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IN THE

Supreme Court of the United States

October Term, 1939.

No. 690.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, Consisting of DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. McGURL, THOMAS B. EVANS and WILLIAM ZAPF, and CHARLES E. ROUDABUSH, Superintendent of MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS and WILLIAM GOBITIS, Minors, by WALTER GOBITIS, Their Next Friend,

Respondents.

Brief for Petitioners.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

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"Train up a child in the way he should go: and when he is old, he will not depart from it." Proverbs 22:6.

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v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

This case comes before the Court on Writ of Certiorari issued to review a final decree of the United States Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW.

On December 1, 1937, an opinion was filed by the Honorable Albert B. Maris, (R. 15) sur Defendants' Motion to Dismiss Bill of Complaint and is reported in 21 F. Supp.

581. The opinion of the Honorable Albert B. Maris sur Pleadings and Proof was filed on June 18, 1938 (R. 120) and is reported in 24 F. Supp. 271.

The opinion of the United States Circuit Court of Appeals for the Third Circuit written by Circuit Judge Clark and concurred in by Circuit Judge Biggs and District Judge Kalodner (R. 155), was filed on November 10, 1939, and is reported in 108 F. (2d) 683.

JURISDICTION.

The jurisdiction of this Court to review the final decree of the United States Circuit Court of Appeals for the Third Circuit on a writ of certiorari is provided by Section 240 (a) of Judicial Code as amended by the Act of February 13, 1925 c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347 (a).).

The decision of the aforesaid Circuit Court of Appeals concerns an important question of constitutional law involving the morale and welfare of the nation. Said decision is in conflict both with prior decisions of your Honorable Court and with decisions of state courts dealing with the identical question.

STATEMENT OF THE CASE.

The Board of Education of the Minersville School District, Schuylkill County, Pennsylvania, conducting the Minersville Public Schools, adopted a resolution requiring teachers and pupils to salute the national flag at daily exercises and providing that a refusal to salute the flag be regarded as an act of insubordination (R. 45, 121).

At the opening of school exercises, the teachers and pupils of Minersville Public Schools place their right hands on their breasts and speak the following words:

> "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R. 46, 92).

In 1935 Lillian Gobitis, aged twelve, and William Gobitis, aged ten, (R. 77) were pupils at the Minersville Public School. They are members of Jehovah's Witnesses and, as such, had covenanted to obey Jehovah's commandments, believing that a failure to obey the precepts in the Bible will result in their eternal destruction (R. 122). The Gobitis children refused to salute the national flag as required by the Minersville Public Schools at its daily school exercises because they believed so to do was contrary to the law of God as set forth in Chapter 20 of Exodus (R. 122). The Bible is their only creed (R. 49).

The School Board regarded said refusal as an act of insubordination and on November 6, 1935 Lillian Gobitis and William Gobitis were expelled from the Minersville Public Schools solely for their refusal to salute the national flag at the daily exercises of the school (R. 46, 47, 122, 123). Since their expulsion, they have been unable to attend the Minersville public schools (R. 47, 123).

On May 3, 1937 Walter Gobitis individually and Lillian Gobitis and Walter Gobitis minors by their father Walter Gobitis filed a bill in equity in the District Court of the United States for the Eastern District of Pennsylvania to compel the Minersville School District, its Board of Education and Superintendent of Schools to reinstate the Gobitis children without their being required to salute the national flag (R. 4).

A motion to dismiss the bill of complaint for lack of jurisdiction was denied on December 1, 1937 (R. 15).

On June 18, 1938, after hearing sur pleadings and proofs, the said District Court entered a final decree as prayed for by the complainants (R. 128).

An appeal was taken to the Circuit Court of Appeals for the Third Circuit, which court affirmed the final decree of the District Court on November 10, 1939, holding that said resolution abridged the religious rights of the Gobitis children and was therefore unconstitutional (R. 155).

On March 4, 1940 a petition for writ of certiorari to review said decree was granted by your Honorable Court (R. 184).

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

The petitioners intend to urge the following Assignments of Error—first, those concerning the question whether said expulsion of the Gobitis children abridged the constitutional rights of the respondents, to wit: Assignments of Error Nos. 1, 2, 9, 10, 12, 13, 14, 23, 24, 25 (R. 132, 134, 140, 141, 142, 143, 146, 147), and secondly, those concerning the question whether the refusal of the Gobitis children to salute the flag was founded on a religious belief, to wit: Assignments of Error Nos. 1, 2, 12, 15, 24, 25 (R. 132, 134, 142, 143, 146, 147).

QUESTIONS PRESENTED.

The Board of Education of Minersville School District adopted a resolution requiring teachers and pupils to salute the national flag at daily school exercises and providing that a refusal be regarded as an act of insubordination. The minor-respondents, members of a sect called Jehovah's Witnesses, while pupils at said schools, refused to salute the flag believing that to do so would violate the written law of Almighty God and result in their eternal destruction.

1. Was the expulsion of the minor-respondents for the refusal to salute the flag in violation of any of their rights under the Constitutions of the United States of America and of the Commonwealth of Pennsylvania?

2. Is the refusal of said pupils to salute the national flag at a daily exercise of a public school founded on a religious belief?

ARGUMENT.[1]

SUMMARY OF ARGUMENT.

I. THE RESOLUTION OF THE SCHOOL BOARD REQUIRING PUPILS TO SALUTE THE FLAG WAS LAWFULLY ADOPTED, AND THE EXPULSION OF THE GOBITIS CHILDREN WAS WITHIN ITS POWER AND AUTHORITY.

II. THE EXPULSION OF THE GOBITIS CHILDREN DID NOT VIOLATE ANY RIGHT UNDER THE CONSTITUTION OF THE UNITED STATES.

III. THE EXPULSION OF THE GOBITIS CHILDREN DID NOT VIOLATE ANY RIGHT UNDER THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA.

IV. THE REFUSAL OF THE GOBITIS CHILDREN TO SALUTE THE NATIONAL FLAG AT SCHOOL EXERCISES BECAUSE THEY BELIEVED TO DO SO WOULD VIOLATE THE WRITTEN LAW OF ALMIGHTY GOD AS CONTAINED IN THE BIBLE WAS NOT FOUNDED ON A RELIGIOUS BELIEF.

I. The Resolution of the School Board Requiring Pupils to Salute the Flag Was Lawfully Adopted, and the Expulsion of the Gobitis Children Was Within Its Power and Authority.

The establishment and maintenance of the public school system of Pennsylvania has been delegated to the state leg-

[1] Consent to file a brief as amicus curiæ has been given by the petitioners both to the Committee of the American Bar Association on the Bill of Rights and to the American Civil Liberties Union. The Court's attention, however, is called to the fact that at the meeting of the House of Delegates of the American Bar Association, the representative body of said association, held at Chicago on January 9, 1940,

islature by Article X of the Pennsylvania Constitution, and the public school system is presently administered under the Act of May 18, 1911, P. L. 309 and the amendments thereto, which act is "intended as an entire and complete School Code." (24 Purdon's Pennsylvania Statutes Annotated (hereinafter cited as "P. S.") §§ 1 to 2394.)

The Commonwealth is subdivided into school districts. Act of May 18, 1911, P. L. 309, art. I § 101, as amended by Act of April 24, 1929, P. L. 642, § 1 (24 P. S. 21). The public schools in each district are administered by a local board of school directors. Act of May 18, 1911, P. L. 309, art. II § 201, as amended by Act of June 1, 1933, P. L. 1152, § 16 (24 P. S. § 161). The board of school directors in each school district equips, furnishes and maintains the public schools for children residing in its district. Act of May 18, 1911, P. L. 309, art. IV § 401, as amended by the Act of May 29, 1931, P. L. 243, § 8 (24 P. S. § 331).

Every child between the ages of six and twenty-one who is a resident of any school district may attend the public schools in that district. Act of May 18, 1911, P. L. 309, art. XIV, § 1401, as amended by the Act of May 29, 1931, P. L. 243, § 32 (24 P. S. § 1371). However, children within the "compulsory school age" (from eight until seventeen years of age) need not attend the public schools but, if it is desired, may attend any other day school where specific subjects and activities are taught. Act of May 18, 1911, P. S. 309, art. XIV, § 1414, as now amended by Act of June 24, 1939, P. L. 786, § 2 (24 P. S. § 1421).

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the House of Delegates authorized its committee to intervene in this proceeding by a margin of two votes, the division having been fifty-three (53) votes for intervention to fifty-one (51) votes against intervention. *American Bar Association Journal,* Vol. XXVI, No. 2, (February 1940) at page 120.

The School Code also provides that the board of school directors in each district "may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper . . . regarding the conduct and deportment of all pupils attending the public schools in the district . . ." Act of May 18, 1911, P. L. 309, art. IV, § 404, as amended by Act of May 29, 1931, P. L. 243, § 9 (24 P. S. § 338).

> "Every principal or teacher in charge of a public school . . . may temporarily suspend any pupil on account of disobedience or misconduct, and . . . the Board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him . . ." Act of May 18, 1911, P. L. 309, art. XIV, § 1411 (24 P. S. § 1383).

The legislature has further provided in the School Code that all public schools and private schools in this Commonwealth shall teach certain enumerated subjects in which is included "the history of the United States and Pennsylvania, *civics, including loyalty to the State and National Government.*" [2] Act of May 18, 1911, P. L. 309, art. XVI, § 1607, as amended by Act of May 20, 1937, P. L. 732, § 1 (24 P. S. § 1551). The School Code, however, does not designate the particular method by which "civics" and "loyalty to the State and National Government" is to be taught, but the legislature has wisely and obviously left that to the discretion of the local school boards.

In 1935 the Board of Education of Minersville School District by appropriate resolution required teachers and pupils in its public schools to salute the national flag as part of the daily school exercises and provided that a refusal to

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[2] Words italicized in the above quotation and in all subsequent quotations have been italicized by counsel, except where otherwise indicated.

salute the flag should be regarded as an act of insubordination.

Lillian Gobitis, aged twelve, and William Gobitis, aged ten, (R. 77) were at that time pupils at the Minersville Public School. They are members of Jehovah's Witnesses and, as such, had covenanted to obey Jehovah's commandments, believing that a failure to obey the precepts in the Bible will result in their eternal destruction (R. 122). The Gobitis children refused to salute the national flag as required by the Minersville Public Schools at its daily school exercises because they believed so to do was contrary to the law of God as set forth in Chapter 20 of Exodus (R. 122). Their only creed is the Bible. (R. 49).

The School Board regarded said refusal as an act of insubordination and on November 6, 1935 Lillian Gobitis and William Gobitis were expelled from the Minersville Public Schools solely for their refusal to salute the national flag at the daily exercises of the school. (R. 46, 47, 122, 123.)

The present proceeding was instituted to compel the School Board to reinstate the Gobitis children without their being required to salute the flag on the ground that the resolution deprived them of constitutional rights. The Courts below erroneously sustained the respondents' contentions, namely, that the resolution of the Board of Education of the Minersville School District was invalid when enforced against the respondents, because such enforcement deprived them of "religious freedom" guaranteed by the Constitution of the Commonwealth of Pennsylvania and also denied the respondents equal protection of the law and due process of the law as provided in the Fourteenth Amendment of the Constitution of the United States. In their Bill of Complaint the respondents also alleged that the resolution violated the Eighth Amendment to the Constitution of the

United States, but the Courts-below properly disregarded that allegation for the reason that the Eighth Amendment does not restrict any act of a state but only prohibits cruel punishments inflicted under acts of Congress.

We submit, first, that the Bill of Complaint should have been dismissed because the right of the school board to adopt and enforce such a regulation under the so-called "police power" is superior to any religious right, if any, which otherwise might have been protected by the Fourteenth Amendment of the Constitution of the United States and Article I of the Constitution of the Commonwealth of Pennsylvania. Secondly, the refusal of the Gobitis children to salute the national flag because they believed to do so would violate the written law of Almighty God is not founded on a religious belief, and their Bill of Complaint should have been dismissed because they wilfully violated a regulation of the local school district which had been lawfully adopted and enforced.

II. The Expulsion of the Gobitis Children Did Not Violate Any Right Under the Constitution of the United States.

The precise question to be determined in this case has already been presented to your Honorable Court on *four* occasions within the past three years and in each case a regulation or statute similar to that involved in this case has been upheld in per curiam opinions.

In *Leoles v. Landers,* 302 U. S. 656 (1937), and *Hering v. State Board of Education,* 303 U. S. 624 (1938) appeals from courts of last resort in the states of Georgia and New Jersey, where requirements to salute the flag were held reasonable and constitutional, were dismissed by your Honorable Court for want of a substantial federal question.

Subsequently your Honorable Court dismissed an appeal from a similar decision by the Supreme Court of California for want of jurisdiction, and, "treating the papers whereon the appeal was allowed as a petition for writ of certiorari" also denied certiorari. *Gabrielli v. Knickerbocker,* 306 U. S. 621 (1939).

In *Johnson v. Deerfield,* 306 U. S. 621 (1939) your Honorable Court affirmed a judgment of the United States District Court of Massachusetts, wherein a resolution requiring pupils to salute the flag was held to be constitutional. Petition for rehearing was denied in *Johnson v. Deerfield,* 307 U. S. 650 (1939).

In the above cited cases the courts of last resort of Georgia, New Jersey, and California and the District Court of Massachusetts had previously considered whether the particular regulation or statute involved in the case before it violated any provision of the Constitution of the United States or any provision of its state constitution. Each court was unanimous in holding the requirement to salute the flag constitutional. *Leoles v. Landers,* 184 Ga. 580, 192 S. E. 218 (1937); *Hering v. State Board of Education,* 118 N. J. L. 566, 117 N. J. L. 455, 194 Atl. 177, 189 Atl. 629 (1937); *Gabrielli v. Knickerbocker,* 12 Cal. (2d) 85, 82 P. (2d) 391 (1938); *Johnson v. Deerfield,* 25 F. Supp. 918 (D. C. Mass. 1939).

The Supreme Court of Georgia in *Leoles v. Landers,* 184 Ga. 580, 585, 192 S. E. 218, 221, stated as follows:

> "It is contended that such action on the part of the school authorities denies to the plaintiff the equal protection of the law, due process of law, and further infringes the provisions of the State Constitution prohibiting the establishment of religion and securing to her religious freedom, and seeks to compel her to act

in disobedience to her religious beliefs and teachings. Code, §§ 2—112, 2—113 (Const. Ga. art. 1, § 1, para. 12, 13) 1—801 (Const. U. S. amend. 1) 2—103 (Const. Ga. art. 1, § 1, par. 3) 1—815 (Const. U. S. Amend. 14). With the foregoing contentions we cannot agree. The United States is a democratic country with a republican form of government. Code, § 1—407 (Const. U. S. art. 4, sec. 4). It is a land of freedom. However, those who reside within its limits and receive the protection and benefits afforded to them must obey its laws and show due respect to the government, its institutions and ideals. The flag of the United States is a symbol thereof, and disrespect to the flag is disrespect to the government, its institutions and ideals, and is directly opposed to the policy of this state."

In *Gabrielli v. Knickerbocker,* 12 Cal. (2d) 85, 88, 82 P. (2d) 391, 392 (1938), the Supreme Court of California referring to the decisions in the cases of *Leoles v. Landers* and *Hering v. State Board of Education, supra,* stated:

"By reason of the above decisions of the Supreme Court of the United States the question as to whether the flag saluting requirement violates the due process clause of the Fourteenth Amendment to the federal constitution, or any other provisions of the federal constitution, is no longer open."

. . . . . .

"It must be accepted as a postulate, by reason of the subject matter involved in the dismissal of the above cited appeals, that every argument relied upon in the instant case, both for and against the power of appellant board to enforce its action of expulsion as an asserted violation of the religious freedom clause of the federal constitution, and every argument and reason urged in the many decided cases of the several courts of the country in which the precise question was presented with respect to the violation of said re-

> ligious freedom clause, came to the cognizance of the United States Supreme Court and was duly weighed by it in the process of reaching the conclusion that no substantial federal question was involved in said appealed cases. The action taken by said court in disposing of said appeals can not be taken in any other sense than that no violation of respondent's constitutional right in the instant case has been committed by the act of excluding respondent from attendance at said public school until she shall comply with the rule which she refuses to obey."

The Court of Appeals of the State of New York and the Supreme Judicial Court of Massachusetts have also sustained the expulsion of members of Jehovah's Witnesses from public schools for refusal to salute the national flag at school exercises. *People v. Sandstrom,* 279 N. Y. 523, 18 N. E. (2d) 840 (1939); *Nicholls v. Mayor and School Committee of Lynn,* 7 N. E. (2d) 577 (Mass. 1937).

In *Nicholls v. Mayor and School Committee of Lynn, supra,* at page 581, Mr. Chief Justice Rugg considered at length the question whether the enforcement of the rule of the school board violated the Constitution of the United States and, after review of the decisions of your Honorable Court, stated:

> "That decision" (referring to *Hamilton v. Regents,* 293 U. S. 245) "appears to us to support in general the contentions of the respondents. It stamps with disapproval the contention of the petitioner that any right secured to him by the Federal Constitution or its Amendments has been infringed."

The Courts-below disregarded the reasoning of the courts of last resort above referred to and endeavored to distinguish the issue in this case from that in the four cases

in which your Honorable Court dismissed appeals. We submit that the Courts-below fell into error.

The District Court ignored the decisions of your Honorable Court in the *Leoles Case* and the *Hering Case* (the *Gabrielli Case* and the *Johnson Case* had not been decided at that time) and confined itself to distinguishing the facts in this proceeding from the facts in *Hamilton v. Regents,* 293 U. S. 245 (1934) and *Coale v. Pearson,* 290 U. S. 597 (1933) which cases your Honorable Court had cited as authority for the dismissal of appeals in the *Leoles Case* and *Herring Case.*

The Circuit Court of Appeals recognized that your Honorable Court had adjudicated this question on four previous occasions but held that those four decisions were not binding precedents or authoritative because they bore "the per curiam imprimatur of the Supreme Court" and were not lengthy dissertations by an individual justice. Then as a further reason for not following these four decisions, the Circuit Court of Appeals stated that in some of these cases the requirement had been adopted by the legislature and not by the school board and that in all four cases the court of the last resort in each state had already added judicial approval to the action of the legislative branch of government.

We submit that such factual differences are immaterial and that the Courts-below were bound by your rulings in said four cases and should have dismissed respondents' Bill of Complaint. It is of no significance whether the legislature itself or whether a school board as its duly authorized agency or instrumentality required pupils to salute the flag nor is it material to the determination of this case or any case of this nature whether the Supreme Court of Pennsylvania had been afforded an opportunity to add judicial ap-

proval to such a requirement. The respondents themselves invoked the jurisdiction of the federal courts, and the motion of the School Board to dismiss the complaint on the ground that jurisdiction was in the state courts was strongly and successfully opposed by the respondents. However, it might incidentally be noted that the only state court in Pennsylvania where this precise question has been presented sustained the constitutionality of a similar requirement. See *Estep v. The School District of the Borough of Canonsburg, infra* at page 26.

Finally, the Circuit Court of Appeals, apparently as a "catch-all" reason for not following the four "flag salute cases" of this Court, pointed out that these decisions have been disapproved by the commentators in various law reviews. While interesting and at times instructive, articles in law reviews and legal periodicals have not yet been accepted as authority superior to the decisions of your Honorable Court.

Irrespective of the applicability of the aforesaid cases, the requirement to salute the flag is constitutional, whether considered solely on principle or in the light of precedents established by other analogous cases.

The right of a state legislature or of a state's duly authorized instrumentality to adopt and enforce regulations in the interest of the public weal has been repeatedly affirmed by numerous decisions of your Honorable Court. The Fourteenth Amendment does not limit or restrict this power where the health, safety, peace, morals, education or general welfare of the people is concerned. This power is superior to any religious right or liberty which might otherwise be protected by state or federal constitution. It is the very basis and foundation of government and transcends all other powers. *Salus populi suprema lex.*

> "Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals." *Beer Co. v. Massachusetts,* 97 U. S. 25, 33 (1887).

In *Reynolds v. United States,* 98 U. S. 145 (1878), the defendant was convicted of bigamy notwithstanding the fact that the Mormon Church, of which he was a member, permitted its male members to practice polygamy. Mr. Chief Justice Waite stated on page 166:

> "Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices."
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> . . . . . .
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> ". . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

See also *Davis v. Beason,* 133 U. S. 333 (1890) where the defendant's belief in the tenets of the Mormon Church did not justify his violation of a state statute.

In *Jacobson v. Massachusetts,* 197 U. S. 11 (1905) a statute requiring vaccinations by the citizens of Cambridge, Massachusetts, was held constitutional, the authority to enact a statute being within the "police power" of the state.

In the *Selective Draft Law Cases,* 245 U. S. 366 (1918) your Honorable Court held that Congress had the right to

compel military service and that the provisions in the act exempting ministers and theological students and granting other relief to members of various religious sects did not make the law repugnant to the First Amendment either as the establishment of a religion or as an interference with the free exercise of religion.

The National Prohibition Act and regulations thereunder limiting the amount of sacramental wine which each Jewish family might use during the year was held constitutional and not in violation of the First Amendment guaranteeing religious liberty. *Shapiro v. Lyle,* 30 Fed. (2d) 971 (D. C. Wash. 1929).

The most recent decision in which the religious guarantees of our federal constitution have been considered at length by your Honorable Court is the case of *Hamilton v. Regents,* 293 U. S. 245 (1934). In that case the minor-plaintiffs had been suspended from the University of California because they refused, for alleged religious reasons, to take a course in military training. The minor-plaintiffs attempted to compel the regents of the university to admit them as students without being required to take the prescribed course in military training. The writ of mandamus was denied and the judgment was affirmed by your Honorable Court, Mr. Justice Butler saying:

> "Appellants assert—unquestionably in good faith —that all war, preparation for war, and the training required by the university, are repugnant to the tenets and discipline of their church, to their religion and to their consciences." (p. 261)
>
> . . . . . .
>
> "There need be no attempt to enumerate or comprehensively to define what is included in the 'liberty' protected by the due process clause. . . . Taken on the

> basis of the facts alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance.
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> "Viewed in the light of our decisions that proposition must at once be put aside as untenable." (p. 262)
>
> . . . . . .
>
> "Plainly there is no ground for the contention that the regents' order, requiring able-bodied male students under the age of twenty-four as a condition of their enrollment to take the prescribed instruction in military science and tactics, trangresses any constitutional right asserted by these appellants." (p. 265)

To the same effect is the case of *Coale v. Pearson,* 290 U. S. 597 (1933).

Just as it was recognized in *Reynolds v. United States, supra,* that permitting a man to excuse his practices because of a religious belief would make the professed belief superior to the law of the land, so also in *United States v. MacIntosh,* 283 U. S. 605 (1931) your Honorable Court held that naturalization was properly denied an applicant who, because of his religious beliefs and conscientious objections, was unwilling to take the oath of allegiance without qualifications. Mr. Justice Sutherland, in his opinion, said:

> "When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make *his own interpretation* [3] of the will of God the decisive test which shall conclude the government and stay its hand." (p. 625).

[3] Italics contained in opinion.

In these days of social, economic and political unrest, the preservation of the state is dependent upon the maintenance of a proper morale as much as the maintenance of the health, peace, safety, and morals of the people. The state is much more susceptible to insidious attacks in these days of strain and stress than would appear from casual observation, and the maintaining of a proper morale among the people is, therefore, essential to the preservation of our nation. Any break-down in the *esprit de corps* or morale of this country may conceivably have a more devastating effect upon the nation than a catastrophe resulting from disease, breach of peace, or even an invasion of the realm. Thus the necessity of strengthening the morale of this country becomes self-evident. Your Honorable Court can not help taking judicial notice of the present condition of unrest, and any effort by educational authorities to strengthen the morale should be fostered and encouraged.

The salute is "a ceremony clearly designed to inculcate patriotism" and has no religious significance whatsoever. *Nicholls v. Mayor and School Committee of Lynn, supra.* In saluting the flag a pupil is neither worshiping an idol nor doing anything which is any way connected with or related to any religious observance or form of worship. "The act of saluting the flag of the United States is by no stretch of reasonable imagination 'a religious rite'. It is only an act showing one's respect for the government, similar to arising to a standing position upon hearing the National Anthem being played." *Leoles v. Landers,* 184 Ga. 580, 587, 192 S. E. 218, 222 (1937).

Students at the public schools are instructed in patriotism and love of country in many ways—by the study of history and civics, by the observance of legal holidays, by special exercises on days of national or patriotic signifi-

cance, by the singing of our national anthem, by saluting the national flag, and by other similar studies and activities. While all of these studies and activities contribute to the development of a pupil's sense of loyalty, the exercise of saluting the flag is as reasonable a method of teaching loyalty as any of the other studies and activities and should not be omitted because of a pupil's alleged religious beliefs. The School Board so decided when it adopted the resolution requiring the salute. Such decision, being within the authority of the School Board, should not be set aside by the Courts, especially when the morale of the country would be weakened and its welfare adversely affected.

While it would seem on first impression that little harm may result from the failure of the two Gobitis children to salute the flag, such is not the case. Dr. Roudabush, Superintendent of the Minersville Public Schools, testified that, if pupils be permitted to refuse to salute the flag, such refusal would have a demoralizing effect on the entire school group.

As he stated: "The tendency would be to spread. In our mixed population where we have foreigners of every variety, it would be no time until they would form a dislike, a disregard for our flag and country." (R. 92.)

When interrogated as to whether or not in time the fact that a number of students failed to salute the flag would lead to any breakdown of government from the standpoint of the safety of the public, the Superintendent of Schools stated that he believed such would be the effect (R. 93). Dr. Roudabush, as superintendent of schools, is familiar with conditions surrounding the youth of today and was particularly qualified to testify as to pupils' reactions to such a situation.

We submit, however, that, even if Dr. Roudabush had not so testified, your Honorable Court would take judicial notice of such facts and reach a similar conclusion.

The morale of each community group affects the morale of other groups and in due course that of the state and of the nation. The decision in this case is of nation wide significance and will effect not merely the Minersville School District but countless other school districts throughout this country. The decisions, to which we have heretofore referred, show that numerous members of Jehovah's Witnesses have refused to salute the national flag and that this practice is not local or restricted to any particular community but is national in scope. The courts have been resorted to in Texas, California, Georgia, Pennsylvania, New Jersey, New York and Massachusetts. Undoubtedly there are many other cases throughout this land where pupils have refused to salute the flag but no litigation was thereafter instituted. If the contention of the respondents is sustained, and a pupil in the public schools be permitted to refuse to salute the national flag for alleged religious beliefs, a large number of children, who are members of Jehovah's Witnesses and possibly many who are not, will refuse to salute the national flag at daily school exercises. Such demonstration of disrespect to our government will influence and affect the other pupils in the schools, and the morale of their respective communities, and ultimately of the nation itself, will be shaken and demoralized.

The youth of today will be the adult citizens of tomorrow and the public schools should be permitted through patriotic exercises to inculcate in them a love of country, and a group or groups of pupils, for alleged religious beliefs, should not be allowed to be disrespectful to the country and

to promote disloyalty to the very government which guarantees them religious freedom in the *worship* of God.

From an educational point of view a requirement that pupils salute the flag at daily school exercises is as important as the study of history and other subjects and from an economic and social point of view such a requirement is more essential in maintaining the morale and welfare than many of the other requirements which have been held to be within the "police power" of the states.

III. The Expulsion of the Gobitis Children Did Not Violate Any Right Under the Constitution of the Commonwealth of Pennsylvania.

Article I, Section 3 of the Constitution of the Commonwealth of Pennsylvania provides as follows:

> "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship."

Mr. Chief Justice Gibson, as early as 1828, stated that the rights of conscience are:

> "Simply a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever on the subject of religion; and to do, or forbear to do, any act for conscience sake, the doing or forbearing of which, *is not prejudicial to the public weal.*"[4] *Commonwealth v. Lesher,* 17 S. & R. (Pa.) 155, 160.

[4] Italics contained in opinion.

Statutes, ordinances, rules and regulations which have conflicted with religious beliefs of individual citizens but which had been enacted for the public good have been held constitutional on numerous occasions by the courts of Pennsylvania, notwithstanding the above quoted constitutional guarantee.

In *Wilkes-Barre v. Garabed,* 11 Pa. Superior 355, 366 (1899), an officer in the Salvation Army had used drums while conducting an open meeting in the streets of Wilkes-Barre notwithstanding a municipal ordinance prohibiting their use. The defendant officer contended that the Salvation Army understands the Divine Command for it to go into the streets and preach the gospel and that the use of the drum had become a regulation part of its service. The officer, however, was fined and the judgment was affirmed on appeal on the ground that "religious liberty does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as part of their religious system."

In *Commonwealth v. Herr,* 229 Pa. 132, 141, 78 Atl. 68, 71 (1910), an act to prohibit teachers wearing any dress or mark indicating a religious affiliation was held constitutional. That case contained the following pertinent remarks regarding the religious rights of citizens of Pennsylvania:

> ". . . the rights of conscience are no less sacred than the rights of property; test oaths and religious disqualifications belong to a period further back than the memory of the present generation can reach, and it is to be hoped they may never be restored. But broad as are these declarations of our constitution, and sacred as are the religious freedom and the rights of conscience they secure, yet it must be apparent to any person upon reflection, and has been repeatedly declared

by the highest judicial authority, that they do not mean, unqualifiedly, that it is beyond the power of the legislature to enact any law which will restrain individuals from doing that which, if it were not for the law, their consciences would teach them to be their moral or religious duty. Indeed it is impossible to see how civil government could exist, if the dictates of the individual conscience were in every instance where they come in conflict with the law of the land the paramount rule of action . . . Many other illustrations may be found in decided cases of the general principles that the religious freedom and the rights of conscience guaranteed by the constitution do not necessarily and always stand in the way of the enforcement of laws commanding or prohibiting the commission of acts even by those who conscientiously believe it to be their religious or moral duty to do or refrain from doing them. For example, not to go outside of Pennsylvania, a Jew who refused to be sworn in the trial of a case on Saturday because it was his Sabbath was fined: Stansbury v. Marks, 2 Dall. 213. The conscientious scruples of a Jew to appear in court and to attend the trial of his case on the same day were held to be no ground for the continuance of his cause: Phillips v. Gratz, 2 P. & W. 412. The act prohibiting all worldly employment upon the first day of the week has been held not to be in contravention of the constitutional rights under consideration, even where applied to persons whose religious belief leads them to observe another day of the week as their Sabbath: Com. v. Wolf, 3 S. & R. 48; Specht v. Com., 8 Pa. 312. The same was held to be true as to persons who conscientiously believe it to be their religious duty to labor the first six days of the week and to keep the seventh day as the Sabbath. Waldo v. Com., 9 W. N. C. 200. . . . Then after speaking of the views of Mr. Jefferson upon the subject he proceeded: 'He denies the right of society to interfere only where society is not a party in interest, the question, with its consequences, being

> between the man and his Creator; but as far as the interests of society are involved, its right to interfere on principles of self-preservation is not disputed. And this right is insolvable into the most absolute necessity; for, *were the laws dispensed with, wherever they happened to be in collision with some supposed religious obligation, government would be perpetually falling short of the exigence.*"

The reading of the Bible has been held by the lower courts of the Commonwealth of Pennsylvania not to be in contravention of any constitutional provision. See *Stevenson v. Hanyon,* 7 Pennsylvania District Reports 585 (C. P. Lackawanna Co. 1898). No appeal was taken from this decision.

The Superior Court of Pennsylvania in the case of *Pittsburgh v. Ruffner,* 134 Pa. Superior 192, 4 A. (2d) 224 (1938), has recently considered the right of a member of Jehovah's Witnesses to distribute books and pamphlets issued by Jehovah's Witnesses without registering with the Bureau of Police or applying for a permit or a license as required in a city ordinance.

The defendant contended that the ordinance was "invalid as applied to the acts of the defendant in that it "violated" the clause of the Constitution of the Commonwealth of Pennsylvania providing for religious freedom and freedom of worship and also the Fourteenth Amendment of the Constitution of the United States." The court held that the defendant had failed to take his appeal within the prescribed time, but "because of the insistance of the appellant's counsel" the Superior Court, nevertheless, "considered the merits of the case and held that the ordinance did not infringe upon the appellant's constitutional right of freedom of religious worship or the freedom of the press."

President Judge Keller stated at 134 Pa. Superior 198 and 4 A. (2d) 227 that:

> "The ordinance in question can not, by any stretch of the imagination, be held to be directed against freedom of worship. . . .
>
> "*This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists in his home or theirs and in church, chapel, assembly or other gathering place. . . . Furthermore, the constitutional guarantee of freedom of religious worship furnishes no ground for striking down a reasonable and salutory ordinance* designed to protect people in their homes and offices from being victimized by unscrupulous and unauthorized agents."

While the appellate courts of Pennsylvania have not had occasion to consider the question of the right of a pupil to refuse at daily school exercises to salute the flag because of alleged religious beliefs, the Superintendent of Public Instruction in the Commonwealth of Pennsylvania requested an opinion from the Attorney General of the Commonwealth concerning this question and was advised by the Attorney General in an opinion dated October 26, 1935 that the pupils should be required to participate in such exercises and that a refusal should be considered "an act of insubordination and treated as any other refusal to obey the lawful regulations of our schools." The opinion is reported in *Oaths of Allegiance in Public Schools,* 25 Pennsylvania District and County Reports 8 (1935).

Subsequently in the unreported case of *Murray Estep, by Ebert Estep, his father and next friend v. The School District of the Borough of Cannonsburg et al.,* as of May Term 1936, No. 51, the Court of Common Pleas of Washington County, Pennsylvania, on April 24, 1937, quashed the

plaintiff's writ of alternative mandamus and upheld the expulsion of the minor-plaintiff, a member of Jehovah's Witnesses, who, like the Gobitis children, had refused to salute the flag. No appeal was taken by the plaintiff from this decision.

We, therefore, submit that the regulation of the Minersville School District requiring the pupils to salute the national flag at daily school exercises did not violate any provision of the Constitution of the Commonwealth of Pennsylvania but was within the "police power" of the Commonwealth.

IV. The Refusal of the Gobitis Children to Salute the National Flag at School Exercises Because They Believed to Do So Would Violate the Written Law of Almighty God as Contained in the Bible Was Not Founded on a Religious Belief.

Teachers and pupils of Minersville Public Schools under the resolution of the Board of Education are required at the opening of school exercises to place their right hands on their breasts and speak the following words:

> "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R. 46, 92).

This simple patriotic ceremony has been performed by countless pupils for many years in all parts of this country. It is patriotic in design and purpose and has no religious significance either subjectively or objectively.

We do not feel that a religious excuse for the disobedience of a regulation which of itself has no religious significance involves a question of religious liberty.

The act of saluting the national flag at daily school exercises can not be made a religious rite by the respondents' mistaken interpretation of the Bible. The ceremony is in no way referable to the religious beliefs of any of the participants and it therefore follows that a pupil's refusal to salute the flag cannot be based on a religious belief.

> "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus* [5] or form of worship of a particular sect, but is distinguishable from the latter. The first amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise of thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and *to exhibit his sentiments in such form of worship as he may think proper,* not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect." *Davis v. Beason,* 133 U. S. 333, 342 (1890).

The act of saluting the flag has no bearing on what a pupil may think of his Creator or what are his relations to his Creator. Nor is a pupil required to exhibit his religious sentiments in a particular "form of worship" when saluting the flag because the ceremony is not, by any stretch of the imagination, a "form of worship". Like the study of history or civics or the doing of any other act which might make a pupil more patriotic as well as teach him or her "loy-

[5] Italics contained in opinion.

alty to the State and National Government", the salute has no religious implications.

Mr. Chief Justice Rugg in the case of *Nicholls v. Mayor and School Committee of Lynn,* 7 N. E. (2d) 577, 580 (Mass. 1937) designated the exercise as a "ceremony clearly designed to inculcate patriotism and to instill a recognition of the blessings conferred by orderly government under the Constitution of the State and Nation" and supported that conclusion with the following observation:

> "The salute and pledge do not go beyond that which, according to generally recognized principles, is due to government. There is nothing in the salute of the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance. It does not in any reasonable sense hurt, molest, or restrain a human being in respect to 'worshipping God' within the meaning of words in the Constitution. The rule and the statute are well within the competency of legislative authority. They exact nothing in opposition to religion. They are directed to a justifiable end in the conduct of education in public schools."

In *Leoles v. Landers,* 184 Ga. 580, 587, 192 S. E. 218, 222 (1937) Mr. Chief Justice Russell, when considering this very question, made this comment:

> "The act of saluting the flag of the United States is by no stretch of reasonable imagination 'a religious rite.' It is only an act showing one's respect for the government, similar to arising to a standing position upon hearing the National Anthem being played; and would we denominate this action as a religious rite? So for a pupil to salute the flag of this country is just a part of a patriotic ceremony, and act of respect to the institutions and ideals of the land that is affording them a free education and a safe and bountiful place to live, and is

not a bowing down in worship of an image in the place of God."

Mr. Chief Justice Crane of the Court of Appeals of the State of New York in *People v. Sandstrom,* 279 N. Y. 523, 529, 18 N. E. (2d) 840, 842 (1939), likewise held that the salute had no religious significance, saying:

> "Saluting the flag in no sense is an act of worship or a species of idolatry, nor does it constitute any approach to a religious observance. The flag has nothing to do with religion, and in all the history of this country it has stood for just the contrary, namely, the principle that people may worship as they please or need not worship at all."

In further support of the proposition that the act of saluting the flag is not a religious ceremony, we fail to find any basis in the Bible for a member of Jehovah's Witnesses or any other person who follows its teachings not saluting the flag. The national flag is not a "graven image" nor a "likeness of anything" either in heaven or in earth. It is merely the emblem or symbol of the national government. Not only is the flag not an "image" nor a "likeness", but the saluting of the flag is not bowing down to any "likeness" or serving any "graven image". As herebefore stated, saluting the flag is merely an act of respect to the government of the United States whereby the pupil acknowledges the *temporal* sovereignty of this nation. The salute is in no way an acknowledgment of *spiritual* sovereignty which members of Jehovah's Witnesses ascribe only to Jehovah.

The commandments of Jehovah, as set forth in the Bible, do not prohibit the saluting of a national flag but on the contrary approve of that practice. Citations to that

effect are too numerous to encumber this brief at any great length, but a few excerpts from the Bible will show that the precepts and commandments in the Bible approve of the salute:

> "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." St. Matthew 22:21. See also St. Mark 12:17 and St. Luke 20:25.

> "Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour." Romans 13:7.

> "And when ye come into an house, salute it." St. Matthew 10:12.

> "Honour all men. Love the brotherhood. Fear God. Honour the king." I Peter 2:17.

The act of saluting the flag is only one of many ways in which a citizen may evidence his respect for the government. Every citizen stands at attention, and the men remove their hats, when the national anthem is played; yet such action can not be called a religious ceremony. The same respect is shown the American flag when it passes in a parade; yet that is not a religious rite.

When the Gobitis children and their father were in court, they arose and stood at attention at the opening and closing of court. The respondents did not claim that such act of respect to the Court and to the government it represents offended their religious beliefs; yet we see little difference, if any, between a person showing respect to the government by arising at the opening and adjourning of court and a person showing respect to the same government by saluting its flag at daily school exercises.

It should further be observed that while members of Jehovah's Witnesses endeavor to extend religious implications to a ceremony purely patriotic in design, they do not accord to others the religious freedom which they demand for themselves, claiming that there is no limit to which they may go when they think they are worshipping God. *Cantwell, et al. v. The State of Connecticut,* 126 Conn. 1, now before your Honorable Court, as of October Term, 1939, No. 632, on appeal from and certiorari to the Connecticut Supreme Court of Errors.

In saluting the national flag members of Jehovah's Witnesses, to paraphrase the above cited words of Christ, render and properly should render unto the government the respect and evidence of loyalty which is due to the government—an acknowledgment of the government's *temporal* sovereignty. The act of saluting the flag, however, does not prevent a pupil, no matter what his religious belief may be, from acknowledging the *spiritual* sovereignty of Almighty God by rendering unto God the things which are God's.

The District Court of Appeals of California was of the same opinion in *Hardwick v. Board of School Trustees,* 54 Cal. App. 696, 712, 205 Pac. 49, 55 (1921), when it said:

> "We can conceive of no just or reasonable interpretation of the Bible, or any part thereof, which could, in the remotest way, inspire the thought that the teaching of patriotism or love of country is in anywise or in any degree or measure contrary to its teachings."

We, therefore, submit that refusal of the Gobitis children to salute the national flag at school exercises was not founded on a religious belief and their Bill of Complaint should have been dismissed.

Conclusion.

The regulation requiring pupils to salute the flag was lawfully adopted and the expulsion of the Gobitis children was within the power and authority of the School Board.

The refusal of the minor-respondents to salute the flag was not based on a religious belief, even though they mistakenly believed so to do was contrary to the precepts of the Bible, and, even if said refusal were based upon a religious belief, the enforcement of said regulation did not violate any right of the respondents under either federal or state constitutions.

We, therefore, submit that the decrees of the Courts-below should be reversed.

Respectfully submitted,

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