F.Supp. 285, 294-96 (S.D.Fla.1970) (regulation requiring students to recite Pledge of Allegiance, or to stand during its recitation, is unconstitutional), *aff'd* 450 F.2d 1103 (5th Cir. 1971). Nor may a school censure a student by sending him out of the room. See *Goetz*, 477 F.2d. at 638 (“If the state cannot compel participation in the pledge, it cannot punish non-participation. And being required to leave the classroom during the pledge may reasonably be viewed by some as having that effect, however benign defendants' motives may be.”); *Frain v. Schuker*, 307 F.Supp. 27 (E.D.N.Y. 1969) (granting preliminary injunction against schools officials enjoining them from removing students not participating in the Pledge of Allegiance from classrooms while the Pledge is recited).

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In recognition of this clear case-law, the Montgomery County Public Schools explicitly and correctly acknowledge students’ right to refuse to participate in the Pledge. “Students will have the opportunity to participate in and/or watch patriotic exercises in school. Students have a right to not be compelled to participate in patriotic exercises, or be penalized or embarrassed for failure to participate.” A Student’s Guide to Rights and Responsibilities in the Montgomery County Public Schools, at 5 (2012-2013) available at <http://www.montgomeryschoolsmd.org/uploadedFiles/students/rights/StudentRightsResponsibilities-English.pdf>. The statement in the Student’s Guide mirrors school Regulations, which similarly provide that “Students have a right: a) To not be compelled to participate in patriotic exercises, or be penalized or embarrassed for failure to participate.” Regulation JFA-RA, § IV.H.2(a), available at <http://www.montgomeryschoolsmd.org/departments/policy/pdf/jfara.pdf>.

Unfortunately, the incident at Damascus High School is not the first time the ACLU has had to contact the Montgomery County Public Schools regarding unlawful harassment of students who decline to participate in forced recitation of the Pledge of Allegiance. In February, 2010, we contacted the principal of Roberto Clemente Middle School concerning teachers’ harassment of an eighth grader who similarly elected not to stand while the Pledge was recited. Despite assurances that the situation would not recur, we were forced to follow up in June, 2010 to report additional improper public criticism by teachers who specifically praised students who stood during the pledge (implicitly criticizing the student who was exercising her rights not to do so). In addition, the ACLU has heard from other families in 2008, 2010, and 2012 reporting similar staff harassment of children at Takoma Park Middle School, Northwoods High School, Rolling Terrace Elementary School, and Gaithersburgh High School, when the children declined to stand during the Pledge, though each of these cases was resolved by the families’ own communications with higher level school officials. And in 2005 we contacted every school system in Maryland, including Montgomery County, asking the Superintendants to take action to ensure that all teachers and administrators were aware of students rights in this area, following a rash of similar complaints from students in Frederick, Carroll, Baltimore, Prince George’s and St. Mary’s

counties. Indeed, over the last decade we have received more complaints about this issue from Montgomery County than any other jurisdiction in the state.

In light of these repeated problems, the fact that the improper harassment of the student in this case came from a senior school administrator, and the indications that the Enidris' case is not the only occurrence at Damascus High School, we request a meeting with staff from the Superintendent's Office to discuss what actions the Montgomery County Schools will take to ensure that *all* teachers and administrators throughout the system are aware of students' right to refuse to participate in the Pledge of Allegiance, as well as to discuss the egregious response to Enidris' exercise of her constitutional rights. The actions taken to date have not been effective, and are not sufficient. Finally, we request a formal apology to Enidris and her family, and written assurances that there are or will be no reports about this matter in her school files, and that she will be permitted to exercise her constitutional right to refuse to participate in the Pledge without harassment or intimidation.

Thank you for your prompt attention to this matter.

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Sincerely,

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