

Supreme Court Case Study 22



Flag Salute Requirement

West Virginia State Board of Education v. Barnette, 1943

***** Background of the Case *****

Barnette was a member of the Jehovah's Witnesses, a religious group whose members refuse to participate in government, bear arms, serve in the military, or salute the flag. The flag salute is forbidden on grounds that it constitutes idol worship, which is forbidden in the Bible.

After the *Gobitis* decision of 1940, West Virginia instituted a compulsory flag salute in public schools. Disobedience was punishable by a child's expulsion from the state's schools, and the child's parents were liable to a jail term not exceeding 30 days and a fine not to exceed \$50.

For refusing to give the required salute, Barnette's children and the children of other parents who were Jehovah's Witnesses were expelled from their schools. State officials also threatened to have the children sent to reformatories for criminally inclined juveniles.

Barnette sued in federal district court for an injunction against the enforcement of the flag salute law. The district court held in Barnette's favor, after which the state Board of Education appealed to the United States Supreme Court.

Constitutional Issue *****

The Court had to decide whether the West Virginia law violated the Fourteenth Amendment's due process clause, insofar as that clause is held to include the First Amendment's protections of free exercise of religion and free speech. In the *Gobitis* case presented earlier, the Supreme Court had ruled that a compulsory flag salute in schools did not violate an individual's First Amendment rights. Three years after that case, the Court was presented with essentially the same issue.

***** The Supreme Court's Decision *****

The Court ruled 6 to 3 in Barnette's favor on the grounds that the West Virginia statute violated the First and Fourteenth Amendments. Justice Robert H. Jackson wrote the Court's opinion.

The Court ruled that the flag salute is a form of utterance. "It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks. Objection to this form of communication when coerced is an old one, well known to the Framers of the Bill of Rights. . . . To sustain the compulsory flag salute, we are required to say that a Bill of Rights, which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."

Against this stood the *Gobitis* decision, which had "assumed" the state's power to impose the flag salute requirement on school children in general. The Court in the West Virginia case undertook to reexamine the existence of that power. In each instance it favored the individual citizen, stressing the limited nature of government under the Constitution.

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Supreme Court Case Study 22 (continued)



Regarding citizen versus state, the Court wrote that “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.” In fact, Jackson explained, the “very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.”

The state’s power to regulate is properly applied to public utilities, where the legislature can impose any rational restrictions without fear of violating the due process clause. However, wrote Jackson, “freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger. . . . It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case.”

In conclusion, the Court dealt with what it called “the very heart of the *Gobitis* opinion”—“It reasons that ‘national unity is the basis of national security,’ that the authorities have ‘the right to select appropriate means for its attainment,’ and hence reaches the conclusion that such compulsory measures toward ‘national unity’ are constitutional.” The Court, however, rejected that reasoning, holding instead that “to believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. . . . 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.”



Questions



DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. According to the Court’s decision in this case, what is the relationship of the principle of free speech to the flag salute?
2. Compare the Court’s decision in this case to that of the *Gobitis* case.
3. Why does the Court believe that making a flag salute compulsory is not necessary to foster national unity?
4. The Court’s decision mentions that freedom of speech and press may be restricted under certain circumstances. Give an example of such circumstances.
5. Why might a person who objects to the religious ideas of the Jehovah’s Witnesses still support their rights under the First Amendment?