

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-Ryskamp/Vitunac

CYNTHIA ALEXANDRE, individually; )  
RICHARD POORMAN, individually, and )  
in his official capacity as Assistant )  
Principal of Boynton Beach Community )  
High School; PALM BEACH COUNTY )  
SCHOOL 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. )

CONSENT ORDER

This Order is entered upon consent of plaintiff and defendants Alexandre, Poorman and Palm Beach County School Board ("school defendants"). This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331, 1343(a)(4), and 1367. This Order is entered to set forth a framework to obtain a full and final resolution of the claims brought by plaintiff against the school defendants. This Order does not involve defendants Winn, Handy, Callaway, Fair,

Martinez, Raulerson, Taylor, and Shanahan ("state defendants").

#### **I. PARTIES.**

Plaintiff Cameron Frazier is an eleventh grade student at Boynton Beach Community High School, Palm Beach County School District.

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

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.

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 Board which is subject to suit pursuant to Fla. Stat. §1001.41(4).

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.

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 system wide 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.

## II. THE DISPUTE.

Because of his personal political beliefs and convictions, Cameron Frazier does not want to recite, or stand during, the pledge of allegiance each morning. Rather, Cameron has generally remained quietly seated during the pledge and has not disturbed or interfered with other students reciting the pledge.

On December 8, 2005, Cameron 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. When Cameron did not stand for the pledge of allegiance, he was instructed by Defendant Alexandre to do so. Ultimately, Cameron was removed from the class, taken to the assistant principal's office and initially instructed that while he could be excused from reciting the pledge of allegiance upon written request by a parent, he would be required to stand during the pledge of allegiance.

For purposes of this lawsuit only, Defendant Palm Beach County School District Board, normally following Fla. Stat. §1003.44(1), has a custom or practice mandating that students, unless excused by written request of a parent, recite the pledge of allegiance. The custom or practice further requires that students, even if excused from reciting the pledge, must stand at attention while the pledge is recited.

Plaintiff claims that these customs or practices, and the state statute upon which they are based, are in clear violation of the First and Fourteenth Amendments to the United States Constitution. The School Board agrees, for purposes of this lawsuit only, that such customs or practices are sufficient to subject it to liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), if plaintiff is correct in his constitutional claims. While Defendant Palm Beach County School District Board has the authority to rescind its own customs or practices, it cannot alter Fla. Stat. §1003.44(1). Moreover, the School Board asserts that it must presume the constitutionality of the statute in the absence of a court decision holding otherwise. Thus, without the Court's analysis of the constitutionality of the state statute, these parties cannot resolve this case. These parties desire to reach a final resolution of this case in an expeditious manner without the need for protracted litigation.

**III. PROPOSED FRAMEWORK FOR RESOLUTION OF CASE BASED UPON COURT'S DETERMINATION OF CONSTITUTIONALITY OF FLA. STAT. 1003.44(1).**

These parties believe that the constitutionality of Fla. Stat. §1003.44(1) is dispositive of Plaintiff's claims. For purposes of this lawsuit only, if the statute is unconstitutional, the School Board's customs and practices based upon the statute are likewise unconstitutional. These parties have further agreed upon the relief to be granted based upon the Court's determination of that issue.

For purposes of this lawsuit only and for purposes of deciding the constitutionality of the statute, the school defendants stipulate to the facts plead in the First Amended Complaint as to them and agree that the case may be resolved by a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), without the need for an

Answer to be filed. If the Court concludes that it cannot resolve this case on the pleadings, defendants will not be bound by its stipulation to the facts and may file an Answer.

Contingent upon a finding by the Court for plaintiff that Fla. Stat. §1003.44(1), to the extent that 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, is unconstitutional on its face and as applied to Plaintiff, in violation of his First and Fourteenth Amendment rights, these parties agree to the following relief:

**A. DECLARATORY RELIEF DECLARING THAT:**

1. Fla. Stat. §1003.44(1), to the extent that 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, is unconstitutional on its face and as applied to Plaintiff, in violation of his First and Fourteenth Amendment rights.

2. Defendant SCHOOL BOARD's customs or practices, to the extent that 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, are unconstitutional on their face and as applied to Plaintiff, in violation of his First and Fourteenth Amendment rights.

**B. INJUNCTIVE RELIEF ORDERING THAT:**

1. The school defendants, and anyone acting in concert with them, are permanently enjoined from enforcing any School District custom or practice that requires

a student to obtain a parent's permission before being excused from reciting the pledge of allegiance or that requires a student to stand during the pledge of allegiance.

2. Defendant SCHOOL BOARD shall rescind any custom or practice that requires a student to obtain a parent's permission before being excused from reciting the pledge of allegiance or that requires a student to stand during the pledge of allegiance, including references to that policy in its Student and Family Handbook.

3. Defendant SCHOOL BOARD shall communicate such rescission to all employees of the School District and will specifically instruct its employees that no student may be disciplined in any way for not reciting the pledge of allegiance or for sitting quietly during the pledge of allegiance. This does not preclude the School Board from disciplining a student for disruptive conduct.

4. The school defendants, and anyone acting in concert with them, are permanently enjoined from enforcing Fla. Stat. §1003.44(1) to the extent that it requires 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.

**C. OTHER RELIEF:**

1. The School District shall issue, and defendant Alexandre shall accept or not contest, a reprimand with written notation in connection with the above-described incident.

2. Judgment to plaintiff to be paid by the School Board in the amount of thirty two thousand five hundred dollars (\$32,500.00) in full satisfaction of his claim for any and all damages, attorneys' fees and costs against the school defendants.

**IV. ORDER:**

Upon consideration of the foregoing agreed framework for resolution of plaintiff's claims against the school defendants, the Court approves that framework.

IT IS ORDERED THAT the facts set forth in plaintiff's First Amended Complaint as to the school defendants are deemed admitted by the school defendants for the purposes of this lawsuit only and that no Answer need be filed by any of them.

IT IS FURTHER ORDERED THAT Plaintiff, within ten (10) days of the entry of this order, shall submit his motion for judgment on the pleadings, together with a memorandum in support.

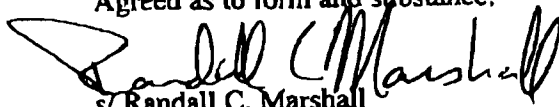
IT IS FURTHER ORDERED THAT the school defendants, within twenty (20) days of the filing of plaintiff's motion, shall either file a response or a notice that they do not intend to respond to plaintiff's motion.

IT IS FURTHER ORDERED THAT a copy of this Consent Order, and a copy of plaintiff's motion for judgment on the pleadings and memorandum in support, shall be served by plaintiff upon the Attorney General for the State of Florida and the state defendants. The Court intends to rule on plaintiff's challenge to the constitutionality of Fla. Stat. §1003.44(1) and invites the Attorney General for the State of Florida and the state defendants to defend Fla. Stat. §1003.44(1) as challenged by plaintiff. The Attorney General and the state defendants are hereby given twenty (20) days from the filing of plaintiff's motion to respond to plaintiff's motion if the State of Florida wishes to be heard in this action.

SO ORDERED this \_\_\_ day of February, 2006.

Kenneth L. Ryskamp  
Senior United States District Court Judge

Agreed as to form and substance:



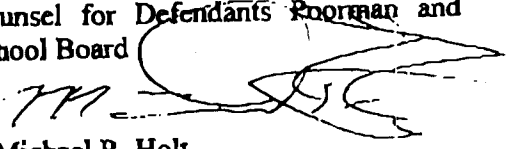
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