

## **Statement of the [school boards] in connection with Pledge of Allegiance Litigation**

1. The Dresden School Board, the Hanover School Board, and SAU70 (hereinafter the "School Boards") have adopted the following position in connection with the complaint filed in the United States District Court for the District of New Hampshire by the Freedom from Religion Foundation and the parents identified in the complaint as Jan Doe and Pat Doe, and their three children who are currently enrolled in schools in the district. The complaint alleges that the recitation of the Pledge of Allegiance (the "Pledge") within schools in the SAU70 district violate the Establishment and Free Exercise Clauses of the First Amendment as well as Article 6 of the New Hampshire Constitution.

2. RSA Section 194:15-c (New Hampshire Patriot Act) states that "[a] school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance". It further provides that "[p]upil participation in the recitation of the pledge of allegiance shall be voluntary".

3. The New Hampshire Patriot Act ("NHPA") does not include directions to local school districts concerning the time or manner in which the Pledge might be recited. Nor does it prescribe the ways and means by which school districts might ensure the voluntary nature of the recitation of the Pledge. The school boards in this district have not adopted policies or practices relating to the recitation of the Pledge having left to the discretion of principals how best to carry out the provisions of the NHPA.

From time to time, the various boards have received information from school administrators concerning how the NHPA has been put into practice. In connection with the filing of the Plaintiff's complaint, the boards have requested information from Principals concerning current practices relating to the recitation of the Pledge in schools in the district.<sup>1</sup>

4. Practices vary among schools in the district although all schools emphasize to students, parents, and teachers the voluntary nature of recitation of the Pledge. In the Hanover High School, at the start of the school day, a designated student will typically recite the pledge over the school intercom system. Participation is voluntary.. Student are requested to pause their movement through the school corridors and respect the rights of students choosing to recite the pledge.<sup>2</sup> A similar practice is followed in the Richmond Middle School at a time set aside at the beginning of the school day for a student to recite the pledge over the school intercom system.<sup>3</sup> In the Ray School, the elementary school in the district, time for recitation of the pledge is set aside in individual classrooms with the actual practices followed determined by the Principal, together with each classroom teacher.

5. The approach of this district has been, and is, to emphasize the voluntary nature of the pledge and to respect the individual views of students as well as their teachers

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<sup>1</sup> Copies of brief written reports are attached hereto.

<sup>2</sup> Before the Pledge is read, the reader says, "Will everyone please pause quietly for the saying of the Pledge of Allegiance by those who wish to do so."

<sup>3</sup> At the Richmond Middle School, every Monday, Wednesday, and Friday morning, at the end of the morning meeting, two members of the Student Council use the PA system to read the Pledge. Every Tuesday and Thursday, two staff members lead a recitation of the Pledge with any students who are interested in joining.

concerning the recitation of the pledge. Though these practices have not been a consequence of formal policy statements and directives (other than the mandate of the NHPA relating to the voluntary nature of the recitation of the pledge), they respect the open and inclusive values of the local community. They have also rested on a clear understanding and appreciation of the Supreme Court's decision in West Virginia Board of Education v. Barnette, 319 U.S.624 (1943) that permits students on religious grounds to abstain from the recitation of the pledge.

6. In the response to the complaint filed by the Freedom from Religion Foundation, the school boards reaffirm the important principle of the Barnette case that the recitation of pledge is voluntary and a matter of individual conscience on the part of students, their parents, and their teachers. The School Boards have requested principals to ensure that this basic underpinning of practice and policy in our district and of the NHPA is well understood by all concerned parties—students, parents, and teachers. The school boards further recognize that intertwined with, and integral to, the right to refrain altogether from recitation of the pledge is the right to refrain from reciting the words “under God” during the course of the recitation of the Pledge. The complaint notes that the “[p]laintiffs are making no objection to the recitation of a patriotic Pledge of Allegiance”. Original Complaint at Para. 70. The essence of their claim is that text of the Pledge of Allegiance, as enacted by the Congress in 1954 amending the original pledge created in 1892, included religious dogma through adding the words “under God”, is unconstitutional and that, notwithstanding its voluntary nature, the recitation of the Pledge is impermissibly coercive “due to the setting and peer pressures”. Complaint at Para. 37

7. For reasons set forth above, the school boards do not interpret the NHPA to be inherently coercive in nature. By its terms, the NHPA recognizes that the recitation of the pledge is voluntary. The practice within the school district respects differences of views regarding the recitation of the Pledge. These policies and practices have been reaffirmed in connection with the school boards' deliberations concerning the pending complaint

8. The school boards are, of course mindful of the fact that the core principles behind the Pledge are intended to be the subject for thoughtful reflection and not merely intended for rote recitation. What it means for a nation or community to be "indivisible" but remain a nation or community "with liberty and justice for all" involves a civic lesson of paramount importance. The school boards are also mindful of the fact that individual students and their parents as well as teachers and other members of the Hanover community—including members of school boards in our district-- may hold divergent views with respect to the underlying constitutional claims raised by the complaint in this proceeding. Recognizing these differences of view, the school boards are also aware that no useful purpose would be served by conducting a wide-spread plebiscite—within each school, the school administration, the school boards, and the community—concerning the fundamental constitutional law questions ultimately be decided by the federal courts and in all likelihood the Supreme Court. The fundamental issues in the Plaintiffs' lawsuit are questions of constitutional law to be resolved by the federal courts. They also have a political dimension that can be addressed by the U.S. Congress. Indeed, the Plaintiffs seek through their lawsuit the immediate enactment of legislation by the U.S. Congress to

“remove the words ‘under God’ from the Pledge of Allegiance to the Flag as now written in 4 U.S.C. Section 4.” Complaint, Prayer for Relief IV at 19. The school boards are without authority to provide relief to the Plaintiffs that must necessarily result from judicial or Congressional action.

9. The school boards also recognize that essentially the same constitutional questions raised in the Plaintiff’s complaint have been the subject of litigation in other judicial districts in this country. The Plaintiffs Freedom from Religion Foundation (FFRF) and Michael Newdow have diligently litigated these issues in the federal district and appellate courts in the Ninth Circuit and in the Supreme Court. Plaintiff FFRF continues to litigate in the Ninth Circuit the very same constitutional questions raised in their current complaint in the U.S. Federal District Court for the District of New Hampshire; and this complaint may be held by the Plaintiff FFRF in abeyance pending the disposition of its litigation in the Ninth Circuit.

10. The school boards are of the opinion that the main parties to this complaint are the Plaintiffs, the United States through the Department of Justice, potentially also through independent counsel the U.S. Senate and House of Representatives , and the Attorney General of New Hampshire. These parties are in the best position to brief and carry forward to resolution within the First Circuit –and ultimately the Supreme Court-- the constitutional claims raised in the complaint.

11. The school boards have been advised that the constitutionality of Pledge under the United States Constitution and the New Hampshire Constitution will be supported by Department of Justice and the New Hampshire Attorney General.

12. For all reasons set forth above, the school boards believe that the issues raised by the Plaintiffs can and should be expeditiously resolved on the basis of pleadings of the main parties to this proceeding. The school boards do not expect to submit their own brief on the merits of the underlying constitutional claims that the main parties can be expected to brief in the course of this litigation. However, they will continue to carry out their obligations under the NHPA and Supreme Court precedent in West Virginia Board of Education v. Barnette, *supra*, to ensure any recitation of the Pledge is undertaken in an environment that is voluntary and respectful of differing opinions within our community concerning the issues raised by the Plaintiffs in their complaint.

Respectfully submitted,

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