



May 30, 2024

Principal Heather Hobbs
Twin Ridge Elementary School
1106 Leafy Hollow Circle
Mt. Airy, Maryland 21771

Sent via U.S. Mail and Electronic Mail (Heather.Hobbs@fcps.org)

Dear Principal Hobbs:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned about the threat to freedom of conscience presented by Twin Ridge Elementary School's ("TRES") directive requiring students and staff to salute the American flag and recite the Pledge of Allegiance. While TRES may set aside time for students and staff who wish to recite the Pledge or salute the flag, the First Amendment and Maryland law protect the rights of those who wish to abstain. As the Supreme Court made clear over 80 years ago, the "action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."² FIRE calls on TRES to correct its unconstitutional directive and notify staff that standing for or reciting the pledge is entirely voluntary.

Our concerns arise out of an April 26 email TRES sent to school staff to address confusion regarding what conduct is required during the Pledge of Allegiance. The email represented that per Maryland Education Code § 7-105(c)(3), "all students and teachers are required 'to stand and face the flag and while standing give an approved salute and recite in unison the pledge of allegiance.'" But the email failed to mention the opt-out provision of subsection (d), which states: "Any student or teacher who wishes to be excused from the requirements of subsection (c)(3) of this section shall be excused."

Not only does the TRES directive misrepresent Maryland law by suggesting it requires participation without allowing abstention, that misdescription of the law is one the First Amendment prohibits. Students do not "shed their constitutional rights to freedom of speech

¹ You can learn more about FIRE's mission and activities at thefire.org.

² *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

or expression at the schoolhouse gate.”³ And the First Amendment protects not only the right to speak and to engage in expressive conduct, but also the right to *refrain* from doing so.⁴

That includes a right to participate—or to refuse to participate—in mandatory flag salutes. Over 80 years ago, in *West Virginia State Board of Education v. Barnette*, the Supreme Court invalidated a requirement that schoolchildren salute the U.S. flag and recite the Pledge of Allegiance.⁵ Even in the dark days of World War II, the Court recognized that requiring students to pledge allegiance to a national symbol is contrary to our national commitment to freedom of conscience. As the Court explained, “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

Requiring students to stand and pledge allegiance to the flag not only violates their First Amendment rights, but compelled rather than self-motivated participation renders the act a “gesture barren of meaning.”⁷ As the *Barnette* Court explained: “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.”⁸

While non-participation may upset others who believe the pledge is an important expressive act, that reaction cannot overcome the First Amendment’s protection of those who decide to abstain, just as the anger that greeted Marie and Gathie Barnett’s refusal to salute the flag did not overcome their rights to follow their consciences.⁹ School officials may not prohibit or compel speech out of “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹⁰ Peaceful refusal to endorse a specified viewpoint cannot be grounds for punishment.

The same holds for teachers and staff. The “First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees’ freedom to believe and associate, or to not believe and not associate.”¹¹ That means “neither federal nor state government may condition employment on taking oaths that impinge on rights guaranteed by the First and Fourteenth Amendments.”¹²

³ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

⁴ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

⁵ 319 U.S. 624.

⁶ *Id.* at 642.

⁷ *Id.* at 633.

⁸ *Id.* at 641.

⁹ The case caption incorrectly spells the students’ last name as “Barnette.”

¹⁰ *Id.* at 504.

¹¹ *Rutan v. Republican Party of Ill.*, 497 U.S. 62 (1990).

¹² *Cole v. Richardson*, 405 U.S. 676, 680 (1972). *See also Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967) (requiring state university faculty affirm they were not Communist Party members violated First Amendment).

FIRE calls on TRES to correct its April 26 directive and notify staff of their rights and their students' rights to refrain from participation in the pledge. We respectfully request a substantive response to this letter no later than June 13, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Jablonsky". The signature is fluid and cursive, with the first name "Stephanie" written in a larger, more prominent script than the last name "Jablonsky".

Stephanie Jablonsky
Senior Program Officer, Public Advocacy

Cc: Neeley Miller, Assistant Principal