

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

A.B., a minor child, by his next)
friend and mother, Jamie Porter,)
)
Plaintiff,)
)
v.)

No. 2:17-CV-248

MARY BETH HARRIS, in her)
individual capacity,)
KELLY McFARLAND, in her)
individual capacity,)
)
Defendants.)

JURY TRIAL REQUESTED

Complaint for Damages

Introduction

1. The law is clear that the government may not compel anyone, including public school students, to recite the Pledge of Allegiance or to stand when it is delivered. However, when 7-year-old A.B. asserted his right to remain seated and quiet when his teacher, Kelly McFarland, recited the Pledge with his class, he was removed by Ms. McFarland from the class and escorted to Principal Mary Beth Harris’s office. He was later required by Ms. Harris to recite the Pledge with her. This is a flagrant denial of A.B.’s rights under the First Amendment and he requests his damages, both compensatory and punitive.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331 and 28 U.S.C.

§ 1343.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

5. Plaintiff brings this cause of action pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. A.B. is a minor resident of Vigo County, Indiana. He brings this action through his mother, Jamie Porter, as his next friend.

7. Mary Beth Harris is an adult resident of Vigo County, Indiana.

8. Kelly McFarland is an adult resident of Vigo County, Indiana.

Factual allegations

9. A.B. is a first-grader and is currently 8 years of age. At the time of the incident on which this action is based, he was 7 years of age.

10. He is a first grader at an elementary school within the Vigo County School Corporation.

11. His teacher is Ms. McFarland and the Principal of the school is Ms. Harris.

12. Indiana law, Ind. Code § 20-30-5-0.5(b), provides that “[t]he governing body of each school corporation shall provide a daily opportunity for students of the school corporation to voluntarily recite the Pledge of Allegiance in each classroom.” However, the law also provides that if the student chooses not to participate or the student’s

parent chooses to have the student not participate, the student is exempt from participation. *Id.*

13. This statute is consistent with a wealth of case law that holds that a student may not, consistent with the First Amendment, be forced to participate in, or stand for, the recitation of the Pledge, as long as the student remains quiet and non-disruptive.

14. In March of this year A.B. chose not to stand for his class's daily recitation of the Pledge of Allegiance.

15. He sat quietly and was not disruptive.

16. His teacher, Ms. McFarland, asked him why he did not stand and he stated that he was doing it to protest the government of the United States as it was racist, greedy, and does not care about people.

17. Ms. McFarland responded by grabbing his hand and taking him to the office of the Principal, Ms. Harris.

18. A.B. had never been sent to the Principal's office before and was extremely upset about this as he believed he was being punished for having done something wrong.

19. Ms. McFarland informed the principal that she was having "trouble" with A.B.

20. He sat in the Principal's office for about 20 minutes and then was taken back to his class.

21. However, as lunch was ending that day Ms. Harris approached him and, in front of his entire class, removed him from line and took him to another area of the school. She told him that they were going to "practice" how to do the Pledge of Allegiance and she made him recite the Pledge with her.

22. A.B. was extremely upset at this treatment by his teacher and the principal as he was made to feel that he had done something terribly wrong and was in trouble.

23. A.B.'s father died within the last year and he is struggling with the pain of losing his father. He is in therapy.

24. No one from school contacted A.B.'s mother as to what had happened.

25. When A.B.'s mother picked him up at school that afternoon he was in tears.

26. After A.B. told his mother what had happened she called the school the next day and demanded a meeting with Ms. McFarland and Ms. Harris. Instead, she was contacted by phone later in the day by Ms. Harris.

27. Principal Harris indicated that students did not have to say the Pledge, but they were required to stand for it. However, the Principal confirmed that she had said the Pledge with A.B., but did not explain how this was consistent with her earlier statement that children were not required to recite the Pledge.

28. Ms. Porter, on her son's behalf, contacted the Office of the Superintendent of the Vigo County School Corporation. She did not receive a call or invitation to meet with the Superintendent. However, she did receive an email indicating that A.B. would be able, in the future, to sit silently during the Pledge.

29. A.B. remains extremely upset about going to school. He has always felt that he was an outsider and this, compounded by his father's death, makes these feelings even worse. He is suffering continuing anxiety and harm because of this incident.

30. A.B. complains of his stomach hurting when he has to think about going to school or when he goes to school. His mother has obtained medical attention and

treatment for A.B. because of his stomach concerns.

31. The actions of defendants were taken with malice or with reckless and wanton disregard of clear law that indicates that a student may sit quietly during the Pledge of Allegiance.

32. At all times defendants acted under color of state law.

33. Defendants' actions have damaged plaintiff.

Jury trial demand

34. Plaintiff requests a trial by jury on all issues so triable.

Legal claim

35. The actions of defendants violated A.B.'s rights secured to him by the First Amendment to the United States Constitution.

Request for relief

WHEREFORE, A.B. request that this Court:

- a. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
- b. Declare that the actions of defendants violated A.B.'s First Amendment rights for the reasons noted above.
- c. Award A..B. his damages, both compensatory and punitive, following a trial by jury.
- d. Award A.B. his costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
- e. Award all other proper relief.

s/ Kenneth J. Falk

Kenneth J. Falk

No. 6777-49