

# West Virginia State Board of Education v. Barnette: Can Schools Force Students to Stand for Pledge of Allegiance?

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As the *National Football League* season begins this year, it seems the most discussed question is not which team is looking good and which team needs some work. Instead, it's who will stand for the *National Anthem* and who will not. Colin Kaepernick has started the discussion, and virtually everyone is weighing in on one side or the other, and schools are no exception. But at schools, the more prevalent question seems to be whether students can be forced to stand for the **Pledge of Allegiance** or whether they may opt out. This will give a refresher on what schools' and students' rights are with regard to standing for the Pledge of Allegiance.

Few people remember it, but the case in which the United States Supreme Court first decided students' rights regarding the Pledge of Allegiance actually originated in West Virginia. The case was [\*West Virginia State Board of Education v. Barnette\*](#), 319 U.S. 624 (1943). In that case, the **Supreme Court** struck down a resolution that allowed schools to expel students who refused to stand for the Pledge of Allegiance on the basis that refusing to stand constituted an act of insubordination. The Court held that forcing students to stand for the Pledge constituted compelled speech and violated the First Amendment.

Following *Barnette* and other related cases, the following guidelines are clear:

1. Schools cannot require students to recite the Pledge or stand for the Pledge (including standing silently while other students recite the Pledge).
2. Students cannot be required to leave the room while other students recite the Pledge, obtain parental approval to be exempt from reciting the Pledge, or explain or justify themselves if they choose not to recite the Pledge.
3. To be entirely clear, schools may wish to inform students that they have the right not to participate in the Pledge. Even if they do not, teachers may not lecture students about patriotism or respect for the flag or the like if a student refuses to stand, as a way to influence students to participate.

So the answer to the title of this alert is clear: no, a school cannot force a student to stand for the Pledge. The First Amendment, of course, is implicated in all manner of situations in schools on a daily basis.

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