

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

THE FREEDOM FROM RELIGION)	
FOUNDATION, <i>et al.</i>)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No. 07-356 (SM)
)	
HANOVER SCHOOL DISTRICT and)	
DRESDEN SCHOOL DISTRICT,)	
)	
<i>Defendants,</i>)	
)	
THE UNITED STATES OF AMERICA,)	
)	
<i>Defendant-Intervenor,</i>)	
)	
THE STATE OF NEW HAMPSHIRE,)	
)	
<i>Defendant-Intervenor,</i>)	
and)	
)	
MURIEL CYRUS, <i>et al.</i> ,)	
)	
<i>Defendant-Intervenors.</i>)	

**MEMORANDUM IN SUPPORT OF RENEWED MOTION BY DEFENDANT-
INTERVENORS MURIEL CYRUS, *et al.* TO DISMISS ALL CLAIMS**

In accordance with the consent motion dated November 6, 2008 (Dkt. No. 51) and the Court's order entered on the docket November 17, 2008, Defendant-Intervenors Muriel Cyrus *et al.* ("Schoolchildren") renew their motion to dismiss this action pursuant to FED. R. CIV. P. 12(b)(6). The amended complaint should be dismissed for all of the reasons offered in the Schoolchildren's memorandum in support of their motion to dismiss (Dkt. No. 22) and the reply memorandum in support of their motion to dismiss (Dkt. No. 43).

The Doe Plaintiffs' new claims regarding parental and familial rights should also be dismissed for the simple reason that government has the right to lead *some* children in reciting the Pledge as long as it gives *other*, objecting children the right to opt out in accordance with their scruples. See *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Government instruction choices can never satisfy every group because "[t]he diversity of religious tenets in the United States ensures that *anything* a school teaches will offend the scruples and contradict the principles of some if not many persons." *Sherman v. Community Consol. Sch. Dist.*, 980 F.2d 437, 444 (7th Cir. 1992). The remedy offered those who have such scruples is to allow them to opt out, not to silence all others: "Compulsory unification of opinion achieves only the unanimity of the graveyard." *Barnette*, 319 U.S. at 641. Being forced to hear others say things one disagrees with is in fact the essence of civil society and indeed, the judicial system itself, which has as a predicate the existence of contending views about fundamental issues.

For these reasons, the reasons previously stated in the Schoolchildren's earlier memoranda (Dkt. Nos. 22 and 43) and the reasons stated by the State of New Hampshire in its supplemental memorandum filed today (Dkt. No. 53), which Schoolchildren adopt, the complaint should be dismissed in its entirety.

Dated: December 4, 2008

Respectfully submitted,

/s/Eric Rassbach

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically and served electronically by operation of the Court's electronic filing system to all counsel of record on December 4, 2008.

/s/Eric Rassbach