

Chair Heinert, Vice Chair Schreiber-Beck, and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in opposition to House Bill 1222 requiring public school students to recite the pledge of allegiance.

Strong free speech protections are enshrined in both the First Amendment to the U.S. Constitution and Article 1, Section 4 of the North Dakota State Constitution. As has long been established, these protections are violated when government officials attempt to coerce others to stand for the Pledge, say the Pledge, or otherwise take part in a Pledge of Allegiance ceremony.

Over eighty years ago that the United States Supreme Court ruled in *West Virginia State Bd. of Education v. Barnette*, 319 U.S. 624, 642 (1943). that government actors may not force individuals to say 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. If there are any circumstances which permit an exception, they do not now occur to us.

The Court concluded that “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.” (In addition, in *Spence v. Washington*, 418 U.S. 405 (1974) the Supreme Court deemed that punishment for not showing proper respect for the American Flag was unconstitutional.)

While HB1222 provides for parental permission to be excused from reciting the pledge of allegiance, a student’s First Amendment protected freedom of speech and freedom of conscience means that a student may choose to say the Pledge of Allegiance one day and refuse another day. A student can make this decision on a day-to-day basis. The need for parental permission restricts the student’s aforementioned rights and government demands that students disclose their reasons for their expression of speech are themselves a burden on free speech. The landmark *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969) has established that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

North Dakota law already permits students to recite the Pledge of Allegiance, however there are myriad moral, ethical, or personal reasons an individual student may not wish to participate. Schools should be a place where different views are embraced and explored, and not a place of compulsory speech or thought.

The ACLU of North Dakota urges the House Education Committee to give a “do not pass” recommendation on HB1222.

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The ACLU has a long history of defending students’ right to decline to say the pledge including cases in Colorado (2003), Pennsylvania (2004), Virginia (2005), Florida (2006), and Texas (2008).