

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF FLORIDA

CAMERON FRAZIER, through his mother )  
 and next friend, Christine Frazier, )  
 )  
 Plaintiff, )

v. )

Case No. 05-81142-CIV-Middlebrooks/Johnson

CYNTHIA ALEXANDRE, individually; )  
 RICHARD POORMAN, individually, and )  
 in his official capacity as Assistant )  
 Principal of Boynton Beach Community )  
 High School; PALM BEACH COUNTY )  
 SCHOOL DISTRICT BOARD; JOHN )  
 WINN, in his official capacity as )  
 Commissioner of the Florida Department )  
 of Education; F. PHILIP HANDY, in his )  
 official capacity as Chairman of the Florida )  
 State Board of Education; and DONNA )  
 CALLAWAY, T. WILLARD FAIR, )  
 ROBERTO MARTINEZ, PHOEBE )  
 RAULERSON, LINDA TAYLOR, and )  
 KATHLEEN SHANAHAN, in their )  
 official capacities as members of the )  
 Florida State Board of Education, )  
 )  
 Defendants. )

FIRST AMENDED COMPLAINT

INTRODUCTION

1. Plaintiff Cameron Frazier is an eleventh grade student at Boynton Beach Community High School, Palm Beach County School District. Because of his personal political beliefs and convictions, he does not want to recite, or stand during, the pledge of allegiance each morning. Rather, Cameron has consistently remained quietly seated during the pledge and has not make any

disturbance or interference with other students reciting the pledge. Although Cameron's constitutional right to remain quietly seated during the pledge is well established, defendants – a teacher and assistant principal at Boynton Beach Community High School – singled Cameron out, subjected him to ridicule and humiliation, and punished him his refusal to recite, or stand during, the pledge of allegiance. Defendant Palm Beach County School District Board, following Fla. Stat. 1003.44(1), has a policy mandating that students, unless excused by written request of a parent, recite the pledge of allegiance. The policy further requires that students, even if excused from reciting the pledge, must stand at attention while the pledge is recited. These policies, and the state statute upon which they are based, as well as the actions of the individual defendants, are in clear violation of the First and Fourteenth Amendments to the United States Constitution.

2. The right of a school student to remain quietly seated during the pledge of allegiance in public schools is clearly established under the First and Fourteenth Amendments to the United States Constitution. Because this right is clearly established, plaintiff sues both the teacher and the assistant principal in their individual capacities for damages and injunctive relief. Plaintiff seeks declaratory and injunctive relief against the School District for its unconstitutional policies which caused the violation of plaintiff's constitutional rights. Finally, plaintiff seeks declaratory and injunctive relief against the Commissioner of the Florida Department of Education and members of the Florida State Board of Education, in their official capacities.

#### JURISDICTION

3. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of his rights under the First and Fourteenth Amendments to the United States Constitution.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory

relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed.R.Civ.P. 65.

#### PARTIES

5. Plaintiff Cameron Frazier is an eleventh grade student at Boynton Beach Community High School, Palm Beach County School District, Florida. He brings this action through his mother, and next friend, Christine Frazier.

6. Defendant Cynthia Alexandre is a math teacher at Boynton Beach Community High School. She is sued in her individual capacity.

7. Defendant Richard Poorman is an assistant principal of Boynton Beach Community High School, vested with the authority to discipline students. He is sued in both his individual and official capacities.

8. Defendant Palm Beach County School District is a public entity created by Fla. Stat. §1001.30. The District is governed by the Palm Beach County School District Board which is subject to suit pursuant to Fla. Stat. §1001.41(4).

9. Defendant John Winn is the Commissioner of the Florida Department of Education. Pursuant to Fla. Stat. §1001.10, the Commissioner of Education is the chief educational officer of the State of Florida, and is responsible for giving full assistance to the State Board of Education in enforcing compliance with state policies regarding education. Defendant Winn is sued in his official capacity for declaratory and injunctive relief only.

10. Defendant F. Philip Handy is the Chairman of the Florida State Board of Education. Defendants Donna Callaway, T. Willard Fair, Roberto Martinez, Phoebe Raulerson, Linda Taylor, and Kathleen Shanahan, are members of the Florida State Board of Education. The State Board of

Education is a body corporate pursuant to Fla. Stat. §1001.01(1). One of the duties of the State Board of Education is “to enforce systemwide education goals and policies.” Fla. Stat. §1001.02(2)(r). The State Board of Education is specifically charged with enforcing compliance with law by all school districts in the State of Florida. Fla. Stat. §1001.03(8). The Chairman and members of the Florida State Board of Education are sued in their official capacities for declaratory and injunctive relief only.

#### FACTS

11. On December 8, 2005, Cameron Frazier was in his fourth period class, taught by defendant Alexandre, when the pledge of allegiance was to be recited. Ordinarily the pledge is recited earlier in the day and this was the first time that it was recited while Cameron was in defendant Alexandre’s class.

12. When plaintiff did not stand, defendant Alexandre ordered him to stand for the pledge of allegiance. Plaintiff refused.

13. Defendant Alexandre then ordered plaintiff a second time to stand for the pledge. Plaintiff again refused, explaining that he had not stood for the pledge since sixth grade and that he was not going to change his practice.

14. Defendant Alexandre then began to berate Cameron, responding “oh you wanna bet? See your desk? Now look at mine. Big desk, little desk. You obviously don’t know your place in this classroom.”

15. Cameron responded: “I thought this was a classroom. Why must you insist on taking this so far?” Defendant Alexandre then said: “I will take this as far as I need to. I will fight this to the top.”

16. Cameron politely responded: "I'm sorry, I do not stand for the flag."

17. Defendant Alexandre, obviously getting angry, was looking through her filing cabinet and said: "I'm sorry, did you say you don't stand for the fuckin' flag!" Cameron responded "no, I said the flag." Other class members then said "Yes, Mrs. Alexandre, he said flag."

18. Defendant Alexandre then handed Cameron a document with the Palm Beach County School District's logo on it and told Cameron: "Read this. Florida state statutes say you may choose not to say the pledge ONLY by written request by your parent AND you still must stand!" A true and accurate copy of the document is attached as Exhibit 1 (the handwriting at the bottom of Exhibit 1 was added by defendant Poorman and is further explained in ¶26).

19. Cameron replied that he had heard that before but was told that he didn't need to have a parent excuse him from reciting the pledge of allegiance. He reiterated that he did not stand for the pledge of allegiance.

20. Defendant Alexandre then berated Cameron, saying: "You clearly have no respect! You are so ungrateful and so un-American. Do you know what's out there fighting our war? That flag you refuse to show respect to."

21. When Cameron replied "no, our soldiers are out fighting a war. The flag is an inanimate piece of cloth that doesn't move and surely can't hold a gun," defendant Alexandre continued to berate him, saying "You are so ridiculous! I can't believe you are so disrespectful!"

22. Cameron tried to respond, saying "I choose not to say the . . ." but was interrupted by defendant Alexandre who said "No! You're out of here. I'm so sick of you!" She called the principal's office and requested that Cameron be removed from the class. She then crossed her arms and just stared at Cameron.

23. Within a short time, defendant Poorman, another administrator (Salvatore Camp) and a school police officer came to the classroom. Defendant Alexandre told them that “I have an extremely disrespectful student who refuses to stand for the pledge.” Mr. Camp asked who it was and Cameron raised his hand.

24. Mr. Camp directed Cameron to get his stuff, which he did and left the classroom. In the meantime, defendant Alexandre gave defendant Poorman a copy of Exhibit 1, the school district’s policy.

25. Defendant Poorman then told Cameron to go to the office and that he would meet Cameron there.

26. Cameron then went to the principal’s office where he waited for about half an hour before defendant Poorman came in and handed Cameron the school policy, with a signature line for his mother’s signature, and instructed Cameron to have it signed by her. Defendant Poorman told Cameron that he had talked to Cameron’s mother but that Cameron will still have to stand during the pledge of allegiance.

27. Cameron was then made to sit in the office until the class period was over and was not allowed to return to the classroom that day. He was humiliated by the actions of the individual defendants.

28. It is clearly established law that a student may remain quietly seated during the recital of the pledge of allegiance. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943); *Holloman v. Harland*, 370 F.3d 1252 (11<sup>th</sup> Cir. 2004); *Banks v. Bd. of Public Instr.*, 314 F.Supp. 285 (S.D. Fla.1970), *vacated by* 401 U.S. 988 (1971), *reinstated without published opinion by dist. ct. and aff’d*, 450 F.2d 1103 (5<sup>th</sup> Cir.1971)(holding school rule requiring student to stand

during pledge of allegiance unconstitutional).

29. Plaintiff desires to remain seated during the pledge of allegiance as an expression of his personal beliefs.

30. Although he has not been punished again since the incident on December 8, Cameron remains subject to School District policies, and state law, that could result in additional punishment at any time a teacher or administrator decides to enforce those policies.

31. Unless restrained by this Court, plaintiff will continue to be subjected to verbal abuse or other punishment for the exercise of his First Amendment right of expression by remaining seated during the pledge of allegiance and not reciting the pledge. Plaintiff has been, and will continue to be irreparably harmed by his continued punishment and denial of his constitutional right.

32. Plaintiff has no adequate remedy at law because the denial of plaintiff's constitutional rights cannot be remedied through legal relief.

33. The actions of defendants complained of are under color of state law and were taken pursuant to express policies of Palm Beach County School District and in conformance with Fla. Stat. 1003.44(1).

34. Defendant Winn, as the Commissioner of the Florida Department of Education, defendant Handy, as Chairman of the Florida State Board of Education, and defendants Callaway, Fair, Martinez, Raulerson, Taylor, and Shanahan, as members of the Florida State Board of Education, are charged with enforcing compliance with Fla. Stat. 1003.44(1).

#### FIRST CAUSE OF ACTION

(Defendant Alexandre)

35. Defendant Alexandre's actions deprived plaintiff of his right to refuse to recite the

pledge of allegiance, and to remain seated during the pledge of allegiance, in violation of the First and Fourteenth Amendments to the United States Constitution. This deprivation may be redressed pursuant to 42 U.S.C. § 1983. Defendant Alexandre's actions were particularly offensive and outrageous enough to warrant an award not only of compensatory damages but punitive damages also.

#### SECOND CAUSE OF ACTION

(Defendant Poorman)

36. Defendant Poorman's actions deprived plaintiff of his right to refuse to recite the pledge of allegiance, and to remain seated during the pledge of allegiance, in violation of the First and Fourteenth Amendments to the United States Constitution. This deprivation may be redressed pursuant to 42 U.S.C. § 1983.

#### THIRD CAUSE OF ACTION

(Defendant Palm Beach County School District Board)

37. Defendant Board's customs and policies directly caused the violation of plaintiff's right to refuse to recite the pledge of allegiance, and to remain seated during the pledge of allegiance, in violation of the First and Fourteenth Amendments to the United States Constitution. This deprivation may be redressed pursuant to 42 U.S.C. § 1983.

#### FOURTH CAUSE OF ACTION

(Defendants Winn, Handy, Callaway, Fair, Martinez, Raulerson, Taylor, and Shanahan)

38. Fla. Stat. §1003.44(1), to the extent it requires a student to obtain a parent's permission before being excused from reciting the pledge of allegiance and requires a student to

stand during the pledge of allegiance, violates plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution. Defendants Winn, Handy, Callaway, Fair, Martinez, Raulerson, Taylor, and Shanahan in their official capacities are charged with the enforcement of Fla. Stat. §1003.44(1). Pursuant to the doctrine established by *Ex parte Young*, 209 U.S. 123 (1908), and its progeny, these defendants may be sued in their official capacities for declaratory and injunctive relief.

#### FIFTH CAUSE OF ACTION

(All defendants)

39. The Supremacy Clause of the U.S. Constitution, Art. VI, Clause 2, provides that the federal Constitution is “the supreme Law of the Land” notwithstanding any state or local law to the contrary.

40. Fla. Stat. §1003.44(1), and Palm Beach County School District's policies, directly contravene the Constitution as set out above and are therefore pre-empted by the Constitution to the extent of the contradiction.

41. The Supremacy Clause provides plaintiff with a remedy for defendants' enforcement of state law, and school policies, in direct contradiction of the federal Constitution.

WHEREFORE, plaintiff respectfully requests this Court:

A. enter a declaratory judgment that Fla. Stat. §1003.44(1), and Palm Beach County School District policies, to the extent they require a student to obtain a parent's permission before being excused from reciting the pledge of allegiance and require a student to stand during the pledge of allegiance, to be unconstitutional on their face;

B. enter a declaratory judgment that Fla. Stat. §1003.44(1), and Palm Beach County School District policies, to the extent they require a student to obtain a parent's permission before being excused from reciting the pledge of allegiance and require a student to stand during the pledge of allegiance, to be unconstitutional as applied to plaintiff;

C. enter a declaratory judgment that plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution were violated by defendants' actions taken against plaintiff;

D. enter a preliminary and permanent injunction enjoining defendants Alexandre, Poorman and Palm Beach County School District Board from disciplining plaintiff or otherwise subjecting him to adverse action for his refusal to recite the pledge of allegiance and for his remaining seated during the pledge of allegiance;

E. enter a preliminary and permanent injunction enjoining defendants Winn, Handy, Callaway, Fair, Martinez, Raulerson, Taylor, and Shanahan from enforcing Fla. Stat. §1003.44(1) to the extent it requires a student to obtain a parent's permission before being excused from reciting the pledge of allegiance and requires a student to stand during the pledge of allegiance;

F. enter a permanent injunction enjoining defendants Winn, Handy, Callaway, Fair, Martinez, Raulerson, Taylor, and Shanahan to take affirmative steps to ensure that Florida school districts comply with the United States Constitution by not enforcing Fla. Stat. §1003.44(1), or any school district policies based upon that statute, to the extent they require a student to obtain a parent's permission before being excused from reciting the pledge of allegiance and require a student to stand during the pledge of allegiance;

G. award plaintiff damages against defendants Alexandre, Poorman and Palm Beach

County School District Board;

H. award plaintiff punitive damages against defendant Alexandre in her individual capacity;

I. award plaintiff the costs and expenses of this action together with reasonable attorneys' fees; and

J. retain jurisdiction of this case and grant plaintiff such other and further relief as may, in the discretion of this Court, be just and proper.

Respectfully submitted,

/s Randall C. Marshall

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served by U.S. Mail, postage prepaid, this 11<sup>th</sup> day of January, 2006, to:

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Gerald A. Williams, Chief Counsel  
Office of the Chief Counsel to the School Board  
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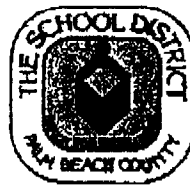
Cynthia Alexandre  
Boynton Beach Community High School  
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/s Randall C. Marshall



## The Pledge of Allegiance

Florida Statutes Section 1003.44 requires the Pledge of allegiance to be recited at the beginning of the day in every public elementary, middle, and high school in the state. Each student has the right not to participate in reciting the pledge. When a parent requests in writing, the student must be excused from reciting the pledge. Any student who is excused from reciting the pledge must still show full respect for the flag by standing at attention while the pledge is recited; men must remove any headdress, except when it is worn for religious purposes.



Please attach with request, as outlined. Sign & return  
as per conversation on 12/8/05 @ 9:45 am. X \_\_\_\_\_