

U.S. Supreme Court

**WEST VIRGINIA STATE BOARD OF EDUCATION v. BARNETTE,
319 U.S. 624 (1943)**

319 U.S. 624

WEST VIRGINIA STATE BOARD OF EDUCATION et al.

v.

BARNETTE et al.

No. 591.

Argued March 11, 1943.

Decided June 14, 1943.

[319 U.S. 624, 625] On Appeal from the District Court of the United States for the Southern District of West Virginia.

Mr. Justice JACKSON delivered the opinion of the Court.

Following the decision by this Court on June 3, 1940, in *Minersville School District v. Gobitis*, [310 U.S. 586](#), 60 S.Ct. 1010, 127 A.L.R. 1493, the West Virginia legislature amended its statutes to require all schools therein to conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the State 'for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government.' Appel- [319 U.S. 624, 626] lant Board of Education was directed, with advice of the State Superintendent of Schools, to 'prescribe the courses of study covering these subjects' for public schools. The Act made it the duty of private, parochial and denominational schools to prescribe courses of study 'similar to those required for the public schools.' [1](#)

The Board of Education on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's *Gobitis* opinion and ordering that the salute to the flag become 'a regular part of the program of activities in the public schools,' that all teachers and pupils 'shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an Act of insubordination, and shall be dealt with accordingly

Appellees, citizens of the United States and of West Virginia, brought suit in the United States District Court for themselves and others similarly situated asking its injunction to restrain enforcement of these laws and regulations against Jehovah's Witnesses. The Witnesses are an unincorporated body teaching that the obligation imposed by law of God is superiod to that of laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, Chapter 20, verses 4 and 5, which says: 'Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above,

or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them.' They consider that the flag is an 'image' within this command. For this reason they refuse to salute it.

This case calls upon us to reconsider a precedent decision, as the Court throughout its history often has been required to do.¹⁰ Before turning to the *Gobitis* case, however, it is desirable to notice certain characteristics by which this controversy is distinguished.

The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behavior is peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce [319 U.S. 624, 631] attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touch individual opinion and personal attitude.

Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views [319 U.S. 624, 635] hold such a compulsory rite to infringe constitutional liberty of the individual. ¹⁵ It is not necessary to inquire whether non-conformist beliefs will exempt from the duty to salute unless we first find power to make the salute a legal duty.

The *Gobitis* decision, however, assumed, as did the argument in that case and in this, that power exists in the State to impose the flag salute discipline upon school children in general. The Court only examined and rejected a claim based on religious beliefs of immunity from an unquestioned general rule. ¹⁶ The question which underlies the [319 U.S. 624, 636] flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be imposed upon the individual by official authority under powers committed to any political organization under our Constitution. ...

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. ...

National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement. ...

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. [19](#)

We think the 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.

The decision of this Court in *Minersville School District v. Gobitis* and the holdings of those few per curiam decisions which preceded and foreshadowed it are overruled, and the judgment enjoining enforcement of the West Virginia Regulation is affirmed.

AFFIRMED.