

## I – Steve Permuth, Susan Silver, Dustin Robinson [Chapter 10]

### Be Careful What You Wish For...

On September 1, 2016, at the American Legion National Convention in Cincinnati, then-candidate Donald Trump provided possible insights into a direction for the future in discussing issues of patriotism and schools. One excerpt of the speech notes that...

- “Together we’re going to work on so many shared goals, but I want to begin by discussing one goal that I know is so important to you. Promoting American pride and patriotism in America’s schools. Very important.”
- “In a Trump administration, I plan to work directly with the American Legion to uphold our common values and to help ensure they are taught to America’s children.”
- “We want our kids to learn the incredible achievements of America’s history, its institutions and its heroes, many of whom are with us today, I can tell you. Including, by the way, two special people, Mayor Rudolph Giuliani and Senator Jeff Sessions. They’re right here.”
- “We will stop apologizing for America. And we will start celebrating America.”
- “We will be united by our common culture, values and principles, becoming one American nation, one country, under one Constitution, saluting one American flag, and always saluting it.”
- “The flag all of you helped to protect and preserve. That flag deserves respect, and I will work with the American Legion to help to strengthen respect for our flag. You see what’s happening, it’s very, very sad.”
- “And by the way, we want young Americans to recite the Pledge of Allegiance.”

As noted in our article, “Through the Eyes of The Witnesses”(Chapter 10), the Supreme Court ruled, on point, in *Minersville v. Gobitis* (310 U.S. 586, 1940), that states could mandate the salute and Pledge of Allegiance. This would be done as a function of illustrating national cohesion and unity in order to

“promote in the minds of children who attend the common schools an attachment to the institutions of their country.” This would be very consistent with Mr. Trump’s language.

Before and after the decision, members of the Jehovah’s Witnesses systematically were physically attacked, beaten, and imprisoned. Children at school were threatened, abused, and harassed for essentially sharing the belief and taking the stand that the salute and pledge were akin to idolatry and a violation of their faith. In so ordering, the Court basically rejected that any religious rights of the Witnesses were violated...and the beatings, intolerance and harassment of the Witnesses continued at an alarming rate of persecution and inhumanity.

Three years later, the Court, in a 6-3 decision in *West Virginia v. Barnette* (319 U.S. 624 (1943)) overturned *Minersville* on fundamental freedom of speech concerns. The Court iterated that the standing of federal and/or state governmental authority to compel mandating a pledge of allegiance and saluting the flag as a function of governmental authority in public schools was unconstitutional. Although there may be sectors of the country which may not adhere to the ruling, given local history and pressures, it is nevertheless “the law of the land,” whether obeyed or not.

In its decision, the Court shared that “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.”

Based on this, we have a couple of issues to raise.

First, are we looking at a return of the issue of saluting the flag and pledging allegiance, given the appointments of new Supreme Court Justices and attempt to return to the “national unity and pride” agenda? Are we looking to return to *Minersville*? Could this change refocus our interests in this realm to where each state can make its own rules regarding its public schools? Is this a new divide between states’ and federal rights? Are we changing or altering established law?

Second, given that the decision of *Minersville* was based on religious grounds not being violated, and *Barnette* framing its overturn on speech issues, could it be that mandating the salute continues to deprive individual faiths and persons their own freedoms? What might this say in extending or negating the rights of people to burn flags without threat of loss of citizenship or prison, under new laws to yet be written?

While these are but a few points and questions, the future will provide us far-reaching thought and action on the American fabric of history.

## **J – Allan G. Osborne, Jr. [Chapter 11]**

### **Improving Access to Special Education Services for Students with Disabilities Who Attend Nonpublic Schools**

When Congress enacted the Education for All Handicapped Children Act,<sup>1</sup> the predecessor to the Individuals with Disabilities Education Act (IDEA),<sup>2</sup> in 1975, it envisioned that all children who had disabilities would be given a free appropriate public education (FAPE). While the situation today is much improved over that of 1975, where the vast majority of students with disabilities received inadequate educational services, if any,<sup>3</sup> one group of such students still does not enjoy all of the rights conferred by the federal special education statute. Students with disabilities whose parents have chosen to send them to nonpublic schools do not have individual rights to a FAPE in the same way as their public school peers.

Under current federal legislation, many students with disabilities who attend nonpublic schools do not receive the same level of special education and related services as their public school counterparts. School boards are required only to spend a proportionate share of their federal special education dollars on nonpublic school students. This falls far short of the funding necessary to provide adequate services to all students who require special education. Thus, the parents of many students with disabilities must choose between enrolling their children in public schools to receive needed services, or forgoing those services by keeping the students in nonpublic schools.

A reauthorization of the IDEA is long overdue. The incoming administration could address the inadequacies that currently exist for students with disabilities who attend nonpublic schools by proposing amendments to the statute that would close the gap. This needs to be done, however, without placing additional financial burdens on public school districts. Rather, it needs to be accomplished with the federal government shouldering more of the costs of providing special education to all students with disabilities.

Unfortunately, the prospect of either the federal government,