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THE PLEDGE TO THE FLAG

"The Pledge of Allegiance shall be recited each school day by pupils in elementary educational institutions supported or maintained in whole or in part by public funds." So reads the text of an Illinois law recently enacted by the Legislature.

In signing the law, Illinois Governor James R. Thompson acknowledged that it may be unconstitutional under a strict interpretation of existing Supreme Court decisions, but he said, "the time has come for a new judicial review." Indeed it has. The Governor was right on target when he said "too many young people -- and adults -- today have no respect for our country's flag simply because it has not been part of their teaching."

The frequent recitation of the Pledge of Allegiance to the Flag began in 1892 as a patriotic exercise in commemoration of the 400th anniversary of Columbus' landing in North America. Recitation first became mandatory in New York in 1898 during the Spanish-American War. By the outbreak of World War II, the Pledge was generally and routinely required throughout the country because of state laws or school board regulations. The phrase "under God" was added in 1954.

The schoolroom recitation of the Pledge was upheld by the Supreme Court in Minersville District v. Gobitis (1940). The Court rejected the argument that the Pledge requirement violated the First Amendment, saying, "National unity is the basis of national security" and school officials have "the right to select appropriate means for its attainment."

Only three years later, in the midst of World War II, Gobitis was overruled by the Supreme Court in West Virginia State Board of Education v. Barnette (1943). The Court held that Jehovah's Witness children (whose creed prohibits the worship of "false idols") could not be expelled for nonparticipation in the Pledge ceremony.

But the Court did not base its decision on freedom of religion, instead using an extension of the First Amendment generally. The Court then proceeded to use Barnette

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as a springboard for other interferences with the ability of the public schools to promote patriotism and respect for the laws of God and America.

The Supreme Court held that students may not be expelled for wearing black armbands to protest U.S. policy toward Vietnam (Tinker v. Des Moines Independent School District, 1969). The Court refused to review a Circuit Court decision holding that a school cannot expel a pupil for distributing material critical of school policies (Scoville v. Board of Education of Joliet Township High School District, 1970).

The Supreme Court refused to review a Circuit Court decision holding that it is unconstitutional to dismiss a teacher for refusing to recite the Pledge (Russo v. Central School District No. 1, 1972). Since all government employees must take an oath to support the Constitution, it does not seem unreasonable that the most important of all government employees, our teachers, should be required to affirm their loyalty to America.

Lower courts, taking their cue from the nation's highest court, have come up with even more imaginative interpretations of Barnette. A 1973 case involved a high school senior class president who refused to participate in the Pledge ceremony and was given the option of standing quietly or leaving the classroom. The Federal Circuit Court in Goetz v. Ansell held that even this is unconstitutional because "the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion and subjected to reproach and insult."

Those who drafted the First Amendment never dreamed it could be used to forbid teachers to instruct their pupils when to stand up or sit down, or to restrain some students from exercising their free speech to "reproach" other students who refuse to affirm their loyalty to the United States.

It is time for the Supreme Court to review its flag salute decisions and to admit the wisdom of that great liberal Justice, Felix Frankfurter, who wrote in dissent in Barnette: "Of course patriotism cannot be enforced by the flag salute. But neither can the liberal spirit be enforced by judicial invalidation of illiberal legislation. Our constant preoccupation with the constitutionality of legislation rather than with its wisdom tends to the preoccupation of the American mind with a false value."

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