



Controversies Over the Pledge of Allegiance in Public Schools: Case Studies Involving State Law, 9/11, and the Culture Wars

Citation

Montgomery, Jennifer J. 2015. Controversies Over the Pledge of Allegiance in Public Schools: Case Studies Involving State Law, 9/11, and the Culture Wars. Doctoral dissertation, Harvard Graduate School of Education.

Permanent link

<http://nrs.harvard.edu/urn-3:HUL.InstRepos:16461048>

Terms of Use

This article was downloaded from Harvard University's DASH repository, and is made available under the terms and conditions applicable to Other Posted Material, as set forth at <http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA>

Share Your Story

The Harvard community has made this article openly available. Please share how this access benefits you. [Submit a story](#).

[Accessibility](#)

**Controversies Over the Pledge of Allegiance in Public Schools:
Case Studies Involving State Law, 9/11, and the Culture Wars**

Jennifer J. Montgomery

Julie A. Reuben
Meira Levinson
David Schimmel

A Thesis Presented to the Faculty
of the Graduate School of Education of Harvard University
in Partial Fulfillment of the Requirements
for the Degree of Doctor of Education

2015

©2015
Jennifer J. Montgomery
All Rights Reserved

Dedication

To Frank A. Cummings and Carol J. Montgomery
In Memory of Robert H. Montgomery

Acknowledgements

I owe a debt of gratitude to my adviser Julie Reuben, who shared generously of her intellect, expertise, and time. I am similarly indebted to David Schimmel and Meira Levinson, who also served as readers on my dissertation committee. David provided an invaluable sounding board on legal issues, in particular. Meira's expertise in civic education and analytical criticism also proved invaluable, and she greatly advanced my understanding of the politics of civic education. I want to give all of them credit, as well, for their excellent teaching at the Harvard Graduate School of Education. Their classes were among the best in my doctoral experience, and this dissertation in great part reflects what I learned from them about history, citizenship, civic education, and education law.

Cheers, too, to Kathleen Donovan, my go-to research librarian in Gutman Library. In addition to being endlessly knowledgeable about how and where to track down information, she provided excellent insight and support in thinking about how to approach research questions. Thank you to Jane R. Pole, who provided technical assistance and advice during my visit to the Legislative Library at the Minnesota State Capitol. And thank you to David Sheehan, a master history teacher, who provided professional perspective and connected me with sources in the field. I also will be forever grateful to my community-of-practice colleagues Michelle Forman, Thomas Tomberlin, and Jennifer Zeuli.

Finally, I want to thank my family, friends, and former students, without whom this experience would not have been possible. My husband Frank Cummings has been endlessly patient, encouraging, and creative in his support; in addition to being wonderfully protective of my time and energy relative to completing this dissertation and degree, he demonstrated again and again and again his faith in me and in my ability to see this through to its conclusion. My brother Lee Montgomery has also been a great friend and supporter in this process. And my dear friends Kathy Eide, Linda Keys, and Vera Larkin also contributed endless moral support. And finally, cheers to my amazing mom, Carol Montgomery, from whom I gained so much of my interest in the world.

Table of Contents

Abstract	viii
Introduction	1
Historical Context.....	4
Present Tense: Pledge Mandates, Patriotism, and the (Multi)Culture Wars.....	18
Overarching Relevance of the Mandate Debates	26
Research Methods and Preview of Cases.....	35
Ch. 1: Minnesota 2001—Before & After 9/11	42
Mandate Politicking Pre-9/11: A Proxy in the Culture Wars.....	45
9/11 Lends Urgency and Local Voices to Pledge Debate in 2001.....	73
Local Focus: Public Pressures and Pedagogical Priorities in ISD 196	76
Local Focus: Conservative Concerns in a Multicultural Community	83
Conclusion.....	90
Ch. 2: Minnesota 2002—The Pledge and Only the Pledge	93
Mandate Debates Post-9/11: Surge in Patriotism Changes Playing Field	94
Political Leverage of 9/11 Trumps Senate’s Delaying Tactics	100
Senate Floor: Broader Patriotic Content v. Pledge as ‘Ethos’ of The Nation	108
Multicultural Complexity: ‘Bleeding-heart’ Liberalism or Valid Concerns?....	116
The Dark Side of Patriotism and References to the Thought Police	136
The ‘Heaviness around Here’ Continues.....	150
The Ventura Veto: ‘No Law Will Make a Citizen a Patriot’	152
Conflict Arises When New Governor Signs Pledge Mandate Bill in 2003	157
In Retrospect: Moua Reflects on Mandate and Patriotism Post-9/11	161
Conclusion.....	172

Ch. 3: Colorado Passes Rigid Mandate with <i>Barnette</i> Bypass	174
The Pledge as Loyalty Oath and Builder of Moral Character	177
Colorado Senate: Decidedly Different Conceptions of Compelled Behavior ...	186
As Predicted, The Court Intervenes on Behalf of Students and Teachers	203
Conclusion	211
Ch. 4: Pennsylvania—Viewpoint Discrimination in Opt-out?	216
A Sweeping Mandate with Punitive Parental Notification	217
Courts Reject as Contrivances State’s Argument for Parental Notification	224
Regardless of Rulings, Conflicts Continue to Arise in Pennsylvania Schools ..	232
Conclusion	235
Ch. 5: Florida—Pledge Pressures Remain in State Law	236
Florida Repeatedly Declines to Align State Law to U.S. Constitution	237
The ‘Big Desk-Little Desk’ Incident: Cameron Frazier Remains Seated	246
Public Reaction Swells; Frazier urged to go to Iraq	250
Pledge Politicking, Hot-button Hyperbole, and Threats of New Legislation ...	253
‘Liberal’ and ‘Activist’ Court Rules Resoundingly for Frazier	259
Appeal to 11th Circuit Yields Confusing Concession	264
Denial of Certiorari Petition Leaves ‘Stain’ in Tact	271
Pledge-related Conflicts Continue to Occur Well after <i>Frazier</i>	277
Conclusion	284
Conclusion	286
Appendices	294
Appendix A—Summaries of Related Lower-court Cases	294
Appendix B—Minnesota Pledge Legislation for 2001 & 2002	296

Appendix C—Current Pledge Law in Minnesota (Passed in May of 2003)	304
Appendix D—Information on the Pledge to the Earth	305
Appendix E—Signed Version of Colorado Bill HB03-1368	306
Appendix F—Revisions to Colorado Pledge Mandate	308
Appendix G—Florida Pledge Law as of 2015	309
Reference List	310
Vita	331

Controversies Over the Pledge of Allegiance in Public Schools: Case Studies Involving State Law, 9/11, and the Culture Wars

Abstract

This dissertation examines state-level efforts to mandate the Pledge of Allegiance in public schools, especially following 9/11. Despite longstanding Supreme Court precedent declaring mandatory flag salutes unconstitutional, various state legislatures sought to institute or strengthen pledge mandates irrespective of students' civil liberties. Driven by personal conceptions of patriotism, fears about cultural unity, and desires for political advantage, legislators pushed to institute new pledge mandates or defend existing ones without substantive consideration of their impact on students and schools. While the full impact of these laws has not yet been seen, some students have experienced harsh discipline and bullying due to pledge mandates, school personnel have needed to negotiate constitutionally questionable state law, and legislative persistence has yielded political victories and also resulted in an 11th Circuit-endorsed qualification of students' civil liberties regarding compelled pledging.

Using historical methods, this dissertation examines efforts to mandate and/or enforce pledging primarily following 9/11. Case-study locations include Minnesota, which experienced a three-year battle over its mandate legislation; Colorado, which attempted to curtail opt-out rights of both students and teachers; and Pennsylvania and Florida, both of which undertook court cases to protect state laws that constrained students' rights to freedom of expression regarding the pledge.

In designing this study, I expected mandate supporters to be advocating a form of civic education labeled by scholar Joel Westheimer as "authoritarian patriotism" and mandate opponents to be advocating a different form of civic education, labeled by Westheimer as "democratic patriotism." I assumed the debate over mandated pledging would largely be a debate over the best form of civic education that was already occurring in schools. While echoes of these debates occasionally occurred, legislators rarely addressed the educational aspects of this issue or its relationship to citizenship development. Instead, legislators emphasized broader concerns about threats to the culture and unity of the nation and focused frequently on gaining political advantage. In essence, little consideration was given to the effects of these laws on students and schools; instead, these legislative debates and laws served more as symbolic ammunition in what other scholars have identified as the "culture wars."

Introduction

Former high school English teacher Sean Parker recalls with great clarity the events of September 11, 2001, and he remembers too how those events affected his experiences as a teacher and a citizen. Parker was teaching at Dennis-Yarmouth Regional High School on Cape Cod with a colleague who for years had remained seated during the daily Pledge of Allegiance. This colleague at the start of each year would inform her homeroom students that they were welcome to stand for the pledge, but that she preferred to sit and contemplate how she would work to make ‘liberty and justice for all’ a reality. Administrators did not question this teacher’s behavior until immediately after 9/11. Then they began to pressure her to stand during the pledge. Parker disagreed with the new policy and left a note for the principal requesting a meeting regarding the issue. Parker explained that though he himself chose to stand, “if I were forced to stand then I would sit faster than he could say ‘Joseph McCarthy.’” Parker met with the principal and reminded him of citizens’ rights to freedom of expression and the importance of consideration during these “volatile times.” Parker also asserted to the principal that he should cease to pressure the colleague who chose to remain seated. Parker recalls saying, “Not on my watch” (Parker 2015).

Parker took this stand as a rookie teacher, and when reviewed for tenure, his principal informed him that even though his teaching evaluations were stellar that

he “was contributing to an atmosphere of disrespect” and so would not be retained. Parker, who himself was a highly accomplished student of philosophy and the humanities, describes building his high-school teaching and classroom atmosphere around democratic principles and around providing students with choice, voice, and personalized paths to attainment and demonstration of proficiency in the English standards. He also regularly required students to recite from memory and in oratorical style the Preamble to the Constitution. Said Parker, “I took democracy seriously in my teaching” (Parker 2015).

‘Taking democracy seriously,’ however, has various interpretations among educators, students and parents, legislators, and the general public. Disagreements about its meaning have been especially evident in the American ‘culture wars’ that gained prominence in the 1980s and beyond. Common clashes over left/right divisions typically include disputes about religious rights, social issues, patriotic expression and ideation, and immigration and multiculturalism (Zimmerman 2002; Ornstein 2003; Evans 2004; Wood 2008). The period following 9/11 was characterized by displays of national unity and shared mourning. However, some of the expressions of post-9/11 patriotism served to magnify existing culture-war divisions and draw public schools and students more deeply into an already politicized fray. The demands for a mandated Pledge of Allegiance as a sign and symbol of national loyalty and unity were a prime vehicle for extending the culture wars more deeply into public-education policy in the period following 9/11.

Westheimer (2007, 171-172) tracked pledge-based patriotism-education initiatives that resulted after 9/11 and found that “within a few months, more than two dozen state legislatures introduced new bills or resurrected old ones aimed at either encouraging or mandating patriotic exercises for all students in public schools. Seventeen states enacted new pledge laws or amended policies in the 2002-03 legislative sessions alone.” Forty-six states now have laws requiring their public schools to lead students in recitation of the pledge (Goss 2012). Furthermore, some states and various communities post-9/11 worked to mandate that each student and teacher be required to recite the pledge rather than opt for a more general mandate requiring schools to schedule the pledge and then invite willing students and staff to join in recitation, an approach that has been adjudicated as not violating constitutional protections for freedom of speech and freedom of religion (Hudson 2009). And in addition to the pledge-mandate efforts, state legislators and some organizations also sought to boost patriotism in schools by requiring the posting of the national motto “In God We Trust” and proposing mandatory patriotism classes (Gehring 2002).

Democratic senator Ted House of Missouri noted that he had first proposed a pledge mandate in the state’s public schools three years prior but that it was 9/11 that motivated his fellow senators to pass the bill 32-0 (Gehring 2002). However, this 9/11-empowered movement to reinvigorate traditional patriotism in public schools was not without controversy. While many state legislators, organizations like the American Legion, and the general public expressed strong support for this return to an explicit and traditional form of patriotic expression by children, critics

of the resurgence of pledging and motto-posting described the efforts “as attempts to mandate patriotic correctness and as examples of old-fashioned political grandstanding” (Gehring 2002).

In an effort to better understand these political and cultural clashes and their effect on public schools, this study uses historical methods to investigate efforts to mandate the pledge in four states; each case illustrates the influence of the contemporary culture wars and, to varying degrees, the events of 9/11. To understand the increased activity related to mandated pledging due to the culture wars and 9/11, I explore the aims of the supporters of pledge mandates, the debates over the requirements proposed by state legislators, and some of the reactions of individuals impacted by this resurgence in pressure to pledge allegiance. Not surprisingly, the events of 9/11 intensified public fears and a desire for patriotic expression; this clearly helped supporters of mandated pledging leverage the pledge for larger political advantage, and it helped them pass and defend mandate legislation. But the debates over this legislation demonstrate that 9/11 did not create an era of new patriotic consensus that united American citizens in a stand against foreign terrorists. Instead, efforts to mandate the pledge ignited many of the same themes associated with the culture wars that resurged in the 1980s and '90s and continue unabated today.

Historical Context

In order to give context to the pledge-mandate debates of the 2000s in the larger context of the culture wars that began to resurge beginning in the 1980s, it is useful to consider some of the historical origins of these larger sociopolitical issues

of traditional patriotism, conceptions of unity, and the challenges of unity and cultural preeminence in a multicultural nation with a complex history of economic and power disparities tied to race and ethnicity. Specifically, the late 19th and early 20th centuries saw a flood of immigrants pour into the United States from southern and eastern Europe to join the influx of relatively recent Irish Catholic immigrants. Because of differences in religion, low levels of education and economic attainment, and 'undesirable' ethnic origins, these new immigrants were initially the object of scorn and fear from native-born Americans with predominantly northern European protestant immigrant backgrounds. Many 'nativist' Americans feared that the influx of foreigners lacking in knowledge and commitment to the American democracy and its northern-European-rooted social and political norms would undermine national unity and stability. This influx of diverse ethnic groups into the young American nation helped set the stage for the writing of the Pledge of Allegiance by Francis Bellamy in 1892, and this unity-from-diversity imperative helped wed the pledge to urgent efforts to 'Americanize' immigrant children in public schools (Ellis 2005, 33-38).

Ellis (2005, 38) notes, for example, the "nativist hysteria" that arose after the throwing of a bomb into Chicago's Haymarket Square in 1886 as a part of radicalized labor protests against deplorable working conditions for low-status industrial laborers, many of whom were recent immigrants living in insular ethnic communities made up of "the scum and offal of Europe." Growing nativist fears and the many challenges of accommodating and assimilating so many immigrants motivated quick and assiduous attention to Americanization programs, some of

which were largely supportive of immigrants and wanted to help include them in American society and some of which were more critical and wanted complete assimilation and restriction on immigration (Higham [1955] 2011, 234-239)

Schools were an especially important site for Americanization of both the more welcoming and more punishing varieties because of the perception that immigrant adults were likely set in their ways but immigrant children would be malleable to concerted common education in American citizenship and patriotism (Higham [1955] 2011; Ellis 2005, 38). Some immigrant groups would press for cultural consideration such as dual language instruction or accommodation of religious preferences, but accommodations tended to be limited to groups whose cultures aligned most closely with existing cultural values (Tyack 2003; 23-27). Groups like southern Italians, Russian Jews, and Irish Catholics were among the least likely to be quickly accommodated, and when by the early 1880s four-fifths of New York City's population consisted of non-American-born immigrants, the push to Americanize, especially in the city's schools, intensified. The New York Presbyterian minister Reverend Charles H. Parkhurst, known for battling Tammany Hall, was at times a vocal advocate of stemming the immigration of 'undesirables' and of forcing existing immigrants to assimilate into prevailing American cultural norms. Parkhurst, who had witnessed firsthand the potential for corruption among ethnic enclaves in New York City, asserted that America "was for the Americans" and that diversity was incompatible with patriotism (Ellis 2005, 39; Sloat 2002).

Because of the 400th anniversary of Columbus' landing in the New World, the year 1892 provided a frenzied backdrop for calls for patriotism and unified

national identity. Amidst contentious wrangling over the economic, ethnic, and religious character of a nation teeming with new immigrants, the U.S. prepared to host the World's Fair in Chicago and to celebrate Columbus' 'discovery' of the New World (O'Leary 1999). In this context, *The Youth's Companion* magazine spearheaded the flag-in-every-school movement and assigned Francis Bellamy to coordinate and promote a national Columbian Public School Celebration that would instill in diverse children a unified love of America and sense of their role as its future explorers, defenders, and leaders of American ideals. Bellamy wrote the pledge for this occasion (Jones and Meyer 2010; Ellis 2005).

Bellamy sought to instill patriotism and reverence for American ideals, but he did not at first advocate mandatory flag salutes. Bellamy initially believed that a rote exercise decreased students' emotional investment and thereby decreased its patriotic power (Jones and Meyer 2010; Ellis 2005). Proponents, however, believed regular recitation increased the pledge's impact, and in 1898 New York became the first state requiring flag salutes in public schools. Mandating patriotic exercises, Americanism curricula, and pledging gradually gained momentum through the efforts of groups like Daughters of the American Revolution and the Grand Army of the Republic. By 1905 eighteen states and territories had enacted laws requiring schools to display American flags (Ellis 2005).

World War I led to a spike in patriotism and fear, and the harsher elements of American patriotism gained momentum. Tyack (2003, 76) notes that while religious diversity was protected by the Constitution, "there was no bill of rights for cultural

diversity,” and so the state could attempt such measures as denationalizing German immigrants. Various levels of government also worked assiduously during World War I to achieve “the eradication of competing cultural allegiances” through Americanization efforts in public schools (Tyack 2003, 76). Given that the U.S. was now at war with European nations from which large numbers of immigrants had recently arrived, fears of those immigrants and their potential subversiveness led to strict immigration legislation as well as other restrictions on people and groups perceived as dangerous to American interests. The restriction on immigration allowed concerns about diversity to decrease and to be replaced by more focus on inclusion in the nation’s common schools and on the challenge of educating for citizenship while still appreciating cultural diversity. Social scientists in the 1920s began to advocate for a slower and less aggressive assimilation into school-based Americanism in order not to engender ethnic-based pushback and in order to foster a deeper and more naturally developing embrace of Americanism. According to Tyack, they promoted “transitional programs that taught tolerance for diversity and preached the doctrine that the United States was a composite of the contributions of many nations” (Tyack 2003, 73-81).

When the United States entered World War II, there was again a surge in patriotism but also a strong desire on the part of some to avoid the repression of World War I. This natural tension between urgent war-fueled patriotism and individuals’ civil liberties accorded by the U.S. Constitution was reflected in two famous Supreme Court cases about forced flag salutes—*Minersville School District Board of Education v. Gobitis* (1940) and *West Virginia State Board of Education v.*

Barnette (1943). The *Gobitis* decision to allow mandatory pledging in public schools reflected the fear of wartime disunity and the desire for mandatory shared expressions of patriotism irrespective of ‘insignificant’ religious objections by denominations like the Jehovah’s Witnesses; the *Barnette* decision, in contrast, overturned *Gobitis* and in so doing reflected the recognition of the danger of coercive patriotism and the right of public-school students to be free from compelled patriotic expression irrespective of wartime desires for patriotic unity.

Gobitis, though its precedence was reversed within three years by *Barnette*, provided the Supreme Court’s first ruling on whether students possess the constitutional right, specifically the freedom of religion, to decline to participate in school-ordered flag salutes, and it elucidated a number of societal viewpoints regarding patriotism, free speech, and minors that continue to resonate post-9/11. *Gobitis*, a case heard in 1940 during the tension-filled run-up to America’s entry into World War II, examined the conflict between a Pennsylvania school district’s requirement to pledge allegiance and the right of Jehovah’s Witnesses children not to participate due to their religious beliefs.

Justice Felix Frankfurter, who himself was a Jewish émigré from Austria, knew America’s entry into the European war was at hand and acknowledged his intellectual struggle in determining the rights of the individual to religious freedom relative to the rights of a wartime state to preserve its unity (Ellis 2005, 103-105). Frankfurter ultimately concluded in *Gobitis* that national unity must be upheld as “an interest inferior to none in the hierarchy of legal values” in order to maintain a nation in which civil liberties might exist (*Minersville v. Gobitis* 1940). In essence, the

court endorsed the right of schools to force patriotic expression of their choosing for the common good of national unity, as long as that expression did not impose a more direct infringement on religious expression. Justice Harlan Stone, the lone dissenter, asserted that mandated flag salutes were in fact a direct infringement of some denominations' mode of religious expression and that schools possessed numerous other options for instilling patriotism and encouraging national unity. Frankfurter shared this concern, but he asserted that a nation near war needed latitude in preserving national unity (Ellis 2005, 103).

A dark and unintended consequence of the *Gobitis* decision was the almost immediate rise in violence against Jehovah's Witnesses, violence that included hundreds of vigilante-style attacks that included castration, the burning of a worship hall, and law-enforcement harassment and abuse (Chen 2004). The threat to public safety of what J. Edgar Hoover called "free-lance spy hunting" was so intense that Hoover made discouraging it an FBI priority. Even so, after *Gobitis* and during World War II more than 500 Jehovah's Witnesses who opposed the war and refused to salute the flag were "beaten by mobs, tarred and feathered, tortured, castrated, or killed in more than forty states" (Stone 2004, 279).

West Virginia Board of Education v. Barnette, a decision announced on Flag Day in 1943, was a shockingly quick and complete reversal of *Gobitis*, and it remains the Supreme Court's cornerstone decision protecting students' rights to decline pledge participation. Like *Gobitis* three years earlier, *Barnette* also featured Jehovah's Witnesses children refusing to salute the flag, but this time there was a new make-up on the court, there was ample evidence of violent persecution of Jehovah's

Witnesses, and the state of West Virginia itself had passed a state law mandating the flag salute rather than just individual schools making local decisions. Moreover, West Virginia in its state regulation equated the flag salute with evidence of “national unity,” which in turn was intended to provide “the basis of national security” (W. Va. Code § 1734 1941). These justifications echoed Frankfurter’s opinion in *Gobitis*, but while the justices in *Barnette* acknowledged the challenges of fostering national unity, especially during wartime, the majority asserted that *belief* cannot be compelled, and justices affirmed the preeminent importance of preserving First Amendment freedoms of religion and expression. Justice Robert Jackson famously asserted that “if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein” (*Barnette* 1943).

Jackson noted in the majority opinion that “free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or failing that, to weaken the influence of the educational system.” That Jackson would explicitly note the importance of limiting partisan influence in public schools spoke to the degree to which schools were known to be political battlegrounds, and Jackson went a step further when he rejected the often cited claim that only state school boards could truly know what was best for students and therefore should be beyond the purview

of the courts and their penchant for overly generous interpretations of individuals' rights. Wrote Jackson, in one of the most famous lines from his opinion:

[State boards of education] have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. (*Barnette* 1943)

Jackson's making inseverable the protection of students' constitutional rights from students' education as citizens in a democracy provides insight into the complexities and substance of contested conceptions of civic education. In diction and detail that could easily have been written about 21st century conflicts over schooling and patriotic education, Jackson wrote that "as governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing" (*Barnette* 1943).

Barnette remains the key precedential case in constitutional law pertaining to mandatory flag salutes. It is worth noting, too, that *Tinker v. Des Moines* (1969), though not pledge-specific, affirmed a cornerstone of *Barnette* in that it further affirmed that students in public schools do indeed retain constitutional rights and

that absent “material and substantial disruption,” students possess the right to First Amendment freedom of expression, and political expression in particular. Notably, subsequent cases about students’ rights to First Amendment freedoms have more narrowly defined the limits of these rights, and the bounds of student expression remain highly contested. However, the political speech of students that was central to *Tinker* remains especially protected (in contrast to profanity, promotion of illicit drugs, etc.). Several cases in state and federal courts have provided further clarification of the reach of *Barnette*. For example, students may opt out of pledge rituals for religious, personal, or political reasons. Courts have also ruled students may stand in silence, sit silently, and even silently raise a fist during the pledge. Moreover, teachers may not send a non-pledging student from the room during recitation as that could be construed as silencing students’ expression or coercing preferred behaviors through perceived punishment. For details and citations about pledge-related court cases, see Appendix A.

After World War II and the *Barnette* victory for students’ civil liberties, the Cold War gripped the nation and led to repression that was primarily directed at people and groups perceived to be ideologically dangerous, particularly in terms of accusations about communist sympathies or affiliations. Foster (2000) describes this as a particularly difficult time for American education in that red-scare tactics were used by various political and economic interests to successfully attack educators, school leaders, and curricula. Foster categorizes these attacks that began in the 1940s as emanating primarily from three distinct interest groups: patriotic

organizations “that appeared as vigilantes of public education,” businesses and taxpayer advocacy groups that “fervently adopted red scare tactics and propaganda to attack public schools’ need for increased financial support,” and politicians and their supporters “who used their influential positions publicly to accuse the teaching profession of ‘subversion’ and ‘un-American’ activities” (Foster 2000, 52). As a result, teachers’ patriotic loyalties and affiliations more than students were targeted in public schools during the Cold War period.

As the Cold War was losing some of its power over domestic politics, social issues such as poverty, civil rights, feminism, and anti-war and other political movements rose to new prominence in the 1960s and pushed the nation’s politics in new directions. Tyack (2003) describes left-leaning social movements of the 1960s and ‘70s as having a major impact on education and particularly the teaching of history. The experiences and impacts of once-ignored or marginalized groups like racial and ethnic minorities, women, and the working class gained prominence among social historians who sought to contribute to postmodern-influenced analyses of more fully faceted considerations of American culture and history.

This change in the scholarship focus of American history was reflected in history textbooks and teaching, which was a development lauded by some, criticized by others as insufficient, and rejected by yet others as deteriorative of the ‘grand narrative’ and respect for the nation’s great accomplishments (Tyack 2003; Appleby, Hunt, and Jacob 1994). Simultaneous to these left-leaning social movements of the 1960s and beyond was a major change to immigration law. Specifically, the 1965 Immigration Act, also known as the Hart-Celler Act, ended the implicitly race-

preferenced national-origins quota system in favor of a first-come first-served system that resulted in radical and unexpected increases in immigration—most of which was from nations in Africa, Latin America, and Asia rather than Europe (Bon Tempo 2011; Ludden 2006).

Due in great part to the prosperity in much of the 20th century and the longstanding influence of the democratic leadership and coalitions responsible for the New Deal, Democrat-favored policies tended to hold sway in the 1960s and '70s. But “New Right” conservatives like William F. Buckley, Jr., Ronald Reagan, and the ascendance of influential think tanks like the Hoover Institute and the American Enterprise Institute succeeded in reframing the conservative message and transforming their thought into actionable policies (Camarillo 2014). Led by Ronald Reagan first in California and then nationally, “New Right” conservatives leveraged their growing influence by providing leadership and political and policy alternatives to the growing anxiety and frustrations of tradition-minded Americans most affected by the social upheavals of the 1960s and 1970s and the renewed surge of multiculturalism.

Stanford historian Albert Camarillo (2014) describes the culture wars that began in the early 1980s and continue today as a backlash by neoconservatives to a collection of social and economic issues that included repudiation of the New Deal liberal welfare state; opposition to affirmative action for women and minorities; inclusion of traditional religion in the public sphere and schools; concern about immigration and opposition to undocumented immigration; English-only advocacy; opposition to bi-lingual education; opposition to gay rights and same-sex marriage;

opposition to abortion and *Roe v. Wade* (1973); and frustration and pushback regarding issues of race, ethnicity, and multiculturalism and their collective impact on national unity and a singular American identity. The culture wars, according to Camarillo (2014), are in their essence “about values, religion, ethos, ethics—all the things wrapped up in a changing society.”

Like Camarillo, Hunter (1991, 42-49) echoes that emphasis and notes that cultural conflicts historically have tended to be rooted in competing religious affiliations but that as those conflicts waned in the U.S. there arose deep divisions based on “competing worldviews” and “systems of moral understanding.” According to Hunter, “The culture war emerges over fundamentally different conceptions of moral authority, over different ideas and beliefs about truth, the good, obligation to one another, the nature of community, and so on.” Hunter distinguishes between private culture and public culture, and he notes that the battle over public culture—for example public education or the Pledge of Allegiance—takes on such crucial dimensions for culture warriors because public culture “embodies the symbols of national identity. These symbols express the meaning of citizenship and, therefore, the meaning of patriotism and disloyalty. More important, public culture consists of the shared notions of civic virtue and the common ideals of the public good—what is best for the general happiness of the people and the welfare of the republic” (1991, 55). He emphasizes repeatedly the struggle for power in the culture wars—“a struggle to achieve or maintain the power to define reality” (52).

Ornstein (2003, 189-209) describes the eruption of the culture wars by first describing the national reverence in the 1940s and ‘50s for Norman Rockwell and

his depictions of idealized American life and then contrasting that with the art and culture of the 1960s and '70s—from Andy Warhol to Jackson Pollock to Liberace to the SDS to the Black Panthers, Vietnam, rock music, and a postmodern world “where normalcy is considered atypical or out of step” and where “even deviancy is considered normal or cutting edge.” Ornstein (2003, 191) asserts that the postmodern belief system is summed up in “one angry word...: *Raceclassgender*,” which helped ignite the backlash by neoconservatives and Americans seeking a more traditionally grounded national identity. This emphasis on traditional values is evident in the books of Reagan-Administration Secretary of Education William Bennett, for example. Bennett published *The Book of Virtues* (1993), *The Book of Virtues for Young People* (1997), and various other morality-based books extolling the importance of traditional values such as patriotism, honesty, thrift, self-restraint, responsibility, delayed gratification, hard work, accountability, and clean living.

Historian Arthur Schlesinger, Jr. also tackled what he perceived as the fracturing of American society in his book *The Disuniting of America* (1991). Schlesinger critiqued the emergence of cultural “tribalism” as destructive of national unity, and he warned especially of the destructive power of “the cult of ethnicity” that he perceived in African American ethnocentrism. Sociologist Nathan Glazer, whose scholarship moved back and forth across the liberal/conservative spectrum, in 1994 published *We Are All Multiculturalists Now*, a book in which he argued that “mild” multiculturalism was positive but that “position-taking” multiculturalism and “militant” multiculturalism were destructive. Glazer also rejected as destructive the rejection of ‘melting pot’ assimilation in favor of “salad bowl” or “glorious mosaic”

constructions of American culture. Lawrence Levine also addressed the role of multiculturalism in the culture wars in *The Opening of the American Mind* (1996), in which he attributed the popular backlash to multiculturalism to the changing face of the nation and the desire of many tradition-inclined Americans to retain traditional family values and social norms. Adding to those tensions and anxieties, according to Levine, was the spotlight that conservatives and traditionalists perceived to be endlessly shining on the past and present shortcomings of America, its social and political institutions, and its civic expressions.

Present Tense: Pledge Mandates, Patriotism, and the (Multi)Culture Wars

At no time in the last fifty years has the push for mandated pledging generated as much new energy and sustained action as it did after the terrorist attacks in the United States on September 11, 2001. In fact, anecdotal stories of pledging conflicts still appear in the news several times a year. One of the most recent occurred in South Portland, Maine, in February of 2015 when the senior-class president Lily SanGiovanni over the intercom invited her classmates to join her in the daily Pledge of Allegiance—"if you'd like to." Public reaction was swift and lopsidedly negative, and the school committee forbade students from including in the invitation to pledge the "if you'd like to" phrase even though the option to decline was not in dispute (Rogers 2015). But while the events of 9/11 may have sparked a resurgence in broad public support for formal displays of patriotism (Westheimer 2007, 171-72) and magnified the negative public response to naysayers (Apple 2002), this new century's battles over mandatory pledging are better understood as a continuation of the culture wars of the late 20th century—particularly the issues of

multiculturalism and diversity relative to national unity and American identity—rather than as a new debate about the most effective forms of civic and patriotic education.

In order to analyze the histories of the pledge debates in each of the upcoming case studies, it is useful to review the topics of patriotism and American exceptionalism in relation to the culture wars. For many neoconservatives and traditionalists in the general public, proudly proclaiming love of country and belief that the United States is ‘the greatest country in the world’ is central to an American’s patriotic identity; however, postmodern and multicultural influences have tempered such expressions for some Americans because of their associations with “cultural imperialism” (Vandivinit 2014, 177). And some Americans have made either rejection or embrace of traditional symbols like the flag and the pledge central to their public activism or politicking, which has resulted in various culture-war clashes.

Prime examples of the pledge and flag flare-ups include George H.W. Bush’s 1988 presidential-campaign attacks against Michael Dukakis for once vetoing a pledge mandate in Massachusetts and also the Supreme Court’s *Texas v. Johnson* (1989) decision that flag burning constitutes “symbolic speech” and was therefore protected by the First Amendment. This Supreme Court decision, a 5-4 vote, resulted in public outrage, additional court involvement, and in a heavy push to pass a constitutional amendment banning flag burning, an effort that failed in 1990 but that still continues today via a coalition called the Citizens Flag Alliance. And it was in 2000 that Michael Newdow filed his first unsuccessful lawsuit contending that the

“under God” portion of the pledge rendered the pledge unconstitutional, a contention that infuriated traditionalists and resulted in intense public condemnations and in cover-taking by liberal politicians in the years since.

Carl Bon Tempo (2011, 163-64) asserts that celebrating and striving to advance the exceptional qualities of one’s country or culture can be positive or negative, and he distinguishes between “soft” exceptionalism and “hard” exceptionalism. In attempting to understand the sustained culture-war backlash to the surge in immigration in the late 20th century, Bon Tempo describes hard exceptionalism as providing “no room for [sharply dissimilar] newcomers to share in America’s greatness” due to a necessity to isolate and protect America’s exceptional qualities from potentially corrupting and diluting influences of non-European cultures. Soft exceptionalism, in contrast, tends to view “a more multicultural and diverse American populace” as reinvigorating American culture.

Bon Tempo’s dichotomous conception of American exceptionalism is important in relation to the pledge-mandate debates because it echoes many of the both latent and direct references to immigrants and multiculturalism included in the mandate debates as justification for a mandated pledge, and it lends a more sympathetic understanding to some of the explicit yearning for ‘yesteryear’ in which mandate advocates remember their simpler—and implicitly less diverse—childhoods recollected as everyone being eager to join together to pledge their loyalty to a nation popularly characterized by traditional family values, righteous military victories, religious piety, economic opportunity, melting-pot sensibilities, and extraordinary founders guided by transcendent ideals—in essence, an exceptional

nation. This cleaving of cultural unity on 'hard' and 'soft' sides of the multiculturalism question also lent urgency in the culture wars to reassert traditional religious and cultural imperatives—like pledging as true patriotism and the ardent defense of the “under God” phrase in the pledge—that many traditionalists perceived as under assault from runaway immigration and its resultant cultural-identity confusion and from overly generous protections for multicultural opinions and interests.

A further complication in conceptions of patriotism and also a driver of the culture wars that inform the pledge debates is found in the rise of postmodernism and its emphasis in the social sciences on relative truths and the aggressive deconstructing and demythologizing of America's traditional conceptions of exceptionalism, according to historian Gordon S. Wood (2008, 133-139). Wood notes, for example, that “the radical shift in perspectives” emphasized by the rise of social historians from the 1960s onward and their emphasis on the experiences of the poor and the persecuted in America “put their research on a collision course with the conventional accounts of the American past.” Wood describes the division in the culture wars essentially as “a struggle between the traditionalists or modernists and the postmodernists,” or more simply a division between “those who stress America's essential unity and those who stress its essential diversity. So what might seem to be a pretty academic debate about the nature of historical writing in fact has momentous implications for the kind of nation that we Americans want to be” (2008, 133).

Wood notes that this seismic shift in the social sciences and “the new historicism of the ‘80s and ‘90s” rejected the ‘grand narrative’ and urged instead an abandoning of “all universal values and standards and to recognize that everything is relative—or that everything is in other words a product of specific historical circumstances,” which becomes a justification to denigrate “the hegemonic forms of existing cultures” (85). Appleby, Hunt and Jacob (1994, 158-59) described the growing alarm that the study of history and civics actually would no longer “strengthen an attachment to one’s country. Indeed the reverse might be true, i.e., that open-ended investigation of the nation’s past could weaken the ties of citizenship by raising critical issues about the distribution of power and respect,” all of which presented a direct challenge to “the possibility of absolute truth and patriotism.”

These growing fears among conservatives attuned to the culture wars were publically and intensely manifested in 1994 with the release of the National History Standards, which were optional guidelines for the teaching of history in public schools. Produced by the National Center for History at UCLA under the leadership of history professor Gary Nash, the standards included multicultural elements of U.S. history and encouraged historiographic inquiry rather than the pre-defined traditionally exceptional ‘grand narrative.’ Conservative pundits like Rush Limbaugh, Oliver North, and Lynne Cheney excoriated the standards for their ‘political correctness’ and alleged pandering to multicultural interests at the expense of traditional heroes of statesmanship and innovation like George Washington and Thomas Edison. Historian John Patrick Diggins (1996, 520) noted that Washington

was mentioned exactly twice in the standards, “once when students are asked to construct a dialogue between him and an Indian chief, and again when students are asked to couple two leaders in order to compare them, a strange fate for a figure in history who was once regarded as incomparable.” Diggins asserts further that while the NHS introduction explains that “standards for United States history should reflect both the nation’s diversity exemplified by race, ethnicity, social and economic states, gender, region, politics, and religion and the nation’s commonalities” (qtd in Diggins 1996, 501), that emphasis on diversity at the expense of commonality makes the standards read “more like a prison house of group categories than an analysis of freedom based on natural rights and power as individual growth and self-development” (519).

Lynne Cheney, a former director of the National Endowment for the Humanities that had helped sponsor the standards effort, was blistering in her criticism, noting that while Washington was mentioned twice, Joseph McCarthy and McCarthyism was mentioned 19 times and the KKK 17 times (1995, 455). Asserting that political correctness and identity politics had overtaken the standards, Cheney (1995, 454) said, “Imagine an outline for the teaching of American history in which George Washington makes only a fleeting appearance and is never described as our first president. Or in which the foundings of the Sierra Club and the National Organization of Women are considered noteworthy events, but the first gathering of the U.S. Congress is not.” The sample activities to which Cheney and Diggins refer instantly derailed the standards as far as many were concerned, but the standards themselves focused on an inquiry-based approach to the study of thinking like an

historian; however, examination of the critical-thinking emphasis of the standards themselves were left largely ignored due to the uproar over the content of the sample activities, which are not a part of the standards themselves (Garcia 2015).¹

Wood, in his analysis of post-1960s historiography, noted that the rise of “identity politics” intensify concerns about the teaching of history and social studies, particularly when they manifest in what he described as “hard multiculturalism” intended to “break up the nation into antagonistic and irreconcilable fragments. Such hard multiculturalism denies the possibility of assimilation and erodes our national sense of ourselves as Americans.” A soft multiculturalism, in contrast, celebrates both ethnic distinctiveness and one’s overall identity as an American (142-43). Wood’s (2008) scholarship informs the analysis of the divided conceptions of patriotism that appear again and again in the pledge-mandate debates. His analysis is particularly germane to mandate proponents’ fears about divisive diversity, the demonizing of national unity by overzealous multiculturalists, and the longing for a civic and history education that emphasizes traditional and unified Americanism in order to transmit to students a national identity more closely aligned to its pre-1960s exceptional form.

Notably, these fears and the cultural positions that helped engender them would also provide to politicians in the case states and beyond fertile ground for intense politicking and advantage-taking irrespective of the depth of pledge-mandate priorities. Dodds (2012) examines this phenomenon relative to Republican

¹ The standards are archived in the UCLA Department of History’s National Center for History in the Schools. To see examples of the content standards themselves, see <http://www.nchs.ucla.edu/history-standards/us-history-content-standards/united-states-history-content-standards-for-grades-5-12>

politicians' advantageous embrace—at least in rhetoric and politicking—of the demands of the Religious Right, but Dodds details how officials elected by this advantage tend to embrace the rhetoric and its various election advantages while often stopping short of enacting related policies or laws, a common dimension of politicking in evidence in some portions of the easily manipulable pledge-mandate debates.

Along with Wood, Joel Westheimer's model of democratic and authoritarian patriotism further informs patriotic side-taking in mandate debates, and it is especially germane to mandate opponents, who were also staunchly committed to American unity but in a manner more embracing of diversity, questioning, and dissent as valid forms of patriotism. Specifically, Westheimer (2007) describes two predominant and conflicting conceptions of patriotism commonly imposed upon students in public schools: democratic patriotism and authoritarian patriotism. In democratic patriotism, dissent is patriotic, allegiance is to democratic principles rather than the state itself, and citizens have a right and responsibility to be "questioning, critical, and deliberative." In contrast, Westheimer characterizes authoritarian patriotism as wary of dissent, adherent to unquestioning loyalty, and allegiant to "land, birthright, legal citizenship, and government's cause" (Westheimer 2007, 174).

Taken together, the work of Wood, Bon Tempo, and Westheimer provide a framework for additional analysis of these historical case studies, particularly in regard to the roots of the recent mandate debates embedded in the culture wars more so than the events of 9/11. In short, the heart of the mandate issue would lie

not in debates about the best practices of civic education but would lie primarily in the politicking around contested conceptions of patriotism and national unity, and the intellectual, political, and emotional struggle to come to terms with the role and reality of American unity and identity in an increasingly multicultural society.

Overarching Relevance of the Mandate Debates

Like the long list of legislators and citizens who would join the debate about whether to mandate the Pledge of Allegiance after 9/11, I too possess vivid memories of childhood recitations of the pledge—and though daily elementary recitations have faded almost entirely, I recall vividly special events like Girls' State, small-town Memorial Day services in which I stood next to my pledging parents, or local American Legion events where I was surrounded by aging veterans—most of them neighbors—in their envelope caps decorated with Legion badges and service insignias. My parents were lifelong members of both the Legion and the VFW, and my mom signed me up for the Legion's Junior Auxiliary before I entered first grade. I have been a continuous member ever since. It was no surprise to me then that Legion advocacy would figure prominently in some parts of this research about pledge mandates, for in addition to vast community-service initiatives the American Legion maintains strong state and national lobbying programs related to traditional Americanism and veterans' affairs.

Being well acquainted both with that world and with public schools has made especially conspicuous the cultural dissonance inherent in accommodating the widely differing expectations regarding the shaping and transmission of 'American' values in the classroom. As a longtime educator in a district with extensive

socioeconomic diversity and another district with extensive racial, ethnic, and religious diversity, I have observed firsthand the complexities of educating for democratic citizenship in a diverse society and of teaching American literature as cultural history. I also possess extensive experience in the teaching and advising of scholastic journalism, a discipline in which First Amendment rights and their attendant responsibilities are revelatory to students for whom that is one of their first substantial entries into the nation's public marketplace of ideas.

Given that professional context, the American Legion's activist commitments to traditional "100 percent Americanism," mandated pledging in public schools, and unqualified defense of "under God" in the pledge—though sincere and tradition-based—seem detached from important dialogues about similarly sincere multicultural perspectives. In a feeling no doubt common to many professional educators, I find myself caught in the middle. I am imbued by powerful personal experience to be predisposed to believe that many supporters of mandated pledging take this position based on strong, positive emotional associations and genuine concern for children and the future of the nation, but my professional experiences lead me to values that can conflict with that type of patriotic imperative: values like the importance of civil liberties, the importance of student agency and voice, the value of participatory forms of pedagogy, the constructing of school cultures as laboratories of democracy, and the reality and value of cultural and religious differences in schools and American society.

The inconsonant intersection of these personal experiences and professional commitments in the form of the resurgence of efforts to mandate the Pledge of

Allegiance drew me to this research. That public schools continue to be battlegrounds for the cultural rifts and competing imperatives of individuals and interest groups in a diverse and politically charged nation is not surprising; tasked with transmitting shared American values and an American democratic identity all at taxpayer expense, common schools and their content and cultures have always been contested territory and will continue to be so. But the often-intense competitions for control of schooling and for political advantage in the endless critiques about public education have a price—they can exhaust teachers, paralyze decision-making, drain financial and temporal resources, constrain best practices and important innovation, and demoralize and confuse students and school communities. These competitions for cultural and political control also can distract legislators and leaders from substantive discussions of the best interests of students and of a democratic and capitalistic nation that depends on an educated citizenry.

From my perspective as a professional educator, I perceived that the pledge-mandate debates might be this type of wearying and destructive distraction. What initially contributed to this perception was that even amidst the outpouring of patriotism and support from virtually every part of the nation after 9/11, state legislators chose to spend considerable time and energy mandating rather than simply encouraging the Pledge of Allegiance in public schools. Moreover, legislators in some states pushed for legislation that would require every student to join the recitation rather than simply requiring their schools to offer the pledge to voluntary participants. These positions struck me as base politicking given the popularity of the pledge post-9/11 and as damaging to students' civil liberties regarding religion

and expression. But what I failed to grasp initially were the important ways in which these pledge-mandate debates transcended 9/11 and instead represented a deeper and more profound fear of and reaction to the fast-evolving character and culture of the United States—and the ways in which that fear and the traditional embrace of the pledge could provide for politicians a powerful rhetorical tool to advance larger agendas.

As I began to investigate these pledge-mandate initiatives, I realized that gaining a better understanding of the foundational motives and commitments of the people who joined these debates would inform the problems of practice created by mandated pledging—or even by voluntary pledging, depending on one’s point of view. But more importantly, this greater understanding of actors in the pledge debates could help educators and school leaders better understand culture-based issues like pledge mandates and curricula challenges as products of the ongoing culture wars and the fears and priorities that drive them.

In order to build a better foundation from which to understand the motives and commitments of participants in the pledge debates, I included in my literature review the literature on civic education, which describes and analyzes a wide array of approaches that variously emphasize textbook study, traditional Americanism, service learning, character education, civic action, and so on. Predictably, various approaches could be expected to align to varying degrees with sociopolitical values and priorities (Bennett 1985; Freire 1985; Apple 2002; Evans 2004). In *The Civic Mission of Schools*, a seminal research report published in 2003 and sponsored by the Carnegie Corporation of New York and The Center for Information and Research

on Civic Learning and Engagement, the authors identify six “promising practices” for civic education, which taken together emphasize both lively classroom study and authentic experience: these “promising practices” include the study of government, history, law, and democracy; the incorporation of relevant and interesting current events; the application of classroom knowledge to real-life experiences in service learning linked to classroom study; participation in extracurricular activities that connect young people to their schools and communities; participation in school governance; and participation in “simulations of democratic processes and procedures” (Levine, Gibson, et al. 2003).

Scholars Westheimer and Kahne (2004) take a different but related angle that also emphasizes the importance of transforming study into action when they describe three different types of citizenship that may be made the goal of the study of civic education K-12. Specifically, they describe and critique the development of a student into a “personally responsible citizen” who, for example, donates to a food drive; a “participatory citizen” who in addition to donating food might help organize a food drive; or a “justice-oriented citizen” who might both contribute and organize but who would also explore why hunger is a problem and how it might be solved. They argue that “justice-oriented” citizenship should be the goal of citizenship education, but they also examine the ways in which political and cultural affiliations may be expected to embrace or reject each of these value-laden constructions of conceptions of good citizenship.

In that literature context of research-based evidence about the importance of connecting classroom civics study to active and interest-driven civic participation,

externally mandated daily or weekly rote recitation of the pledge as a stand-alone activity could be predicted to have limited efficacy in the development of active citizenship. Bennett (2004) attempted to summarize the body of research literature about the value of pledge recitation in classrooms, but she found that no studies had been done. Advocates of regular pledging, according to Bennett, generally assert that pledge recitation will instill patriotic values, will “harness a sense of ‘strength and unity,’” will help increase public engagement, will promote understanding of concepts such as liberty and allegiance, and will foster a sense of patriotic community in the classroom (2004, 58-59). In contrast, opponents assert the limited citizenship-education value of both the rote and compulsory elements of mandated pledging and its disconnection from active citizenship (O’Leary and Platt 2002; Apple 2002; Kavett 1976). Hirsch (1996, 279), however, argues that daily rote recitation will eventually lead to “conceptual understanding.”

Russo, in a point-counterpoint argument with McKinney, supports a mandated pledge, asserting that patriotic rituals like the pledge are essential given the reality that “everyday modern life is saturated with attacks on many traditions and norms” and that socializing institutions like family, faith communities, and neighborhoods “have become increasingly fragmented and less influential in transmitting values” (McKinney and Russo 1993). Russo, while echoing culture-war concerns about a fragmenting society, also asserts that embracing a mandated pledge does not in and of itself diminish active inquiry into citizenship issues and injustices: “It is imperative today that we take action and focus on the importance of reproducing our shared democratic, political and cultural life. This does not mean that we should

not question distorted notions of justice, equality or opportunity. But we must protect those traditions and cultural values, like the pledge, that lead to a sense of collective membership and attachment in this society” (McKinney and Russo 1993).

In designing my own study, I expected that proponents of mandates would view the issue similarly to Russo in terms of the importance of transmitting a certain type of shared values regarding patriotic unity and national identity. But state legislators’ efforts to employ the power of the state to compel a narrowly prescribed patriotic behavior by public-school children perhaps also suggested position-taking that advocated a form of civic education labeled by Westheimer (2007) as authoritarian patriotism. Specifically, I expected these legislators to argue that emphasizing prescriptive and traditional elements of American patriotism would boost citizenship qualities considered desirable by authoritarian patriotism and would provide for children a strong foundation in a shared traditional Americanism. I also anticipated that these laws would be opposed by people who supported a different form of civic education, labeled by Westheimer as democratic patriotism, which emphasizes a more open-ended inquiry model in which questioning is considered patriotic.

I predicted erroneously that the debate over mandated pledging would largely be a debate over the most effective form of civic education—whether traditional or action-based or liberal- or conservative-leaning—that was already occurring in schools. While there were occasional echoes of these debates about the preferred methods of civic education, I found in fact that legislators rarely addressed in-depth or in a cohesive argumentative fashion the educational aspects of this issue or the

best interests of civic education regarding students' development as citizens in a democratic society.

Instead of being focused on citizenship development of children in public schools or the needs of the nation for certain types of citizens, proponents tended strongly toward political maneuvering targeted at gaining greater political control and at addressing broader concerns about threats to the culture and unity of the nation. To my surprise given my background as an educator rather than a politician, little cohesive consideration was given to the effects of these new laws on students and schools—not in terms of best-practices civic education, not in terms of students' civil liberties, not in terms of mandating recitation of an oath that included “under God,” and not in terms of the potential for bullying and awkwardness that could be experienced by pledge decliners. Instead, the case histories of the legislative and local debates regarding these laws illustrate that they are much more representative of a symbolic skirmish—and symbolic and actual victories for mandate advocates—in what has come to be known as the culture wars.

For educators who focus on their classrooms rather than the art and actions of politicking, this may be a distressing conclusion—but not just because these pledge debates are caught up in the culture wars. Most educators and school leaders are well aware of the culture-war conflicts inherent in their decisions about literature choices, health-education curricula, reading programs, history textbooks and activities, civic-education priorities, prom couplings, and even school-lunch menus given the nanny-state debates about Michelle Obama's anti-obesity initiatives. But what will be deeply illustrative and possibly useful to many who are invested in

children's educations—both on behalf of the interests of the children and the interests of a nation that relies on an educated citizenry—will be the tenor and content of the pledge debates among state legislators and among members of the public. To have so much discussion about laws that will be levied on public schools and yet to have so little sustained cohesive argumentation about the impact of those laws on the education of children is remarkable—at least to educators whose professional lives are wedded to that type of best-practice deliberation.

Rather, these pledge-mandate debates will provide insight into the ways in which politicking and intense culture-war competitions can dominate and drive education-policy decisions and lawmaking in ways that have very little to do with effective education or the best-possible functioning of public schools. The intense focus on political advantage-taking and on pledge advocacy based on personal belief will crowd out cohesive debate about the most promising practices in civic education, the qualities most important in young citizens, and the constitutional rights of students in public schools. Additionally, the focus and style of these debates will demonstrate to students, educators, and school leaders how politicians and activists value education more for its value as a cudgel in culture-war battles and in the drive to reinforce American exceptionalism than they do as a tool for promoting rich learning in service both to students and the society.

The case details and analysis may also prove useful to those who advocate for more participatory and constructivist forms of civic education. For though cultural conservatives often struggle to gain broad public approval in installing their cultural imperatives in public schools, their persistent legislative advocacy of mandated

pledging, particularly after the events of 9/11, has provided a vehicle by which they may advocate related cultural priorities such as traditional exceptionalism. This popular and political advantage attained by conservatives through pledge advocacy has affected the work of educators who now find themselves needing to comply with unconstitutional or questionably constitutional mandates that also sometimes imply a public expectation of traditional patriotic and civic education. These mandates also require educators to discern how to teach key ideas of civic education—including the First Amendment and constitutional law—in environments where dissent and tolerance of difference may be immediately and irredeemably perceived as un-American.

Research Methods and Preview of Cases

In order to trace the recent history and analyze the nature of pledge-mandate conflicts of the last fifteen-plus years, this dissertation employs the methods of historical research and especially a cultural-history lens that focuses on “the system of meaning through which people experience the world” (Howell and Prevenier 2001, 117). The organizational and contextual structure relies primarily on a chronological narrative that emphasizes primary sources that include extensive use of legislative documents, audio/video of legislative floor debates and committee hearings, school handbooks, letters to the editor, commentaries and news accounts, court documents, and personal interviews.

Regarding the selection of subjects to interview, I primarily sought to gain the personal insight of interviewees who had taken prominent public roles in the pledge debates in the case states. To this end, I attempted to contact state legislators and

state leaders involved in the mandates; plaintiffs, defendants, and legal experts connected to the resulting court cases; and some educators, students, and parents who appeared in news stories or wrote letters to the editor on this issue. I also attempted to contact several journalists who covered the mandate debates in their states and communities. I acquired contact information through internet databases, LinkedIn connections, Facebook profiles, and similar web-based resources. While I attempted to secure interview sources on both sides of this issue, opponents of the mandate responded in the affirmative much more often (though only about a fourth of those sources contacted consented to be interviewed). In addition to disinterest in participating or my own inability to locate contact information, factors that negatively affected the availability of interview sources included no longer recollecting the events, being deceased, adhering to public-relations guidelines of the employing organization, and so on.

Secondary sources include news articles related to the case locations and literature specific to the history of the pledge and patriotism in schools, law related to students' free-speech rights in schools, and the foundations of the civic purposes of schools. Case locations include Minnesota, Colorado, Pennsylvania, and Florida.

Chapter 1 focuses on the efforts in Minnesota in 2001, both before and after 9/11 and will illustrate the power of the Minnesota veterans' lobby to drive legislation toward traditional constructions of American unity. Minnesota's legislature had begun the battle for a mandated pledge early in 2001, and the struggles over this early legislation illustrate both the partisan positioning on patriotism and the public and political pressure to accede to a majoritarian desire to

mandate the pledge, particularly as an honorific to the state's well-organized and well-respected veterans. This pre-9/11 legislative effort also provided a preview of the culture-war rootedness of this pledge issue on the part of social conservatives seeking a traditional and tangible show of patriotism by children in public schools and by the adults who run them. The events of 9/11 added a new urgency to the mandate issue in Minnesota, and they motivated community-level discussions that again included a strong veterans' presence and that illustrate varying localized perspectives on patriotism in Minnesota public schools. The events of 9/11 also lent a potent political lever to mandate proponents at every level, and the resulting public pressures required school boards and educators to navigate new demands on the part of some community members.

Chapter 2 focuses on the tense debates regarding the mandate legislation in the Minnesota legislature in 2002 post-9/11, and it will vividly illustrate the fears and concerns related to multiculturalism and unaligned conceptions of national unity and identity. It will also illustrate the strategy of opponents to reframe the mandate debate as the need for even more patriotic and civic education, of which a voluntary pledge could be a part; this strategy would allow them to oppose the mandate while still promoting patriotic and civic education and so mitigate the political damage of opposing a pledge-related bill after the terrorist attacks of 9/11.

Even though both Minnesota chambers would pass the legislation by large margins, they would both experience vitriolic debates; the debates in the Senate proved especially volatile and were illustrative of the complex politicking, beliefs, and motivations underlying this mandate legislation and its close connection to the

culture wars. This chapter illustrates the deep divide evident between adherents to competing conceptions of patriotism; it also illustrates the range of motivations and maneuverings by legislators as well as the latent and explicit sociocultural priorities for which a mandated pledge was the symbolic vehicle. Issues of bigotry and class, of ethnic diversity, of generations, and of legislative symbolism surfaced during this legislative battle, and its arc provides extraordinary insight into the willingness of legislators to impose personal and political imperatives upon schools and children without first committing to substantive analysis of the impact or appropriateness of those imperatives. And even though both bodies eventually passed the legislation, an independent governor remained unconvinced of its appropriateness for public schools.

Chapter 3 focuses on the pledge mandate passed into law in Colorado in 2003 and the lawsuit it provoked. The debate in Colorado illustrates not only an attempt to bypass *Barnette* and *Tinker* protections of students' civil liberties, but it will illustrate as well the distrust of teachers and the desire to compel them to pledge as a loyalty oath irrespective of their civil liberties and personal consciences. As in Minnesota, patriotic politicking characterized the legislative debate, but unlike Minnesota the Colorado legislation was a clear violation of constitutional law. Heedless of warnings to that condition, Colorado legislators persisted in their rigid mandate and gained its political dividends irrespective of formal efforts by the ACLU and others urging them to relent. Legislators' refusal to accommodate constitutional protections of students' civil liberties set in motion a lawsuit that resulted in an immediate injunction and a rewrite of the law to address the constitutional

violations.

Chapter 4 focuses on Pennsylvania, who like Colorado attempted to enlist parents to control the behaviors of children relative to pledging allegiance. Unlike Colorado, however, Pennsylvania persisted in its attempt to bypass *Barnette* protections and chose to commit state resources not only to the initial trial but also to an appeal to the U.S. Court of Appeals for the 3rd Circuit. The political persistence and news coverage in Pennsylvania together with the extended legal battles provide distinctive insight into not only the pledge-related culture-war conflict but also the irreconcilable gap between popular and political arguments for the pledge versus legal arguments. Specifically, the popular and politically advantageous rhetoric justifying a mandated pledge held no legal weight, and so the state defendants found themselves in the position of attempting to argue legalistically for a mandate that was rooted exclusively in politics and personal/public popularity. Irrespective of the overturning of the law by the Courts, however, school-related conflicts in Pennsylvania continue to illustrate that in matters as personally and emotionally engaging as recitation of the pledge, the letter of the law remains significantly less powerful in the moment than the power of personal or community preference.

Chapter 5 focuses on Florida, a state that also employed a bypass strategy that included parental involvement in enforcing its mandated-pledge initiatives, but Florida's effort illustrates a longer history and a more intransigent commitment. More than any other case state, Florida illustrates the pre-9/11 conservative cultural commitment to traditional conceptions of school-based patriotism, and it illustrates too a current example of conservative cultural commitments to the

Pledge of Allegiance and the political rhetoric that takes advantage of that commitment to achieve broader goals. To this day, this commitment to a rigidly mandated pledge remains written into state law even though it mandates that schools adopt the illegal requirement that non-pledgers must stand for the pledge and mandates the largely illegal provision that students must first gain parental permission to act on their right to opt out of the pledge (but still remain standing in respectful silence, as per state law). Even though the 11th Circuit Court of Appeals adjudicated these requirements as entirely and selectively unconstitutional, respectively, these requirements persist in state law, and they continue to retain popular appeal among large numbers of citizens and among some members of the school community—especially after the events of 9/11. Florida schools and students have regularly experienced conflicts related to these commitments, and schools continue to attempt to mitigate their compliance with a state law that clearly violates the U.S. Constitution.

These cases taken together illustrate the ways in which the resurgent desire to compel children to pledge allegiance largely ignored explicit debates about educational interests regarding promising practices in civic education but rather focused on debating pledge mandates in terms of contemporary culture-war issues such as multiculturalism and conceptions of national unity and identity. Taken together, they also show state legislatures' retreat from local control of schools in favor of the partisan culture-war pull to mandate the pledge on a state level and by so doing to install more deeply their larger cultural and political priorities. The politicization and culture-war tenor of the mandate efforts are further evident in the

rhetoric of the legislative debates and the lawsuits that followed, lawsuits that in Pennsylvania and Florida resulted in a Circuit split regarding student versus parents' rights relative to First Amendment freedoms that still remains unresolved.

Ch. 1: Minnesota 2001—Before & After 9/11

As much as any state, Minnesota illustrates the competing interests and conceptions regarding patriotism and the drive of state legislators to involve public schools in their pledge-related politicking. But unlike many states, the pledge-mandate struggles in Minnesota played out intensely, publically, and rancorously in the legislature for *three* consecutive years—in 2001, 2002, and 2003—before mandate legislation finally passed (Ellis 2005, 193-98). Additionally, the mandate debate in 2001 illustrated both pre-9/11 and post-9/11 efforts to mandate the pledge and so helps make clear the connections of the mandate issue to the larger culture-war politicking irrespective of 9/11.

The pre-9/11 mandate push occurred solely in the House and was driven by conservative legislators moving their political and social agenda, an agenda that included satisfying the potent and popular veterans' lobby led by the American Legion and the VFW. Both organizations actively pressed for a mandated pledge in order to improve the patriotic moorings of children and to teach children to respect and honor the sacrifices of veterans. Various veterans' organizations successfully turned out members to lobby representatives and to attend hearings and debates on the mandate issue, and much of the pledge-mandate debate pre-9/11 revolved not around education but around which political party was more aligned with and supportive of veterans' issues, honors, and desires for unambiguous American unity.

The mandate politicking in the House also provided an avenue for social conservatives to continue their attack on the Profile of Learning education reform that had been an ongoing sore point among all parties. Conservatives, however,

were especially riled by Profile reforms based on the primary emphasis of process-oriented performance activities at the expense of foundational subject knowledge, which in social studies and civics was perceived by culture-war conservatives to be an abandoning of essential facts and understanding about American history and identity. Because of the focus on politicking by both Democrats and Republicans, very little of the mandate debates at any point addressed issues central to education such as the effect of the legislation on schools and children or the practice of pledging relative to research-based best practices in civic education.

The crisis events of 9/11 awakened much larger segments of the general public to the mandate debate and to unity concerns and so elicited involvement and discussion at many public levels. In order to analyze the legislative and public reactions both before 9/11 and immediately after, Chapter 1 will focus on the before and after events of 2001, while Chapter 2 will describe and analyze the post-9/11 atmosphere of 2002 and the resulting intensification of political and public maneuverings regarding a mandated pledge. Whether through veterans' and others' politicking for traditional Americanism and values in 2001 or the eruption of diversity-based arguments in 2002, the culture-war issues about American unity and identity would prove to be powerful drivers in the Minnesota mandate debates.

Notably, a distinguishing feature of all pledge legislation in Minnesota each of those years included an unqualified opt-out that recognized the right of any person to decline to pledge for any reason. But even with that constitutional safeguard for students and teachers, the rich record of the legislative debates and news coverage provides copious evidence of both hard and soft exceptionalism, issues related to

diversity and multiculturalism, fears regarding national unity and identity, personal and political rather than pedagogical arguments for pledge mandates, and clear and sustained efforts to achieve maximum political dividends from patriotic politicking. And even though the letter of the law protected students' right to decline, the experiences of some individuals will illustrate the ways in which the Minnesota legislature and the public imposed upon schools and students a constrained vision of patriotic and civic education in which the expectation of a mandated pledge gained great prominence independent of the pedagogical preferences and broader civic initiatives indicated by research (Bennett 2004; Westheimer and Kahne 2004; Levine, Gibson, et al. 2003).

These ongoing divisive debates evident in the Minnesota case—particularly after 9/11—further illustrate the problem of practice that confronts educators and school leaders who must navigate culture-war competitions and partisan politicking in order to transform into concrete content and school practice competing and politically charged and politically useful conceptions of patriotism and civic education.

Mandate Politicking Pre-9/11: A Proxy in the Culture Wars

In January of 2001, the Minnesota Legislature found itself with a state budget surplus, a House chamber controlled by Republicans, a Senate chamber controlled by the DFL (Democrat-Farmer-Labor party or, more commonly, Democrats²), and a governor who was elected as a Reform Party candidate but who by then was identifying himself as an independent (*Session Weekly* 2001). Governor Jesse Ventura's priority agenda items included property-tax reform and a transition to the state providing all funding for K-12 education. Republican Speaker of the House Steve Sviggum listed tax reductions as his party's top priority, while House Minority Leader Tom Pugh said that the Democrats would seek to balance tax relief with increased spending in education and human services (Maeda 2001). Nowhere in any of the legislature's official publications did any member mention his or her intention to focus on the pledge or the battle that was to come, first exclusively in the House in 2001 but in both chambers by 2002 and 2003.

Minneapolis Star Tribune columnist Doug Grow, however, wrote in January of 2001 how he noticed "one of those little three-paragraph items buried in a pile of state government news in the back" of the *Star Tribune*. His recognition of the cultural conflict embedded in a pledge mandate placed him well ahead of other reporters in recognizing the political battle that would come. Grow immediately interviewed the Senate bill's author, Bob Kierlin (R), who said he began getting emails based on that buried newspaper blurb.

² To aid in clarity, I will refer to DFL members as Democrats, but the more common term among Minnesotans is DFL for the party and DFL'er for Democrat.

That the pledge was part of a larger struggle about conflicting values quickly became clear to Kierlin, who described receiving many “pats on the back” but said a third of the messages he received opposed a school-mandated pledge based on the forcing of a loyalty oath and also the multicultural and religious complications inherent in a school-mandated pledge with the words “under God.” Kierlin, who would never get a chance to introduce Senate File 303³ to the 2001 Senate and who chose not to be the sponsor in the two years following, was described by Grow (2001) as “a well-intended man” caught in a contradiction when Kierlin himself said that he only wanted the mandate “to go forward if it’s the right thing to do. I don’t want people to say the pledge because they’re forced to. I want them to say it because it brings us together.” Kierlin stepped away from active participation on the bill in 2002 and 2003 after he experienced firsthand the conflicting opinions swirling around a mandated pledge early in 2001. (To see the various iterations of the pledge bills in Minnesota, see Appendix B.)

In the House, a companion to Kierlin’s Senate bill, which was filed but did not make it to the floor of the Senate in 2001, was authored by George Cassell, a 66-

³ The House and Senate bills as initially filed in 2001 (HF 915 and SF 303, respectively) were nearly identical. Kierlin’s Senate bill called for recitation of the pledge at least once a week in public schools to be led by the teacher or teacher’s surrogate or over a school’s intercom system. Each bill included the following opt-out: “Any student or teacher who objects to participating in the pledge recitation must be excused from participation without penalty.” There was also a provision that school boards by a majority vote each year could waive the requirement. The House bill also included language declaring that boards that opted out may adopt a local policy regarding pledge recitation. To study the bills in their original form, see https://www.revisor.mn.gov/bills/text.php?number=SF303&version=0&session=ls82&session_year=2001&session_number=0 for the Senate bill or <https://www.revisor.mn.gov/bills/bill.php?f=HF915&y=2001&ssn=0&b=house> for the details about the House bill.

year-old Republican and former school superintendent. Cassell did not share Kierlin's conflicted thoughts about a mandate, and when he introduced House File 915 in the Education Committee on March 6, 2001, he was sufficiently confident of the bill's support that he had not arranged any testifiers on the bill's behalf. Cassell described the mandate legislation as a "simple" bill that would require public schools to include school-wide pledge recitation at least once a week, and he noted that students or teachers could opt out at their discretion.⁴ Cassell asserted that patriotism was waning and that school choices and student behaviors in this regard needed to return to the public eye, presumably in order that local leaders of public schools would honor majoritarian expectations for regular pledging (*HF915 2001a*).

The only audience member to testify that day was Virgil Persing, the legislative chairman for the Minnesota American Legion, an organization that in 2001 included 116,000 members in Minnesota, according to Persing. He emphasized the Legion's support for the bill and stressed the critical nature of instilling patriotism and respect for the flag in schools and in children. Persing lamented that he regularly witnessed parade-goers continue conversations or attend to other matters when the colors were presented, and he reminded the audience of Red Skelton's tribute to the pledge and to the importance of understanding the meaning of each word in the pledge (*HF915 2001a*). Given his use of these arguments to support mandated

⁴ Cassell's bill called for recitation of the pledge at least once a week in public schools to be led by the teacher or teacher's surrogate or over a school's intercom system. HF 915 included the following opt-out: "Any student or teacher who objects to participating in the pledge recitation must be excused from participation without penalty." There was also a provision that school boards by a majority vote each year could waive the requirement. The House bill also included language declaring that boards that opted out may adopt a local policy regarding pledge recitation.

pledging, it seems reasonable to assume that Persing believed that students who consistently recited the pledge would also grow to understand it and that teachers would take the opportunity to teach students about the meaning of the pledge. In a larger sense, Persing's pledge advocacy on behalf of the American Legion was also part of a comprehensive Americanism effort by the Legion to encourage American-made American flags in each classroom, the inclusion of and respect for the National Anthem in school and public activities, the teaching of flag etiquette by schools, the inclusion of knowledge and remembrance of veterans and active military by school children, and similar initiatives (Americanism Position Paper 2014).

Cassell correctly predicted that this bill in the House would have strong bipartisan support, but it was a support more evident in the final House vote in the spring of 2001 than in the debate itself. A number of legislators, for example, offered politically motivated oppositional comments or amendments like requiring American-made flags, but they still voted in support of the mandate itself, a sign perhaps of bipartisan affection for the pledge (if not necessarily the school mandate) and/or of the risk of political fallout for opposing a pledge bill that included endless roll-call votes⁵ that would be witnessed by veterans in attendance and that could be used later in campaign literature.

⁵ The default option was a voice vote, which expedited the process considerably. However, roll-call votes provided a popular political tool on controversial topics. Roll-call votes needed to be explicitly requested according to parliamentary procedure, and each roll-call vote was recorded on a large electronic board on which each legislator's name appeared with a red dot for a "no" vote and a green dot for a "yes" vote. The person-by-person details of a roll-call vote also appear as part of the official archived record of the House and Senate proceedings.

This initial House debate prior to 9/11 would preview the types of arguments and range of actors that would persist in the House over the next three years. It would also illustrate vividly the intense politicking at play when attempting to accommodate and leverage entrenched views on patriotism, American identity, and national unity. For example, the veterans' lobby and the desire to gain their support proved powerful each year, as did the cultural imperative on behalf of conservatives and traditionalists to reclaim a more prominent patriotic and moral authority in public schools via a mandated Pledge of Allegiance, a position that gained much greater traction in 2002 after the events of 9/11. And the powerful political leveraging of the pledge would be evident in the explicit requests for roll-call votes, the defense of the provision to make recalcitrant school boards vote on the pledge mandate each year, the strong emphasis on the rhetoric of patriotism and support for veterans, the absence of substantive considerations of the pedagogical effect of the legislation on civic education and students, and the omnipresent wariness of mandate opponents to state their concerns without first employing extensive rhetoric boosting their own patriotic credentials.

Evidence of these forces and of the emotional and political nature of mandating the pledge arose immediately on the House floor—first in the regular attendance of Legion members and other veterans and the exigent politicking for their support, and then in politicking to amend the mandate bill by requiring students at private schools to pledge, as well. That amendment, offered primarily as a political strategy to put conservatives on the defensive *against* mandated pledging, elicited multiple unsubstantiated but emphatic assertions about the meritorious patriotic practices

of religious schools and the distressing patriotic deficiencies of public schools, which in itself was illustrative of the culture-war conflict over the liberalizing of public schools and the place of religion and American identity in public education.

The debate over the mandatory pledge bill would over the next years frequently veer off to include many of these types of tensions in the larger culture wars and to score political points against their opponents. Another example lies in the efforts of pro-labor legislators to refocus the debate on what they described as true patriotism: the creation of American jobs by mandating that American flags displayed in American public schools be manufactured in America by Americans. In another example, before Cassell introduced the mandate bill itself to the full House, he requested a point of personal privilege in order to recognize the many veterans who filled the gallery that day. Cassell asked the House members to stand and pay tribute to the veterans from “the American Legion, the VFW, the Order of the Purple Heart, Ex-Prisoners of War, Korea War Veterans, Disabled American Veterans, and Minnesota Veterans’ Home board members” (*HF915* 2001b). Although no doubt expressing genuine respect for veterans, Cassell also successfully reminded his opponents that if they opposed his bill, they would risk angering a powerful and popular constituency.

Opponents of the bill also faced repeated roll-call votes, forcing them to go on the record over and over against a bill that was repeatedly framed as a test of patriotism and a test of respect and honor for military veterans (Gottfried 2002). Reporter Anthony Lonetree (2001) would describe the final House vote a month later as occurring “before a gallery jammed with military veterans waving tiny

American flags,” veterans like Vietnam-War soldier Joe Metcalf who drove 120 miles across the prairie to “help put a little patriotism back into Minnesota schools.” Metcalf’s comment mirrors a popular view in the Minnesota debates: that pledge recitation represented tangible traditional patriotism, a quality perceived to be lacking in young people and in many Minnesota public schools.

After recognizing one by one the veterans’ groups in attendance to witness the mandate debate, Cassell proceeded to introduce the bill.⁶ A former school superintendent, Cassell stated repeatedly in the first four minutes of his introduction that “I know how school boards operate” as a justification for the mandate itself and for a yearly public meeting and revote for school boards that wanted to waive the mandate. Cassell seemed to be implying that school boards would discreetly eliminate the pledge while the public was not watching. Thus, he justified creating that special provision to discourage boards from exercising local authority to override the state mandate.

Cassell then related a story that he attributed to U.S. Senator and former prisoner of war John McCain. According to Cassell, one of McCain’s fellow prisoners was severely beaten when captors discovered a tiny American flag sewn to the inside of his shirt, a flag to which all the American POWs daily pledged allegiance. Cassell asserted to the members of the House that this story of sacrifice by servicemen provided the reason for the mandate bill, “that we do permit these opportunities, that we do set the guidelines for these opportunities, so our young people might know the sacrifices that have been made that we might enjoy the

⁶ For complete details, see the prior footnote or refer to Appendix B, which provides details verbatim.

freedoms that we have today” (*HF915 2001b*). Throughout the Minnesota debates, this imperative of understanding and honoring the commitment and sacrifices of veterans and active military through mandated pledging would be a powerful and prominent argument that spoke to traditional values and respectful behaviors.

Cassell chose to describe the proposed mandate as an action to “permit these opportunities” to pledge allegiance, but the pledge had never been prohibited in Minnesota schools; in fact, a Minnesota School Boards Association survey early in 2001 showed that 169 of the 230 responding schools regularly included pledging and that 142 of those schools pledged daily (Lonetree 2001). The insinuation that few schools were actually pledging and that some actively prohibited pledging was common not only among some conservative legislators but also among community respondents and conservative blogs where these assertions often concluded that resistance to pledging was out of step with traditional majoritarian values such as love of country, respect for the military, and embrace of “one nation under God.”

Cassell also asserted the act of reciting the pledge would help students “know the sacrifices that have been made that we might enjoy the freedoms that we have today,” though he did not specify how recitation would accomplish this nor did he support amendments for more patriotic study. Cassell may have believed that including the pledge would lead to organic discussions of sacrifice on behalf of the nation or perhaps a greater awareness of patriotic identity that would eventually generate organic interest in learning more about sacrifice and service. Clearly, Cassell wanted at the very least to signal his respect to the nation and to veterans by supporting the pledge mandate, and he created a political situation where not

supporting the mandate might be seen as not supporting veterans or patriotism. Hence, throughout the debates both sides competed to present their ‘credentials’ as veterans’ supporters or as patriots who had sacrificed for their nation, and this dynamic overwhelmed much of the substantive education-based arguments in favor of or in opposition to a mandatory pledge law for public schools.

Rep. Harry Mares (R), a high-school social studies teacher for 36 years and the chair of the Education Policy committee from which the bill had emerged, opted not to address the education-based arguments for a mandate but further buttressed Cassell’s emphasis on a pledge mandate as veterans’ due. Mares spoke declamatorily about his unqualified support for the mandate and reprised long portions of a Memorial Day speech he delivered in 1999. Mares recited the pledge itself, included long quotes from the Gettysburg Address, and read a letter he said had been left by a child at the Vietnam Memorial in Washington, D.C. Mares concluded his address with a numerical reporting of the number of war dead from World War I, World War II, Korea, Vietnam, Grenada, the Persian Gulf conflicts, and the current wars, and he solemnly finished with the following: “Every war dead deserves a moment of silence and respect. Imagine them rising out of their graves and if they could speak with one voice, ‘Make the most of your freedom and privileges; we have purchased them with their lives’ ... I personally feel every vote should be a green vote. But that’s what is great about America—we all won’t be. [Long pause] And they purchased *that* with their lives” (HF915 2001b). For Mares, a career social-studies teacher who was born in 1938, a mandated pledge in and of itself was an essential tribute to veterans and a testimony to the greatness of the American democracy that so many

had sacrificed to sustain, and that speech was his lone participation in the floor debate in the Minnesota House.

Outside of a political setting like the legislature, this line of reasoning could be predicted to elicit counterpoints about the role of schools in teaching children about the sacrifice of veterans and about whether the pledge was the best vehicle for that teaching, but a politically essential hallmark of legislative debate is that it does not require or encourage cohesive argumentation. Rather, floor debates are governed by the procedural orderliness of parliamentary rules. This structure expedites and manages participatory fairness, and it also facilitates the politicking at the heart of legislative action. Although scholars of political discourse and effective politicians understand that successful politicking requires great “myth makers” and “storytellers” rather than “propositional coherence” in public policy (Ignatieff 2014), the absence of cohesive argumentation in the mandate debates had a consequence: Issues like students’ civil liberties, best-practices pedagogies, and the impact of the legislation on schools and students were either never explored or were only briefly addressed and in piecemeal fashion. Instead, in keeping with the general nature of politics and the special potency of culture-war politicking in service to broader interests (Hunter 1991, 274-287), most legislative speakers used the mandate forum to boost their patriotic credentials through personal storytelling, reframe the debate to advance other issues of particular importance to them, or score political points for themselves and against their opponents.

Bruce Anderson (R), for example, shared a long story about his childhood experiences learning to fold flags, which motivated Mindy Greiling (D) to recall at

length how she learned flag etiquette in Girl Scouts. She then used that soft narrative lead-in to reframe the debate to criticize Republicans for providing only symbolic support to veterans through the pledge mandate rather than supporting legislation for more college tuition for returning soldiers, for more and better VA medical care, and for more substantial services overall for veterans. In another prime example later in the debate, Betty Folliard (D) wanted simply to state that she supported an amendment on the floor, but she prefaced that single remark with nearly two hundred words about the military service and patriotism of her father, father-in-law, and uncles before transitioning to details of her own service in the USO during Vietnam and her frequent impassioned childhood renditions of singing the Star Spangled Banner from atop a chair (*HF915 2001b*). Folliard's brandishing of her personal patriotic resume would be matched and exceeded by speaker after speaker this year and in the two years following. The sheer volume of patriotic self-identifying that entered the legislative debate—even before 9/11—speaks to the challenges of successfully navigating patriotism-related political minefields, which in the pledge debates proved to be a decisive advantage for advocates of the mandate.

In partial contrast, Cassell himself in 2001 engaged in relatively little politicking beyond his recognition and leveraging of veterans and his desire to dampen school board waivers. At times he even tried to minimize the politicking of fellow Republicans in order to preserve broader support for his “simple” pledge bill. His speeches in favor of honoring and supporting veterans also appear to be heartfelt rather than just politically driven, as Cassell disclosed in 2002 that his own son was

a Navy veteran who was gravely wounded in service to his country. Nonetheless, whether intentionally or not, Cassell's own celebration of veterans set the tone for politicking to gain the moral and political high ground on veterans' issues, which dominated much of the debate.

Politicking also heavily influenced discussions about education during the pledge debates. Although one might expect debate about a pledge mandate in schools to address best-practice civic pedagogies or students' civil liberties, none of the speakers of either party had yet addressed the pledge legislation in these terms. Instead, conservatives gained points with their constituencies by linking mandate opponents to Minnesota's endlessly controversial education-reform effort known as the Profile of Learning,⁷ which was targeted for repeal by Republicans. Even though

⁷ The Minnesota Graduation Standards, more commonly known as the Profile of Learning, was a multi-year 1990s education-reform effort that included new academic standards and a statewide assessment. Meant to replace seat-time Carnegie Units as the requirement for graduation, the Profile of Learning included a Basic Skills Test and a varying set of content standards the attainment of which were to be demonstrated through performance-based assessments of each student; graduation would be contingent on passing both the Basic Skills Test and the performance-based assessments. Critics varyingly claimed there was too large a focus on vocational education; that the social studies standards were entirely lacking in specificity and crucial core content; that the content standards overall were vague, untestable, lacking in key subject matter, and lacking rigor; that the performance assessments were unwieldy and impractical, and so on. The Profile generated yearly repeal efforts in the House, and it was finally repealed in 2003. Columnist Doug Grow (2001) described a Profile environment as one where "students are expected to learn through individual research and teamwork, instead of through traditional textbooks and lectures." To read the House's 1998 Information Brief from its Research Department, see <http://www.house.leg.state.mn.us/hrd/pubs/profile.pdf>. For a policy analysis on the impact of the Profile reform on teaching and learning in English and social studies classroom, see <http://epaa.asu.edu/ojs/article/view/235/361>. For more on opinions about the Profile of Learning and efforts to repeal it, see "House Dumps Profile of Learning" http://news.minnesota.publicradio.org/features/2003/02/17_scheckt_profile/ or

it was only marginally supported by Democrats due to enormous problems with logistics and implementation, conservatives' sharp and heavily politicized attacks against it had put liberals in the position of defending what Minnesota Public Radio described as a "system of statewide curriculum guidelines that extols the virtues of 'hands-on' learning, and which encourages children to 'show what they know'" through performance-based assessments rather than pen-and-paper tests of discrete knowledge" (Kaste 1999). By linking opponents to the pledge mandate with support for the Profiles of Learning, therefore, conservatives were able to expand the education-based battleground in Minnesota's culture wars from the curriculum to the pledge. They also attempted repeatedly on the House floor to use Cassell's popular pledge bill as a vehicle for a controversial amendment to terminate the Profile of Learning reform effort. In this respect, the educational implications of the pledge mandate both became subsumed to, and a useful vehicle for, broader culture-war politicking about educational aims and practices in the public schools.

Conservatives also potentially viewed the pledge mandate as exemplifying the kind of recitation-oriented pedagogies that should be more prominent in Minnesota schools, in contrast to more constructivist approaches. State Senator Bob Kierlin, author of the 2001 Senate pledge legislation, explained to columnist Doug Grow that the germination of the pledge-mandate legislation occurred when he and "some of his colleagues in the Republican caucus were expressing concerns about patriotism

Diane Ravitch's review published in the *American Experiment Quarterly* in 2001: http://heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/8311.pdf. Also, the archived pages of the conservative group EdWatch, which is now a part of Education Liberty Watch, make available extensive links to their commentary about Minnesota's Profile of Learning, the state's social-studies standards, and so on. See <http://edwatch.org/ab_state.html>.

fitting into classrooms where open-ended and investigatory Profile of Learning teaching concepts are used” at the expense of traditional subject-matter content (Grow 2001). David Dudycha, an administrator in the Minneapolis Public Schools, rejected Kierlin’s fear and asserted instead that students in a Profile classroom would “do more than memorize words; they also learn the meaning of the words and the context in which they were spoken” (Grow 2001). But many conservatives seemed to believe that memorization itself was at the heart of learning, and they advocated for traditional transmission-of-core-knowledge approaches to history and civics that emphasized American exceptionalism and the ‘grand narrative.’

This confluence of the mandate legislation, the Profile of Learning repudiations, and the intensifying of culture-war politicking was also evident in the rhetoric and activism of Minnesota state senator Michele Bachmann, an avowed culture-war conservative and national activist on behalf of those causes. Bachmann, for example, would be a prominent advocate for the mandate when it reached the Senate in 2002, and she would employ classic culture-war rhetoric in defense of a mandated pledge.⁸ Bachmann’s backstory, however, included the launch of her political career as a spokesperson and leader for the Maple River Education Coalition (MREC)⁹, a

⁸ Bachmann’s contributions to the pledge debate will be detailed in Chapter 2, but as a preview she would emphasize in her rhetoric the American Creed, the ethos of America, and the importance of transmitting to students a commitment to American exceptionalism.

⁹ The Maple River Education Coalition was eventually renamed EdWatch, and then the mission of EdWatch was assumed by the Education Liberty Watch. For more, see their websites: <http://www.edwatch.org> and <http://edlibertywatch.org>. Education Liberty Watch on its homepage includes a statement of belief that a good education reinforces “the sovereignty of the United States and American Exceptionalism” and “the American Creed,” which creates “people from many nations gathered under one American Creed.”

group that formed to overturn the Profile education reform in Minnesota. Bachmann wholeheartedly advocated the pledge mandate and similar traditional curricular content and simultaneously sought the repeal of the constructivist Profile of Learning reform. Bachmann and her fellow MREC activists would variously assert that the Profile reform was intended to “accomplish a one-world system” in which everyone was controlled by a one-world government, that the Profile reform was a direct result of the Goals 2000 plan from the Clinton Era, and that it was modeled on the education systems of Cuba and China. Other MREC contentions asserted that the Profile emphasized skill-based training at the expense of a broad liberal arts education (Kaste 1999). MREC activists also described the Profile as “leading the nation toward a pantheistic, pro-abortion, one-world society” (Murphy 2011). While some of the position-taking by MREC’s most conservative members may be perceived as far religious-right, the Maple River Education Coalition positions taken as a whole echo many of the culture-war concerns among mainstream conservatives and moderates about preserving American identity and sovereignty in a globalizing world, preserving and transmitting capitalistic values, and preserving and transmitting traditional values and subject-matter content to young people.

In that context, conservative legislators’ linking of the repeal of the Profile reform to the promoting of the pledge mandate represents not only shrewd politicking but also a further illustration of the ways in which the pledge issue represented a contested view of the purpose and direction of education in American citizenship and overall education in diverse American schools. Wood’s (2008) description of conservatives’ alarm regarding educators’ emphasis on relative truths

and of the dangers in inappropriately channeled open-ended investigations could have been written specifically about the Profile conflicts and its constructivist learning in social studies, as evidenced by the reports of EdWatch to its culturally conservative constituency. For example, during legislative debates in 2004 to replace the Profile standards with more traditional content standards in social studies, EdWatch, which was the evolution of Bachmann's Maple River Education Coalition, reported regularly to its supporters about legislative committee hearings. The EdWatch reports illustrate how this culture-war divide manifests in debates over education. For example, EdWatch briefings illustrate the division in whether and how to study and interpret the Founding Documents, the division over the value of deep content knowledge that includes memorization and recitation such as the pledge, the division over the value of activities and inquiry without first learning "the foundations of knowledge," and so on (EdWatch 2004). In addition to providing legislative briefs, EdWatch actively campaigned for its preferred emphasis on traditional subject matter and methods in social studies. EdWatch eventually evolved into its current form Education Liberty Watch, which engages in ongoing national advocacy for schools to include and emphasize "the American Creed," *e pluribus unum*, and classic American exceptionalism.¹⁰

¹⁰ Liberty Education Watch defines the American Creed as follows: "Good education in the United States promotes the American Creed (Principles of Liberty) as defined by the Declaration of Independence and U.S. Constitution, including national sovereignty, natural law, self-evident truth, equality, God-given inalienable rights of all people, the right to life, liberty and private property, the consent of the governed, and the primary purpose of government being the protection of citizen's inalienable rights. The American Creed creates 'e pluribus unum' (out of many, one), i.e. people from many nations gathered under one American Creed." For additional

Education Liberty Watch clearly aligns itself with conservative positions in the culture wars, and these positions echo the analysis by Hunter (1991, 42-49) that the culture wars represent a battle to control and define moral authority in America. For example, Education Liberty Watch makes concomitant with its hard version of American exceptionalism the denunciation of government overreach and interference in such forms as universal preschool, denunciation of truth as a relative construction based on choice of interpretive lens, and denunciation of promotion of cosmopolitan interests such as climate change at the expense of American sovereignty.

Given the guiding mission of MREC, its EdWatch heirs, and its political supporters in the Minnesota legislature, the strategy by some conservatives to link the repeal of the Profile to the advancement of the pledge mandate epitomizes the politics at play in the pressure to mandate the Pledge of Allegiance in public schools. To be clear, however, not all mandate linkages to the Profile lay in positions as far right as Bachmann's; original Senate sponsor Bob Kierlin, for example, expressed his deep concern about the content gaps in the Profile social-studies standards, a concern that was shared by individuals across partisan lines and that mirrored concerns about the National History Standards, and he wondered if the pledge mandate could help fill that content gap regarding traditional American history (Grow 2001).

Back on the floor of the House, the attempt to attach the potentially incendiary Profile battle to the widely popular pledge mandate appealed to some legislators,

details, see the site's mission on its homepage: <http://edlibertywatch.org/our-mission/>.

but Cassell perceived the danger in such a controversial linkage and temporarily stalled the Profile politicking by attempting to refocus on the importance of patriotism and the bonus of this mandate not costing any taxpayer money. Cassell's hope for a "simple" patriotism bill continued to fade, however, when simmering tensions erupted related to the political stakes of gaining support of the powerful and popular veterans' lobby. Democrats in various committees had been proposing legislation for more housing, health, and education benefits for veterans, but they had met with little committee success for these appealing but costly initiatives, which in and of themselves may have been politically strategic since Democrats in the House lacked the numbers to move bills out of committee on their own. Democrats framed this lack of committee success on behalf of veterans as the work of intransigent and uncaring Republicans, and this tactic resulted in an accusatory back-and-forth regarding 'real' support for veterans as opposed to the symbolic support of the pledge mandate. Majority Leader Tim Pawlenty (R) protested Democrats' terse comparisons of Republicans' feel-good pledge bill to their own bills proposing substantive expansion of direct services for veterans. Pawlenty lurched through an awkward defense of the mandate legislation before making rambling reference to a veterans' memorial plaque in a community hockey arena as evidence of how they all should honor soldiers' "ultimate sacrifice" and contributions every day (*HF915 2001b*).

Democrats in this exchange may have scored a few points with the veterans in attendance, but the pledge legislation was both a national and state focus of the American Legion and VFW, and the support of the veterans' lobby did not waiver.

Like nearly all of the House speakers before him, Pawlenty at no point argued for the bill on its education merits but focused instead on veterans' interests and the importance of patriotic tradition, a political predilection that would continue to characterize this and future debates. And even though House opponents of the mandate could illustrate the ironies in children pledging allegiance to flags manufactured in China or the inadequacy of a pledge mandate as the primary pro-veterans' legislation when so many stark needs existed for veterans' healthcare or housing, the power of more effective politicking and the traditional attachment to the pledge rendered each of those potentially-damaging ironies relatively powerless.

The next effort to reframe the debate arose in the form of a Democrat-led culture-war trap in which mandate opponents moved to include all private schools in the mandate. Joe Opatz (D) brought the motion to add private schools to the mandate, but not before praising Cassell and his efforts on behalf of the "fine idea" of the pledge mandate. Opatz noted that he himself was a product of private schools and that he wanted to make sure those students gained the benefit of pledging just as he had. And before he finished his motion to amend, he asked for a roll-call vote.

This stratagem by the Democrats to propose extending the reach of a government mandate—even one as popular among conservatives as the Pledge of Allegiance—into conservatives' sacred ground of private and religious enterprises elicited heated culture-war debate about the role of the state, the role of mandates relative to private and religious schools, and the perils of overreaching into non-public entities. A few fellow Democrats like Phyllis Kahn played along with Opatz by arguing at length for the amendment that all schools pledge and by contributing

instances where private schools availed themselves of public support and therefore opened themselves up to a mandate as important as the pledge. Some legislators also appeared genuinely to support the amendment because of the importance and universality of the pledge to all Americans. In general, however, Republicans found themselves in the exasperating position of having to argue *against* the pledge in order to argue *for* the rights of private schools. Marty Seifert (R), a former high school social studies teacher and Catholic school graduate who himself would push the incendiary amendments to repeal of the Profile of Learning, vehemently expressed his support for only mandating pledging in public schools, and he voiced his disgust with what he described as efforts to stall the bill. His politicking manifested in a comment about mandate opponent Phyllis Kahn's (D) advanced age—she was born in 1937 and Seifert in 1970—and derisive comments about supporters of the Profile of Learning. Seifert finished his speech by announcing that all Catholic schools already say the pledge, asserting angrily that Catholic schools “know how to operate their own schools without your help.”

This Democratic strategy to amend the bill to include private schools flowed back and forth among several speakers for nearly 40 minutes and became increasingly tense as the competing comments mounted and obvious culture-war themes emerged. Speakers attempted to assert their conceptions about moral authority, the public good, and the rights of private individuals and private enterprise. A point emphasized by four different supporters of the mandate who opposed the private-school amendment was that every private school already required daily pledging, an assertion wholly unsupported by any speaker, nor was it

likely to be true given that in 2001 more than 500 non-public schools were operating in the state (*Minnesota Education* 2014). The tone and content of this portion of the debate rapidly devolved into moralistic condemnations of the patriotic failings of public schools and the patriotic righteousness of private ones.

Rep. Mark D. Olson (R) was particularly agitated by the proposal to mandate to independent schools, and he rose to deliver a long rebuttal strongly indicative of the culture wars and hard exceptionalism. Olson included a medley of culture-war motifs such multiculturalism, ecology, globalism, tolerance, national pride, private versus public, and yearning for the values of yesteryear. His voice rising in volume, Olson eventually turned his attention to what he called the “pledge to the earth,” a derisive reference that would be made repeatedly in this and future debates in order to advance the argument that non-traditional multicultural-inspired sentiments had infested public schools—but not private ones—at the expense of the Pledge of Allegiance. Said Olson, reading the text from an unspecified website before lambasting that text:

[Reading] ‘Imagine reciting a pledge that embodies inclusive expansiveness, tolerance, and ecology—it was borne of much contemplation and is inspired by the new millennia and an urgency to promote attitudes that lead children away from violence,’—as if our Pledge [of Allegiance] does not do any of those things. It does all of them! That’s what America is about. Interestingly enough, as you look at this pledge to the earth, which basically is a pledge to the world—[Reading again] ‘I pledge to the health of the united world to the universe in which we stand, one planet, born of love, with rights

and responsibilities for all'¹¹—the rights and responsibilities are reversed...

The pledge to the flag has a history, and I don't believe we needed laws [in prior years] to tell our public institutions to exercise liberty and inculcate the patriotism that it represents, but today we need it in our public schools.

(*HF915*, April 18, 2001)

Olson's speech provides insight into how these types of fears of disunity directed toward the pledge and civic education pose challenges for public schools and best-practice pedagogies. In his full speech, Olson repeated six times his apocryphal belief that every private school was already regularly reciting the pledge, and he extrapolated that belief to assert an unsubstantiated causal relationship between the absence of pledging in public schools and parents' decisions to flee the public school system for private schools. He also made claims about the history of the pledge that were not accurate.

Olson did not display sharp command of facts in his speech, but his general argument aligned with culture-war concerns about globalism and multiculturalism expressed by Liberty Education Watch and that spoke to conservatives' desires for an "essential unity" (Wood 2008, 133) rather than a privileging of unpredictable diversity. Olson asserted that "things" were "out of line" as evidenced by a pledge to the earth that he said was being recited in schools in his area.¹² Even though he

¹¹ For more on the pledge to the earth, see Appendix D.

¹² The lone reference to a pledge to the earth specific to Minnesota was made by newspaper columnist Joe Soucheray (2002) who said that a parent had complained to him about a handout given to early-elementary children on Earth Day; the handout included activities that children might do in celebration of Earth Day, and one of the optional activities was to say a pledge to the earth. The text of such a pledge was not included in the column.

spoke angrily and at length against this pledge to the earth, he did not provide any evidence of the schools that were participating or with what frequency, and he described this as a “pledge to the world,” an implicit warning against cosmopolitan forces trumping national interests. Olson concluded his lament of present-day patriotism in public schools by offering a position reminiscent of culture-war rhetoric that would be common in this and future debates about mandated pledging in the Minnesota legislature: In the past, public schools and other institutions could be trusted to provide patriotic instruction in the form of the pledge and similar activities, but now mandating schools to comply was the only option to guarantee that children would get the traditional patriotic education that they needed to be good citizens with a traditional sense of American identity and unity.

By Minnesota House standards in 2001, Olson’s choice of words may have been near the far right of that spectrum, but Olson’s general viewpoint was one that was and is deeply entrenched among some conservatives, and especially some mainstream Christian conservatives who have sought leading roles in the culture wars. Dr. James Dobson of Focus on the Family and Dr. Laura Schlessinger of “Dr. Laura” fame both have large followings among Christian conservatives and both regularly criticize public schools and the divisive and subversive effects of contemporary multiculturalism. Dobson on his website asserts that a destructive form of multiculturalism permeates public education and public schools and that it is exclusively a proxy for “moral relativism—not respect for differing cultures.” Dobson writes in his ‘Solid Answers’ column, “Unfortunately, the terms multiculturalism and diversity have come to have very different meanings when

used by the cultural elite. They are a kind of Trojan horse in which to smuggle the concept of moral relativism into the heartland of Western culture.”¹³ This “Trojan horse” concept of the dangers of multiculturalism in public schools would arise implicitly as the debates progressed, both in Minnesota and elsewhere. While there never occurred specific attempts to reach consensus on the definition of common terms such as multiculturalism and diversity, there clearly were value-laden personal and partisan definitions in play among the politicking around the pledge and the larger culture wars—for instance that some diversity might be okay but that multiculturalism took diversity too far.

Already in this single Minnesota House floor session, politicked points of contention had already included these types of concerns about multiculturalism, concerns about the questionable state of patriotism among children attending public schools, the imperative of honoring and supporting veterans, the desire for better flag etiquette, the issue of mandates versus local control, multiple loaded references to the Profile of Learning, and tense comparisons between public and private schools. Still absent was the politically nonadvantageous discussion of students’ best interests and substantive consideration of the pledge as a best practice in civic education.

As the 2001 House vote on the mandate bill neared, Alice Hausman (D) went out on a political limb when she cautiously questioned whether a mandated pledge would actually foster American democratic values: “We all have such a different

¹³ For more on Dobson’s beliefs about multiculturalism, see <http://www.drjamesdobson.org/Solid-Answers/Answers?a=7078fca7-5c67-408e-9ec2-0a9d672ad70c>

view of what freedom is,” Hausman said. “Many in the balcony probably fought to insure our freedom, and I wish they were down here now so I could ask them this question, but I’ll just ask members: Should our children be free to honor their country or should they be ordered by the state? One might suggest that ordering of the pledge might be a desecration, a cheapening, of the freedom we seek to exercise” (HF915 2001b). While that may have been a reasonable question on its face, shrewd politicians who may have agreed with her in principle were well aware that opposing the pledge—even a mandated one—was politically dangerous. Moreover, supporters like sponsor George Cassel, who had spoken of the essential nature of pledging in terms of American unity and the honoring of veterans, implied by their speeches that they would rather force the pledge than leave to chance and to unreliable school boards the forming of children’s opinions regarding patriotism and support for veterans.

Hausman’s question to her colleagues—asked late in the process and cautiously self-answered with her “one might suggest” diction—went unacknowledged by the next three speakers, all of whom were proponents of the mandate. The third speaker, fellow Democrat Irv Anderson, avoided the legislation altogether and rose only to encourage members to donate to the World War II Memorial fund. Hausman’s question to the body to address the democratic underpinnings of a pledge mandate was not mentioned until the fourth speaker, Mark Olson.

Olson, who had earlier denounced the apocryphal surge in classrooms pledging to the earth, responded to Hausman that schools have proven they cannot be trusted with the freedom to commit to pledging on their own. In a logic that was

difficult to follow, he defined freedom as “the power to do what we *ought* to do,” and since public schools were not committing to the pledge when they had the freedom to do so, they must now be made to do so.¹⁴ He also reiterated his belief that public-school students were transferring to private schools because of the absence of regular pledging in public schools (*HF915 2001b*).

Olson’s contention that freedom had many definitions and that to him it meant “the power to do what we ought to do, not the power to do what we want to do” was a constitutional non-starter save for restrictions like yelling “Fire!” in a crowded theater or otherwise impinging excessively on the rights of others. In essence, Olson asserted paradoxically that schools and students were free *not to pledge* as long as they were *already pledging*, a compelled approach that was a direct threat both to students’ civil liberties and to more investigatory approaches to civic education.

Olson further clouded the issue of mandating patriotic expression by erroneously describing mandated pledging by schoolchildren as equal to that of immigrants taking the oath of citizenship or adult legislators reciting the pledge each day of the session. Neither comparison logically applied, however, because immigrants exercise their own free will in seeking citizenship, and legislators freely seek election and the ceremonies that attend it. And Olson finished his response to Hausman with yet another unsubstantiated causal assertion that absence of regular pledging, which would “truly inculcate patriotism,” was driving students from public schools (*HF915 2001b*). Taken in total, Olson’s attachment to the pledge, his beliefs about patriotism, his definition of freedom and its implied consequences for civil

¹⁴ As detailed earlier, a large majority of Minnesota public schools were in fact pledging regularly, and the majority of them daily (Lonetree 2001).

liberties, and his desire to impose upon public schools his own tightly constrained vision of traditional patriotic education illustrate vividly how external pressures irrespective of pedagogical evidence can create problems of practice for public schools and their students.

Even though the House floor debate featured significant disagreement about the nature of honoring veterans and the qualities of ‘true’ patriotism, the 2001 pledge mandate passed the House by a landslide vote of 126-6. The Senate version, however, languished in committee, and so Minnesota’s first big attempt to mandate the pledge died without reaching the Senate floor. But George Cassell vowed in a July 4 *Star Tribune* feature story that he would try again.

Reporter Norman Draper also interviewed various school leaders who shared their perspectives about the prospect of mandated pledging in Minnesota public schools. Elementary students at Bloomington’s Indian Mounds Elementary in suburban Minneapolis, for example, were already reciting the pledge daily and also were singing a patriotic song each day. Principal Kathleen Baldrice said this approach helped elementary children “understand what citizenship is. It’s not just being nice to your neighbors or doing nice things, but being allegiant to your country and understanding what that is all about” (Draper 2001).

In contrast, Minneapolis Public Schools spokesperson Melissa Winter explained that most schools in her urban district had chosen not to pledge as an official school-wide activity due to the high number of students who were not yet citizens and due to the religious diversity that characterized the Minneapolis public schools. According to Winter, requiring an official school-wide activity that included the

“under God” phrase was particularly problematic given the community’s diverse opinions and practices regarding religion (Draper 2001). As a point of context, the Minneapolis Public Schools reported for 2013-14 that 68 percent of their students were students of color and 21 percent were English Language Learners (Minneapolis Public Schools 2013). Evidence of this diversity may be found on the district’s website, which offers portals in the Spanish, Somali, and Hmong languages in addition to the main English-language portal.

Jan Witthuhn, who had worked as an administrator in the Minneapolis Public Schools but left for a superintendency in the small and then ethnically homogeneous suburb of Mounds View, said she noticed immediately the different approach to the pledge in Mounds View when she saw even the office personnel immediately join in: “I thought, ‘Oh, we’re in a different place.’” She noted, too, that as communities like Mounds View gained greater religious and cultural diversity in their school communities, traditional pledge routines might need to be adapted: “I think there is some sensitivity as we become more diverse, because we certainly have some [students] and families that aren’t citizens in this country. I couldn’t stand up in some other country and recite that same kind of thing... The truth of the matter is that it doesn’t fit everybody anymore,” Witthuhn said (Draper 2001).

That reality of diverse student populations, particularly in Minnesota’s urban areas, was mainly a latent issue in the pre-9/11 2001 debates, but in general schools seemed committed to a soft multiculturalism in which they could simultaneously promote American values and school curriculum without seeking to constrain or demote ethnic cultures and religious diversity. This type of *laissez-faire* approach

likely concerned Rep. Mark Olson, who on the floor of the House had warned explicitly of the threat to American values posed by globalism and multiculturalism. Conservatives' political jabs at the Profile of Learning reform echoed related culture-war concerns, but at this pre-9/11 point, potential tensions about growing diversity and multiculturalism appeared to be wrapped into the larger issue of many proponents' desires to reinstate more traditional and more explicit reverence for the flag, for the nation, and for veterans' sacrifices they believed it represented.

Opponents, in contrast, also embraced the pledge, honoring and supporting veterans, and respecting the flag and American unity, but they tempered that embrace by suggesting that a mandate was an intrusion on local control and by attempting to reframe the debate for their own political advantage. Mandate opponents in the House also knew that Senate Democrats were not giving the companion bill a hearing, and so the stakes were lowered. After 9/11, however, legislative tensions and public concerns related to diversity and unity, to multiculturalism and majority culture, would be significantly more apparent and significantly more problematic in terms of the legislature's desire to impose upon schools a mandated pledge in service to an 'essential unity' of American identity.

9/11 Lends Urgency and Local Voices to Pledge Debate in 2001

Legislators in the spring of 2001 could not have predicted that their debates about the pledge, patriotism, and American unity would be reignited at every level less than six months later due to the terror attacks of 9/11. School boards around the state took up the issue of whether and how to mandate pledging and bolster other patriotic programming, and at that point localized decisions still obtained. For

example, Melissa Winter of the Minneapolis Public Schools was interviewed again after the 9/11 attacks, and she reiterated that policies and routines regarding the pledge required sensitivity to the high numbers of immigrant students and families who were not yet citizens and to the diversity of religious beliefs: “It’s really up to the teacher to decide whether to do the pledge. It’s not required because of the diversity of our students, speaking 80 different languages, and we know not all our students may recognize the same God who’s referred to in the pledge,” Winter said (Welbes 2001).

Not surprisingly, that type of explanation—that diversity accommodations for non-citizens and non-Christians trumped the majoritarian preferences of ‘traditional’ Americans—abraded conservatives who were already alarmed by the influence of multiculturalism and the waning of enthusiastic American exceptionalism in the public schools. Conservative scholar and education analyst Chester E. Finn, Jr. (2001) denounced the primary impulse of schools and educators post-9/11 to protect Muslim students and other minorities and to urge tolerance for different viewpoints without simultaneously and even more prominently asserting that other nations and cultures must return that tolerance toward the U.S. Finn also called on educators scrambling to address 9/11 in their classrooms to assert unequivocally that the U.S. was the blameless victim in those attacks rather than qualifying the blame by long explanations of America’s past conduct in foreign affairs. Finn asserted that the type of one-way tolerance favored by liberals was tolerant of virtually everything except traditional Americanism and that is the

reason “we find so little [in public schools] about strengthening children’s loyalties toward their country, its history, and its values.”

Rick Shefchik, a reporter for the *St. Paul Pioneer Press* and a parent, wrote a poignant column in October of 2001 in which he focused not on this diversity issue but rather on the gap between transmitted heritage versus youthful experience and the way that gap narrows as one matures. He described his own childhood of daily pledging during the Eisenhower years, knowing the action was “somehow patriotic, and yet [they] were words I rarely, if ever, thought about.” Shefchik also described both his disillusionment during the Vietnam and Watergate eras and his eventual return to a deep appreciation for the “complexity and richness” of America. He recalls a renewal of gratitude that he attributed to maturity, a career, and being a “taxpayer, a husband, a homeowner, a father, and, I would like to think, a genuine patriot.”

Shefchik said he engaged his own children in discussing whether they should renew a daily pledge in their schools, and both children said no. His 12-year-old son reasoned that he didn’t “see the point. Why do you need to pledge allegiance to the flag when you’ve already pledged allegiance to the flag?” his son asked. Shefchik agreed with his son, and he warned that forcing kids to “regurgitate a set of words—high-minded emotionally charged words though they ought to be—simply dulls their meaning until they run together into nonsense.” He suggested instead that the pledge be reserved for special occasions and special transitions such as gaining citizenship, joining the armed forces, or coming of age and voting for the first time:

“...You ought to say the pledge as a rite of passage into full citizenship. By that time, you might actually have an inkling of what the words really mean” (Shefchik 2001).

Mankato East High School student-body president Kari Venem said she and her peers wanted to embrace the pledge and its sentiments after 9/11 but they also wanted to avoid rote recitation. Venem said they debated whether to pledge daily, weekly, monthly or on the 11th of every month: “We want it to mean something. Some people said if we did it every day, they wouldn’t take it seriously.” Venem said the student body settled on a voluntary recitation once a week for a one-month trial period (Fenske 2001). In terms of pedagogical practices in civic education, Venem’s description of her and her classmates’ grappling with an authentic and important problem ranks as very effective in developing civic commitments and then building the civic capacities—the skills and knowledge— to “participate in democratic deliberation and action” (Kahne and Westheimer 2003). The events of 9/11 provided both opportunity and motivation for students to examine and define their civic commitments and to practice participation in democratic deliberations and action, and newspapers in Minnesota covered numerous stories of students embracing that challenge, not only in relation to the pledge but also in relation to civic action and community service as a response to 9/11. Those localized anecdotes of students’ development of civic commitment and capacity, however, would not be shared as a part of the intense legislative debates that would reignite in early 2002.

Local Focus: Public Pressures and Pedagogical Priorities in ISD 196

American Legion Post 1776 in Apple Valley, Minnesota, wears its patriotism proudly. An American-flag backdrop fills its internet homepage, and other dominant

elements include the Post's American and military flags and featured text that proclaims "we make no apologies or excuses for our patriotism and service as all our members, at one time in their lives, have solemnly sworn to support and defend the Constitution of the United States from all enemies, foreign and domestic." Below that is posted the preamble to the American Legion Constitution. The organization's purpose, according to the preamble, includes the following: "...to uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred percent Americanism; ...to make right the master of might; ...[and] to safeguard and transmit to posterity the principles of Justice, Freedom, and Democracy...." (American Legion 2014). There are many other things on Post 1776's website as well. There are links to the newsletter, the chaplain's page, the post's motorcycle club, and the ladies' auxiliary. There's also information about the Texas Hold 'Em nights, dinner menus at the Legion club, charitable-gambling details (proceeds go to Boy Scouts, local special-education needs, the girls' lacrosse team, and Fourth of July activities, to name a few), and the U.S. Flag Code and flag facts (American Legion 2014).

In these activities and emphases, Post 1776 would not stand out much from the other nearly 15,000 American Legion posts in the U.S. and abroad. Post 1776 made the news after 9/11, however, when it declared it would withhold nearly \$100,000 in donations to the local school district a month after the terrorist attacks. The district's misstep, according to Post 1776 Commander Duane Glum, was that it was acting too slowly in mandating daily recitation of the Pledge of Allegiance at all schools in Independent School District 196 (ISD 196—Rosemount-Apple Valley-

Eagan). In fact, board member Judy Lindsay had proposed daily pledge recitation at a board meeting on September 24, 2001. Lindsay asserted that the world had changed on 9/11 and that schools had a responsibility to instill a greater sense of patriotism in students “because this is the greatest country on God’s green earth,” but the board referred it to committee for further consideration and policy development (Walsh 2001a).

Glum, however, expressed frustration at the delay: “After this tragedy, they should have used their head,” he said (Associated Press 2001a). Glum, an Army veteran, asserted that schools must instill patriotism in students and that the pledge was central to this effort: “Today we’ve got to all pull together, with us going to war and with the terrorists and all that,” he said. “That’s why we want it, because there are kids in high school who don’t know how to say it” (Walsh 2001a).

In a recent interview, former Rosemount High principal Greg Clausen (2014) empathized with the frustrations of the American Legion members who believed that traditional patriotism in schools had faded, which likely made the 9/11 public pressure and legislative routes more appealing to them than leaving the issue to the schools and students. Clausen remembers specifically how something as mundane as the updating of classrooms played a role. He says that in the gradual transition from blackboards to whiteboards, flag holders and flags were either misplaced or discarded and as a result there were many classrooms without flags, an unintentional oversight but an oversight nonetheless. Recalls Clausen, “We kind of deserved a little bit of this because we kind of let it slide.”

Initially far removed from these central-office and school-board debates, students in ISD 196 and surrounding districts had responded immediately to the attacks through student-initiated efforts that included extensive fundraising and deliberations about how best to respond through word and action. Rosemount Middle School Principal Larry Larson expressed frustration that adults were focusing on mandating student behavior rather than focusing on supporting students' own efforts to construct a unified patriotic response to 9/11.

According to Larson, his own middle-school students created a groundswell of action after 9/11 that included raising over \$7,000 for the Red Cross, displaying flags in all classrooms, and adding a pledge recitation to their Friday Pride Days. In fact, students in ISD 196's regional association raised over \$50,000 combined for 9/11 relief efforts (Walsh 2001a). Students at Rosemount High participated in that fundraising, and the school's student council also voted in September 2011 to say the pledge, though they were still thinking through the details about how best to incorporate pledging. Student Council Vice President Matt Thunselle said they were looking at school-wide pledging once a week: "If it's every day it's repetitive," he said, while a weekly pledge would "show respect, show our patriotism." He also stressed that students needed to "respect the people who choose not to [pledge]" (Welbes 2001).

For Larson and other educators attuned to cultivating patriotism through civic action, this school-based initiative on the part of students was patriotic education at its most meaningful. Larson marveled at students' capacities for developing their own patriotic response to 9/11 and implored adults to honor students' choices:

Students' efforts are "just incredible," Larson said. "How can intelligent, conscientious people not believe that it's better [for students themselves] to create something they believe in?" (Walsh 2001a). That students will learn better and sustain their effort longer for content that they believe to be relevant to them is widely documented in scholarship on learning (Meyer and Rose 2013; Marzano and Pickering 2010; Shernoff et al. 2003), and it is a position that many educators incorporate daily in their planning for student learning. But as Larson (2014) noted in a recent interview, it is also a position—a critical core concept of teaching and learning—the discussion of which was mainly absent from the legislative and public debate about the merits of a mandated pledge.

Legion leadership, for its part, wanted a pledge mandate to be written into school policy immediately. The district acted quickly after the Legion's decision to delay nearly \$100,000 in funding and immediately used administrative authority to mandate regular recitation of the pledge in all district schools. Then Post 1776 restored its funding allocation to the district. Glum expressed his pleasure with the formal commitment to pledge and said that his Legion post believed that an official policy would insure that the commitment to reciting the pledge would not decline after the immediacy of 9/11 had faded (Walsh 2001b).

This conflict illustrated how Legion Post 1776 viewed the pledge as essential to patriotism and Americanism, while some school leaders valued student engagement and action more, particularly when students themselves were on a similar and positive path to the same conceptual objective (Larson 2014). This example reflects different conceptions of civic education that are needed in today's schools. One

conception elevates assured unity, even if it is symbolic, while the other conception supports authentic activity that constructs individualized expressions of unity. This example also illustrates different conceptions of learning, one valuing practice and repetition and the other motivation and initiative.

Usually, these values are not mutually exclusive. For example, students in ISD 196 did choose of their own volition to include pledge recitation in their 9/11 response prior to the mandate taking effect, and the American Legion and its Auxiliary long ago created one of the longest running, most authentic, and most intensive civic-education simulations in their Boys and Girls State programs, which continue to this day.¹⁵ But an issue like the Pledge of Allegiance, a topic deeply rooted in the culture wars, can create more rigid boundaries, particularly when a precisely defined outcome like a mandate is required by one side and rejected by the other.

The positions of board member Judy Lindsay and Legion Commander Duane Glum also provide an example of Westheimer's (2007) authoritarian patriotism—for them, the formal mandating of a daily school-wide pledge would help engender in young people a greater love of country, respect for those who sacrifice on its behalf, and allegiance to its values. Principal Larry Larson was supportive of pledging in and of itself, but for him a crucial element of gaining civic capacity was the students' self-initiated and sustained grappling with the mode of response to 9/11 and their subsequent action-taking. Larson's emphasis illustrates

¹⁵ According to American Legion documentation, Boys State was founded in 1935 in order to counter the influence of the Young Pioneer Camps of the USSR. Girls State programs followed beginning in 1937. For more, see <http://www.boysandgirlsstate.org>

Westheimer's concept of democratic patriotism, a patriotism that could include questioning, collaboration, and deliberation, and that is best learned through participatory civic education.

Value-laden and culture-based conflicts like the pledge may be found throughout the school curriculum and culture. Examples might include the teaching of evolution in science classes, the curriculum for sex education, the boundaries for explicit content in literature classes, or school rules about who may and may not attend the prom. In this civics-education example from ISD 196, educators like Larry Larson were following what most experts in the field of civics believe to be especially valuable: engaged activity that connects classroom learning with students' authentic action. But the American system of public education was designed for public control at the local and state levels (Tyack 1967).

In essence, this built-in tension between popular public sentiment and 'expert' knowledge is endemic to the structure of American public education, and the presence of this tension relative to such a critically important and value-laden discipline as the development of citizens for participation in American democracy is a predictable phenomenon. But similar to the politicking endemic to the legislature, this reality would have a consequence: As in the legislature, the public debates in Minnesota would occur almost entirely disconnected from the participation of students and educators and from substantive discussions about the qualities of a citizen that are most esteemed and how those qualities develop in children.

Local Focus: Conservative Concerns in a Multicultural Community

In the St. Paul Public Schools, widely considered liberal and progressive, Tom Conlon was the school board's lone conservative member in 2001, and motivated by 9/11 he pushed to amend district policy to require regular recitation of the pledge in all St. Paul schools. The board defeated Conlon's motion five to two, but members also agreed to advance the issue to a work committee for further consideration. Nearly 50 community members attended the board meeting on October 23, 2001, and according to reports, more than a dozen spoke on the issue with conservative school-board candidate Georgia Dietz requesting from the floor that everyone assembled join her in pledging allegiance and then asserting that "it is time to bring patriotism back into the schools." Some in attendance echoed her view while others commented on the need for moderation given divergent religious practices. Parent Andy Mosca said he supported the idea of patriotism education but that it was best achieved through different measures: "If we are trying to create patriots in our students, we need to put our energies into how we're teaching history," he said (Kumar 2001). Others in attendance echoed that view, and Carl Quella added that the religious element of the pledge was inappropriate in public schools (Helms 2001).

Conlon, in reflecting his desire for traditional unity, asserted that the power of the pledge was to unite a diverse culture during difficult times: "We are a very diverse culture, we have a very diverse school district, and our students come from many different backgrounds. And I think the beauty of the pledge is that it's the one time—the one opportunity—where we put all that aside, and we say we're

Americans, we're here for a common purpose, a common cause. It's diversity at its best" (Helms 2014).

Conlon's belief that the pledge promoted unity amidst the diversity proved widely held in Minnesota, but it would become a lightning rod in the legislature in 2002, and it also rankled some citizens attuned more closely to "essential diversity" and the importance accommodating multiculturalism and ethnic and religious diversity. In a sense, this was a clash between a vision of America as a cultural mosaic rather than a melting pot. As the coming legislative debates would illustrate, Conlon's claim that the diversity present in St. Paul Public Schools was a good reason to include a unifying pledge was the type of assertion that held deep appeal to individuals who yearned for less cultural conflict against their traditional norms (Wood 2008). However, in Minnesota it simultaneously created alarm among liberals who perceived that that 'traditional norms' position rooted in the culture wars was directly related to anti-immigrant and anti-minority sentiments thought to be driving the push for voter-ID legislation, for color-coded drivers' licenses, for racial profiling, and for similar related measures in Minnesota and beyond (Moua 2014).

The St. Paul school board revisited the mandate issue in an open meeting on February 6, 2002.¹⁶ Board member Anne Carroll said prior to the meeting that board members sought input on the larger question of the role of the pledge in education rather than simply determining whether or not to mandate recitation, and she said the board was seeking ideas rather than dogmatic stances: "This is our time

¹⁶ These early-2002 events are included here because they are part of the St. Paul events that began immediately after 9/11.

to listen to people,” Carroll said. “I am going to try to structure the meeting to discourage people from feeling that they have to tell everybody they know who thinks their way to show up at this meeting. The object is not to keep score; the object is to get a diverse range of input” (Tosto 2002a).

News reporting described an atmosphere in the February 6 meeting that reflected the local tension around the issue since the 9/11 attacks: “That tension was apparent even among adults Wednesday as the meeting sputtered at the start after someone in the audience asked to stand and recite the pledge,” reporter Paul Tosto wrote. Approximately 50 people attended the meeting, and many shared their views. District Legion Commander Robert Silvagni referred to the duty and honor of Americans, and he asserted that there was no better way to instill American ideals “than to ask the children to express some allegiance to our country.” Parent Andrea Friesen disagreed, saying she did not believe “the pledge has a role in our schools.” Friesen urged the district to employ instead “the most secular, least coercive” strategies for teaching citizenship and patriotism. She noted, too, that students who wished to decline to pledge would feel tremendous peer pressure to go against their own conscience (Tosto 2002b).

Anne Carroll, in an interview in 2014, reflects back on that period and says a lot of factors coalesced at that time—there was an election cycle for the state House and various local leadership positions, there was 9/11 and the related fear of terrorism and simmering anti-immigrant tensions, and there were people seeking votes or attention related to these and similar issues. Greg Copeland, for example, was a high-profile St. Paul activist who frequented meetings and who at the October

23rd board meeting gave a “fiery” speech claiming erroneously that “6,000 people died in New York City. How many more must die before we come to our senses? That there are people who do not share our values, that there are people in this world who mean to do us harm. It seems to me if we start with these children, and express to them why it is that we believe in the principles that that flag represents, then, we will have done something for their education,” Copeland said (Helms 2001).

Copeland, like many mandate proponents, rhetorically equated mandated pledging with learning about the principles of democracy, and he did so with a frame of reference focused on patriotic exercises as a tool against those “who mean to do us harm.” This was a position similar to that of Chester Finn (2002) and the Fordham Foundation, which published a guide to teaching about 9/11 from a perspective that generally aligned with conservatives’ views. Finn (2002, 6) in his introduction to the publication criticized the NEA and others’ emphasis on tolerance and children’s feelings post-9/11 and lamented that instead of reaffirming traditional American values and heroics when confronted by attackers, “much more widespread was simple disregard for patriotism and democratic institutions, non-judgmentalism toward those who would destroy them, and failure to teach about the heroism and courage of those who defend them.”

Carroll, a self-identified liberal who continues to serve on the St. Paul School Board, describes St. Paul as having ethnic diversity akin to New York and Los Angeles, and she explains that it is a city that strongly favors liberal-leaning leaders and rejects “shouters and chest beaters whether they are from the left or right.” According to Carroll (2014), it was a repeatedly unsuccessful school-board

candidate who would try from the floor to pressure those in attendance to pledge at board meetings, a high-pressure tactic to demonstrate loyalty that according to Carroll was “completely unacceptable. And it wasn’t just me who thought that.” Carroll remembers, too, that post-9/11 for many people engendered an unfamiliar sense of fear and cultural turbulence; she says that backdrop sometimes fostered an atmosphere that made rational conversations and maintaining focus on the interests of children and pedagogical best practices more difficult for school boards and for schools. Carroll (2014) recalls:

Let us not deny the fear that good liberals felt. Now, this is not Nazi Germany, right; I get that. But it gave me a deeper understanding of people who talked about spies on every corner, and it really constrained the way I felt I could talk about this. Not because I was afraid but I didn’t want to encourage and be the cause of the narrow, histrionic, aggressive tactics. Again, this wasn’t about protecting myself; it was about protecting the conversation and the work of the board... We had then and continue to have such a high number of non-citizens, and the ‘under God’ piece was just a huge complication...

She explains that a blanket mandate of this type was out of character for a district that emphasized site-based decision-making but “just like the legislature, you get caught up in this because somebody else demands to put it on your agenda.” Carroll’s description echoes the through-line in these case studies that districts, schools, and students found themselves pressed into behaviors and conformation based not on analysis of pedagogical best practice or the best interests of civic

education but rather based on assertive legislators' and individuals' personal conceptions of patriotism in times of crisis and their attachments to the pledge as a unifying act or in some instances a unity test.

But unlike ISD 196's generally homogeneous population, St. Paul's religious and ethnic diversity and significantly more liberal political climate lent a wider range of voices to the spectrum of opinion. Carroll (2014) explains, for example, that JROTC was a hot-button issue in St. Paul Public Schools at the time and that there was strong anti-war sentiment mixed among the fears of terrorism and calls for unity via the pledge: "Peace activists and anti-war activists were afraid that a pledge mandate and flags all over the place was St. Paul Public Schools' concession to war mongers, that that was the absolute opposite of what a civil society does—these sort of... shallow shows of patriotism that really didn't have anything to do with democracy or citizenship as broadly construed. They were just for show—there was that drama running in the background. This was messy."

This larger culture war among conservative and liberal interests, among those seeking "essential unity" in contrast to those seeking "essential diversity" (Wood 2008) melded with the emotional nature of fear and patriotism post-9/11 to imbue the debate with an intensified position-taking, according to Carroll. "The rational model does not apply, so you can't win this on rational arguments," Carroll says.

The fact that the mandate was popular in large swaths of the state outside of metro Minneapolis-St. Paul was also used by some to justify a mandate in St. Paul, but Carroll recalls that she did not sense that anyone on the board or in the district believed "that the pledge solves anything" in terms of improving achievement in the

study of history and civic education. Carroll asserts the contrary, that “the churn around this was personal, it was political, it was people who wanted to look good to somebody or some group, or at least not to look bad, at least not to create doubt. So that is I think what motivated people in leadership positions—elected or hired leadership positions—to want to go along to get along.”

She does not lament that the interests of students were affected by adults’ personal and political causes but rather regrets the degree to which students and their needs were excluded from the conversation: “It bothered me that they didn’t drag kids into it,” Carroll said. “Because this was never about kids. It was always about adults. Adults just poking flag poles at each other. I mean really. And this relates to student achievement how? This really addresses our kids’ needs how? And then, you know, the response is that this is at the center of their education as Americans. Bull... When people are there in that place—whatever the topic is—when they are there in that place in a soundproof room, there is no room for dialogue. And that’s hard” (2014).

Carroll remembers that ultimately the pledge-mandate debates in St. Paul were more of a distraction “with angst associated with it” than a major issue, and she says the upside was that it helped the school board practice its commitment to site-based management and to practice its emphasis on deliberate capacity building in order to work as a high-functioning board in a systems-based approach. However, one of the dangers of these types of “messy” distractions for a board or for a legislature, according to Carroll, is the potential to derail focus on more important and more role-appropriate matters: “If you’re doing management’s job, then you’re not doing

the job of governance. And if you're not doing the job of governance, face it, boys and girls, nobody is because we can dive into management's work, but they have no authority to dive into governance work. This is the problem: When governing bodies don't govern, nobody governs, so of course there is a cost," Carroll said (2014).

Conclusion

The pledge-mandate debates in Minnesota in 2001 illustrate a tale of two periods: before 9/11 and after, but debates in both periods owe their origins to the culture wars that reignited in the 1980s and have continued unabated since. Prior to 9/11, only conservatives in the Minnesota House pushed hard for a pledge mandate, both in order to instill traditional values of unity, loyalty, and respect in students and also to honor—and curry favor—with the powerful and popular veterans' lobby led by the American Legion and the Veterans of Foreign Wars.

Opposition arose in the form of point-scoring attempts to reframe the debate—about 'true' patriotism in the form of American jobs, about 'true' support for veterans in the form of housing and education bills, about a 'true' mandate that would extend to private and religious schools, and so on. Culture-war references were found primarily in the call for a traditional unity based on traditional patriotism, and they were also evident in the attacks on the much-maligned Profile of Learning education reform, a reform that attempted to de-emphasize traditional Carnegie units and textbook-driven subject knowledge in favor of a constructivist approach that emphasized process-oriented performance assessments for each individual student. Neither liberals nor conservatives could abide the endless problems in logistics and implementation, but conservatives additionally decried

what they perceived as the sacrificing of foundational content knowledge necessary for meaningful performance assessments.

The House debates, even though lively and sometimes impassioned, primarily served as an opportunity for political point-scoring rather than education law-making not only because most schools were already pledging (Lonetree 2001) but also because the Senate would not add the bill to the calendar of the Education Committee. And without Senate consideration, the bill would die regardless of House action. The obvious politicking of the pledge-mandate debates was an easy win for conservatives in 2001, who in their desire for a mandate and their catering to that demand on the part of the veterans' lobby were well aligned with the majority of public opinion in Minnesota (Lonetree 2001).

But as the local focus on ISD 196 would illustrate, neither legislators nor many veterans or community members were inclined to consider issues beyond the natural appeal of the pledge as traditional patriotism. Consequences of this popular focus on the appeal of the pledge included the absence of substantive consideration of the effect of an external mandate on students and schools and the absence of exploration of the larger issue of the pledge in relation to research-based promising practices in civic education.

Events in the St. Paul Public Schools, however, provide a counter-example. Anchored by a predominance of liberal leaders and a local majoritarian embrace of multiculturalism, the ethnically and religiously diverse city of St. Paul experienced local-level debates about mandating the pledge in local schools, but they were debates that tilted away from a mandate due to the liberal nature of the community,

a nature that maintained in spite of 9/11. School board member Anne Carroll (2014) recalls the period as “messy” and emotion-laden, but also a good exercise in managing divergent public opinion and retaining focus on the best interests of students’ educations amidst competing public pressures.

Ch. 2: Minnesota 2002—The Pledge and Only the Pledge

In 2001, the pledge-mandate fight in the Minnesota legislature included both partisan gamesmanship and sincere desires to honor veterans, their sacrifices, and American ideals in the symbolic form of the Pledge of Allegiance. The events of 9/11, however, launched to the foreground fears and feelings regarding patriotism, unity, and identity at both local and state levels in Minnesota. Those fears and feelings among constituents forced mandate opponents to attempt awkwardly to reframe patriotism as a topic larger than the pledge. And more importantly, the protracted partisan conflicts over the mandate eventually exposed thorny culture-war divisions regarding the role of diversity and multiculturalism in American identity and national unity, particularly in a time of crisis related to divergent cultures and religious practices.

Republican state legislators in early 2002 politicked hard for a pledge mandate and its various political advantages, which clearly were magnified due to the popular surge in patriotism after the events of 9/11. Even though local communities and schools immediately took up the pledge question and initiated local responses to 9/11, state legislators focused on using the pledge mandate as a political tool to wage partisan and personal battles about patriotism, traditional Americanism, and the role of diversity in American identity. The substantial 9/11 advantage gained by mandate proponents also required the Senate to cease its delay tactics and initially attempt new blocking strategies. This created space—albeit small and politically motivated—for discussion of the pledge in contrast to the value of the study of founding documents, historical events, and democratic principles. As in 2001,

however, the 9/11-charged legislative debates would leave almost entirely unexamined the educational value of a mandated pledge and the overall nature of effective citizenship education.

Mandate Debates Post-9/11: Surge in Patriotism Changes Playing Field

When Rep. George Cassell (R) reintroduced the pledge-mandate legislation¹⁷ in early 2002, it was nearly identical to the prior year and included the controversial yearly public re-vote by school boards that wished to opt out in favor of their own pledge policies. The surge in popular patriotism resulting from 9/11 clearly had buoyed the confidence and assertiveness of Cassell, and he and others used that popular advantage in their pledge politicking. Cassell again asserted the importance of the mandated pledge as honoring the ideals, history, and sacrifice of Americans by quoting at length from the Declaration of Independence and then from the Gettysburg Address, emphasizing for both the high prices paid by Americans of those eras for their commitment to the ideals of “life, liberty, and pursuit of happiness.” Cassell also emphasized the sacrifices of soldiers in the 20th century and the events of 9/11. He reminded members that 600,000 servicemen and women had died in the 20th century alone, and that many more had suffered grievously for America’s democratic ideals. And he warned that the events of 9/11 were a

¹⁷ To review the legislation verbatim, see Appendix B. In brief, Cassell’s 2002 bill called for recitation of the pledge at least once a week in public schools to be led by the teacher or teacher’s surrogate or over a school’s intercom system. The bill included the following opt-out: “Any student or teacher who objects to participating in the pledge recitation must be excused from participation without penalty.” There was also a provision that school boards by a majority vote each year could waive the requirement. The House bill also included language declaring that boards that opted out may adopt a local policy regarding pledge recitation.

reminder that “the price of liberty is eternal vigilance,” a vigilance that public schools had neglected. Evoking traditional Americanism, Cassell asserted that “it’s time that we put patriotism back on the curriculum agenda. It’s important that our young people understand the vision for our country. This vision is ‘one nation under God, indivisible, with liberty and justice for all’” (HF2598 2002a).

Unlike the prior year when he had limited his remarks to his own desire for a mandated pledge, Cassell chose to declare censoriously that those who were uncomfortable or offended by a mandated pledge were, in fact, offensive to him and to others who sought to honor those who had sacrificed on behalf of the nation. Using detailed personal storytelling, Cassell named a long list of loved ones who served and sacrificed in the American military. He reflected first on his father, who had lost a lung in a gas attack in World War I; then his uncles and cousins who fought in World War II; and he briefly mentioned his own service before describing in grim detail his own son, who was gravely wounded in a shipboard accident while serving in the Navy. Having provided a grim and gripping narrative of sacrifices made in service to the flag, Cassell attempted rhetorically to dampen dissent:

...When I am told someone might be uncomfortable or be offended when we say the Pledge of Allegiance, when we say ‘one nation under God, indivisible with liberty and justice for all,’ members, I think of the price that has been paid over and over and over. Members, I am offended. I am offended that anyone would view this kind of weak excuse for not sharing with our young people what this country stands for that is stated in our Pledge of Allegiance (HF2598 2002a).

Cassell's introduction illustrated his core contention about what for him was at the heart of the pledge mandate in public schools: That in and of itself, the "vision for our country" that would result from regular recitation of the pledge would create in youth a commitment to "what this country stands for," and it would help students better understand and honor the sacrifices made to preserve ideals such as "life, liberty, and pursuit of happiness." Cassell also emphasized repeatedly that "freedom is not free" as a justification for mandating the pledge rather than simply recommending it. Further, he urged members to "put patriotism back on the curriculum agenda," implying both that schools lacked a commitment to patriotism and that the pledge in and of itself represented trustworthy traditional patriotism.

Cassell constructed a clear and compelling argument for those who believed as he did that the pledge was a cornerstone of unambiguous patriotic expression and that that expression bred belief or at least produced unifying and respectful behavior that honored the country and its veterans. As in the year prior, no House member in 2002 would focus on the importance of research-based practices such building civic capacities through democratic deliberation or the planning and carrying out of civic action (Ornstein 2003; Kahne and Westheimer 2003). Subsequent speakers addressed elements entirely disconnected from Cassell's introduction and instead replayed the prior year's amendments first on flag etiquette and then on the Left's partisan jab that children should pledge allegiance to American flags manufactured in America rather than China or similarly non-allegiant nations. Even though the American Legion and other veterans' groups

agreed in principle with the American-made flag argument, that partisan reframing fizzled badly each time it was attempted.

The events of 9/11 had given tremendous leverage to supporters of a pledge mandate, the most vocal of whom tended to be conservative Republicans. This popular patriotic imperative motivated House opponents, all of whom were Democrats, to create a new reframing of the mandate issue as one requiring more and better patriotism in the form of broader Americanism content than just the pledge. This strategic reframing would permit oppositional Democrats to position themselves as advocates for more patriotism in public schools without having to embrace a pledge mandate, and it would irritate advocates who sought to limit the mandate to the pledge and only the pledge. But even this 'more patriotism than just the pledge' gambit was politically dangerous post-9/11 as evidenced by the amount and degree of autobiographical testaments offered by opponents of the bill regarding to their personal embraces of patriotism and Americanism.

Nowhere was this more evident than in the speech of Rep. Scott Dibble (D), who offered the opposition's first amendment proposing broader patriotic content than just the pledge. Dibble's amendment also proposed removing the yearly re-vote should a school board choose to waive the pledge mandate. Clearly frightened by the political exigencies of any misplayed roll-call vote related to a pledge bill, Dibble treaded very carefully, declaring his patriotism *bona fides* and invoking his flag-loving "Gram" before even mentioning the details of his amendment to broaden the scope of mandated patriotic content beyond just the pledge:

I am a flag-waving red-blooded American, so I hope this amendment is not misinterpreted. I really love the symbols of our country and in particular I was taught to love and respect the symbols of our flag by my school and by my youth groups but especially by my grandmother, Shirley Dibble. I was able to invoke her name on this floor a few weeks ago, and I am delighted to be able to do so again because she really really loved our flag... She flew that flag [in front of her house] in honor of her three sons—my dad and my two uncles—who all served in the service and then for my cousin, Andrew, who is serving in the Navy right now somewhere near Afghanistan. And she never ever stepped out of the house without a flag pin on her lapel.... And a flag flies in front of my home, too, and I recited the Pledge of Allegiance in school while I was growing up, but I remember a lot of my peers just reciting it from rote—just going through the motions—and it would be a shame if this bill led to that same behavior.... (HF2598 2002a)

Dibble went on to assure Cassell that he just wanted to improve the patriotic impact of the bill—and then he, too, asked for the requisite partisan roll-call vote. Dibble’s apologetic introduction of his amendment to broaden patriotic content was more literally a pre-emptive defense of his patriotism, and it sounded almost like *Saturday Night Live* parody. In this post-9/11 environment, Dibble was compelled to authenticate to potential doubters his own “red-blooded American” flag-loving self with supporting evidence in the form of love of school, church, youth-group, and family wholesomeness; a flag-loving “Gram”; a father, two uncles, and a cousin in the service; flag lapel pins and yard flags; and schoolboy pledging of his allegiance.

Dibble's speech illustrated the retribution that dissenters expected to face from colleagues, constituents, and from their opponents in the next election cycle, a fear that manifested in later campaign mailings that trumpeted any anti-pledge votes (Gottfried 2002). Ironically, Dibble's patriotic prelude preceded a simple-enough motion that schools might be better served by retaining more local control through a mandate not for the pledge but for increased time on patriotic education that districts could use as they deemed appropriate. Dibble's attempt to reframe the debate as a need for even more patriotism to be determined by local districts failed by a margin of 3 to 1, a vote that illustrated the deep appeal and power of the pledge itself and the desire to mandate the pledge and only the pledge.

Having gained no traction with any of their efforts to reframe the debate, House opponents of the mandate all but conceded. One opponent's frustration with the politicking became evident, however, when he challenged Cassell's credibility as the bill's sponsor. Loren Solberg (D) highlighted Cassell's failure to mandate the pledge in Cassell's own school district when he possessed the authority as superintendent. Solberg lamented the political cost of opposing the mandate because "nobody's [campaign] literature will say 'I stood up for the Constitution. I stood up for the right of the school board to make a decision. I stood up for the right of the superintendent to make it right through the superintendency....' All the other campaign will say is that you were not for the Pledge of Allegiance" (HF2598 2002a).

Despite Solberg's challenges, support remained strong for Cassell's bill. The 2002 Minnesota House passed the pledge-only mandate by a landslide—114 to 11. Now the Republican-dominated House had to wait and watch as the Senate's

companion bill elicited partisan vitriol, troublesome debates about cultural and multicultural interests, and various amendments made possible by the Democrat-controlled Senate.

Political Leverage of 9/11 Trumps Senate's Delaying Tactics

Minnesota's Democrat-controlled Senate had avoided the mire of a mandate debate in 2001 simply by stalling the bill in committee. However, after the 9/11 attacks, that delaying tactic would be made much more difficult due to new Senate sponsor Mady Reiter (R), who publicized the issue of committee delay by complaining openly on the Senate floor (HF2598/SF2411 2002a). Reiter's strategy—a politically bold one given Senate protocols and committee processes—eventually won her bill a committee hearing, but she and her supporters still had to fight for its passage out of committee in an emotionally charged hearing that devolved into last-minute parliamentary maneuvering and various accusations of political overreach.

Democrats in the Education Committee would preview their party's overall strategy to oppose the mandate—that being a reframing of the issue as one requiring non-specific study of even more patriotic education rather than pledge recitation in isolation. This was similar to the strategy used by some opponents in the House, but the Democratic majority in the Senate would provide this reframing with a strategic advantage that was lacking in the House; even so, the specter of 9/11 loomed large as evidenced by the first committee salvos and the broad appeal of the pledge-only mandate bill. Education Committee chair Sandra Pappas (D) scrambled awkwardly to mitigate the committee's unplanned concession to Reiter

by privileging a competing pledge/patriotism bill from a fellow Democrat. It favored broader patriotic content in the form of the founding documents and the history and meaning of the flag and other American symbols. Reiter was present at this committee hearing and was prepared to present the Senate companion (Senate File 2411) to the House's pledge-only bill, but Pappas threw down a procedural gauntlet by calling on fellow Democrat Satveer Chaudhary to present his bill instead of Reiter's, knowing that only one patriotism/pledge bill would advance out of committee.

This politically defensive and heavy-handed strategy to retain some sense of moral high ground relative to patriotism legislation, however, would incite a near revolt in the Education Committee. Members of the committee clearly had been expecting Reiter's bill, and in an awkward and often-interrupted speech, Chaudhary attempted to promote his bill to require more and broader patriotic content rather than isolated pledge recitation. Chairwoman Pappas struggled haltingly to explain why Chaudhary's previously non-existent patriotic-education bill received precedence over Reiter's pledge bill, which had history from the prior year and which had a House companion that had already passed. Chaudhary explained that his bill would require more study of American symbols overall, including oaths, anthems, and various other expressions of American patriotism more broadly defined than the pledge alone. He also described a distinction that was a subtle dig at the pledge-only supporters and that illustrated the patriotism-education divide: "And my bill does so *not only* to honor our country's symbols but to *know* what they are. And to know what these people behind me and in front of me [signals the

veterans in attendance] fought for.” Chaudhary, in essence, was proposing study of various symbols and ceremonies of American patriotism in contrast to Reiter’s pledge-recitation mandate. Knowing the political minefield he was entering, Chaudhary also acquiesced to the impulse to share his service-related credentials—for him a brother then fighting in Afghanistan and a grandfather who fought in World War II, and he concluded with an effort to one-up the pledge mandate’s political dividend: “I think [my] proposal goes further to honor our country than any I’ve seen” (*HF2598/SF2411 2002b*).

Pappas, who had obviously coordinated with Chaudhary to devise this Reiter rebuff in order to gain better footing for Democrats in the post-9/11 patriotism politicking, struggled with the unconvincingness of the political maneuver to privilege the previously unknown bill of her fellow Democrat over the Reiter bill.¹⁸ Chaudhary was in mid-sentence discussing his bill when Pappas interrupted him to apologize to him and to the members of the committee. She stammered that Chaudhary had introduced his bill at the end of last year but it was mistakenly overlooked, and since it had the lower bill number, his took precedence over Reiter’s. An obviously deflated Pappas added finally, “This puts me in a really awkward position—his bill is going to be the vehicle bill for the Pledge of Allegiance.... I know Sen. Reiter has worked very hard on this issue, but in fairness to

¹⁸ The Reiter bill—SF 2411—was virtually identical to its House companion bill HF2598, which had been introduced in the House by George Cassell. The existence of the House companion bill and the history of the pledge-mandate bills from the 2001 portion of the biennium of the 82nd Legislature meant that the Reiter bill—a carryover of the bill authored in 2001 by Bob Kierlin—should take precedent over the Chaudhary bill regarding the Pledge and patriotism. To see the pledge-mandate bills as written, see Appendix B.

the author with the lower bill number, I need to hear Sen. Chaudhary's bill."

Republican members of the committee immediately challenged Pappas with an accusation that her decision was unfair to Reiter, to which Pappas responded that "maybe we need to look beyond individual egos to the issue itself. People want to be able to demonstrate that they feel very strongly and very patriotically about this country" (*HF2598/SF2411 2002b*).

Pappas' deflated words and affect and her awkward strategy to reclaim patriotic high ground for Democrats illustrated vividly the politically adverse position of mandate opponents due to the substantial popular leverage held by mandate advocates after 9/11. Pappas' nakedly political attempt to privilege a bill that would better suit and politically benefit Democrats elicited pushback from Reiter's supporters and exposed the inconsistencies in Pappas's choice to advance the Chaudhary bill. When supporters of Reiter's pledge-only bill accused Pappas of politicking, she responded crossly that she and Chaudhary invited Reiter to join them in a bipartisan effort but that Reiter declined. Exasperated, Pappas returned the accusation of politicking: "I really don't think it's right for people to use this issue in the political campaign next year as a litmus test for people's patriotism...." (*HF2598/SF2411 2002b*). Pappas and her Democratic supporters had attempted both to protect themselves from accusations that they were unpatriotic and also blunt the popular push for mandated flag salutes, but that attempt failed.

For the first time in the Senate, mandate proponents would offer their political arguments for the pledge in schools, and they would focus intently on issues of traditional unity, traditional American identity, and the power of the pledge to

repair some of the corrosive effects of contemporary culture and its unmitigated diversity. Reiter, for example, shared a long personal story about why she loved America and therefore backed a pledge mandate. Reiter described in explicit detail moving her daughter to Washington, D.C. and meeting an East Indian man at the Library of Congress who was looking for his deceased dissident brother's unpublished manuscript about American democracy. Reiter retold her digressive story moment by moment and eventually she choked up and explained that "he told me first of all that America was the most wonderful country on earth, which I agreed with wholeheartedly, and then he looked at me and said 'You don't understand what a country you have and you must never take it for granted,' and I never have."

Reiter's story eventually transitioned to the bill itself in relation to September 11: "And what occurred last September—I believe we all got a wake-up call and when parents came to me and said 'Why aren't my children saying the Pledge of Allegiance in schools?'" Reiter then reminded committee members that the public was watching and intimated that a mandated pledge was central to a safer and healthier America because it would help children would better understand and value American democratic ideals and what it meant to be an American. Reiter's position on the importance of the mandate was similar to House author George Cassell's that regular recitation in and of itself would have a powerful impact on children's knowledge of the nation, their identification with its ideals, and their reverence for the sacrifices made on its behalf.

Reiter in her various speeches regarding the mandate frequently expressed a longing for a simpler and more unified American identity. She was well known

among her colleagues for regularly wearing an assortment of flag-themed scarves, and she was proud of her connection to veterans and traditional Americanism through her longtime membership in the American Legion Auxiliary (Ellis 2005, 195-197). Reiter would also bring along with her to testify in committee an elementary-school student named Tyler Newcomb, whom Reiter would have recite the pledge and talk of how much pledging meant to him in terms of feeling like a part of America. Reiter would also attempt frequently to emphasize the greatness of America by juxtaposing it against other cultures or countries she had visited. Her reference to the Indian man she met at the Library of Congress included details about how his brother had been persecuted and imprisoned for promoting traditional American democracy, and she would at various points make reference to her visit to Turkey and describe her gratitude that she lived in the far safer and more prosperous nation of America—a nation that she would describe repeatedly as threatened by divisiveness in contemporary society. Reiter frequently expressed her struggle to understand how a patriotic institution as beloved, traditional, and long-embraced as the pledge could be considered anything but unifying and beneficial to America's national wellbeing (*HF2598/SF2411 2002a; 2002b*). And like her colleagues on both sides of the aisle, Reiter was quick to use the pledge for political advantage by asking for roll-call votes and by abandoning her one-time agreement to drop the requirement that school boards who wished to waive the policy must do so publically every year.

Committee member Steve Kelley (D) was the only senator of either party to address explicitly the value of practices like democratic deliberation, skill-building,

and authentic action as central to the development of citizenship in young people. A lawyer at the time of his legislative service and later a university fellow in political science, Kelley argued for an active and deliberative approach to patriotic civic education similar to that described in the research of Kahne and Middaugh (2008). Specifically, Kelley proposed an alternative view in which schools should teach students to act on their citizenship by investigating and solving the problems in their world:

If we were serious about teaching [students] what it means to be in a democratic country, we would be finding ways to give them more responsibility to come together and solve problems that really affect their lives rather than mandating what they say... So the question is: What's most important? Is it things like the First Amendment and the ability of students to engage in self-determination or is it more important that we have a sentence that all public and charter-school students shall recite the Pledge of Allegiance? (*HF2598/SF2411 2002b*)

Kelley may have used the form of a question, but clearly he believed that the pledge was a poor substitute for civic education that should emphasize inquiry, deliberation, and civic action on the part of students; that, however, was not a topic of interest either to the committee or the full Senate. Kelley's rhetorical question to the committee elicited no response. Instead, a flurry of confused activity around various amendments occurred. This confusion regarding implementation led Reiter to clarify that while students or teachers technically could remain seated if they opted out of pledge recitation, she suggested that the best behavior would be the go-

along-to-get-along option, a position that was the antithesis of Kelley's advocacy of inquiry and deliberative action. Said Reiter: "It's no different than if you're traveling somewhere and you go to a soccer game and it's another country—let's say it's Canada—and we don't know the French words to their song or their pledge and you respectfully go along with it—do what they do" (*HF2598/SF2411 2002b*). Reiter was attempting to offer helpful advice regarding the least obtrusive option for non-pledging students, but her impulse to be helpful regarding practical issues of the mandate revealed the disconnect between her generally positive intentions in mandating the pledge and the fact that many pledge-decliners recognized that they had neither obligation nor desire to "respectfully go along with it," a fact that was at the heart of the conceptual conflict of whether mandating a pledge was appropriate in any circumstances.

Having abandoned the Chaudhary maneuver to privilege a Democrat-sponsored pledge/patriotism bill, Democrats in the Education Committee next tried to amend the Reiter bill with an expansion of civic-education content. This elicited an increasingly tense verbal exchange, and the amendment distressed Reiter to the point of her ignoring the chair and interrupting the debate on the amendment with a statement that would presage one of the proponents' primary conceptual arguments in all the debates yet to come. Pled Reiter, "Could I just go back to the original bill—this was a crisp clear bill to pledge allegiance to the flag of the United States that is our symbol, and it was nice and crisp and neat..." (*HF2598/SF2411 2002b*). For Reiter and several other proponents, in and of itself the frequent rote recitation of the pledge possessed a power to improve students' patriotic ideation, and it was a

power that would be made less certain by broader content options. After much political back-and-forth that included a walkout by one of the Republican members and tears of frustration by another, Reiter's pledge mandate did pass out of committee with few changes. But she would have to continue the fight to keep the mandate "nice and crisp and neat" as opponents would continue to attempt to engage mandate supporters in a debate about the benefits of broader content in patriotic and civic education.

Senate Floor: Broader Patriotic Content v. Pledge as 'Ethos' of The Nation

Having passed out of committee, the full Senate would now debate the Reiter bill. The first Senate debate, which occurred on March 12, 2002, would drag on for three contentious hours and would expose legislators' power and purpose regarding the mandate, the relative value of a mandated pledge versus broader patriotic content, and the culture-war concerns about American identity and multiculturalism. This first full-Senate debate would also illustrate various emotional attachments to the pledge as well as the powerful political leveraging of both implicit and explicit threats to expose as unpatriotic those members not supporting the mandate, which was implicated as not supporting the pledge.

Echoing the committee conflict, mandate proponents described the pledge in and of itself as the key to post-9/11 patriotic unity versus an alternative strategy that pressed for broader patriotic content that would include the pledge—but there were other factors shaping this debate that were less explicit but even more formative. Hunter (1991) describes in detail the political utility of this type of culture-war politicking, and Ellis (2005, 187-208) focuses specifically on the

political dividend of patriotism and pledge bills irrespective of true beliefs about patriotism and education. Ellis describes, for example, how patriotism legislation, roll-call votes, and similar gamesmanship after 9/11 were used systematically to amass effective material for subsequent campaign attacks meant to shift the balance of power in legislative bodies in various states and to leverage popular support for patriotism into support for other legislation. Consistent with Ellis' abundant evidence of *realpolitik* related to the pledge and 9/11, these events in the Minnesota Senate were first and foremost political. But the gamesmanship for both sides took a decidedly sobering turn when the debate began to reveal the depth of the divide between those who viewed the pledge as a uniting act that transcended multicultural differences in public schools versus those who viewed a *mandated* pledge as inappropriately coercive, divisive, and potentially damaging to diverse children in multicultural-attuned classrooms, positions that align with Wood's soft multiculturalism and attendant "essential diversity."

The initial conflict between pledge-only and broader-content supporters would emerge immediately upon introduction of the bill on the Senate floor. Mady Reiter, sporting a red blazer with a long stars-and-stripes scarf draped around her shoulders, opened the full-Senate deliberation that day with an introduction of the bill's main points¹⁹ and asserted that children needed to know about American

¹⁹ The main points of HF2598 when it entered the full Senate included the following: 1) The pledge would be recited by students in all public school classrooms, including charter schools, at least once weekly; 2) School boards may vote to waive mandated pledging, 3) Individual students and teachers may opt out of the mandated pledging, and 4) Flag etiquette would be taught in the public schools, including charter schools. Notably, the yearly re-vote on any waiver of the

history and freedom and that this bill accomplished that. Reiter did not explain how saying the pledge would lead to that knowledge, but Don Betzold (D), himself a veteran, moved to amend the Reiter bill in order to explicitly add more study of American history and civics, which could include *the option* of reciting the pledge but did not mandate recitation of the pledge; Betzold suggested that schools could choose among options including pledge recitation, the history and meaning of the pledge, the Bill of Rights, current events, government activities, and patriotic songs and symbols (*HF2598/SF2411 2002c*). Like the Democrats' Chaudhary bill that was awkwardly tabled in the Education Committee, Betzold's amendment before the full Senate illustrated the opposition's strategy of reframing the pledge mandate as a patriotic-education bill and then justifying change by arguing for even more patriotic content. This would allow them to argue against the pledge-only mandate without arguing against patriotism or the pledge. Not surprisingly given the political stakes in play, neither side substantively addressed this amendment in terms of pedagogy or students' rights. But core beliefs about unity, identity, and diversity did begin to emerge.

These core beliefs—ones that according to Hunter (1991) and Camarillo (2014) resided near the heart of the worldview struggles central to the culture wars—found voice in various persons and in varying degrees of rigidity and explicitness during the Senate debates. The most frequent and most explicit of these voices on the Republican side came from Michele Bachmann, the conservative described in the prior chapter for her involvement in the Maple River Education Coalition and

mandate was removed by the Senate Education Committee, but it remained intact in the House version of the bill and it would later be restored in the final version.

EdWatch. Bachmann asserted that the Betzold amendment for broader content and study “so waters down the purpose of Sen. Reiter’s bill that it could easily be called a killer amendment. This amendment is actually against the Pledge of Allegiance.” (*HF2598/SF2411 2002c*). Bachmann, as her speech continued, explained what she saw as the purpose of the pledge and the importance of the roll-call vote in forcing senators to declare themselves by their votes as patriotic or as unpatriotic:

Let’s not forget what the pledge is about and what the purpose is. We owe a duty of loyalty to this nation and to freedom, and I do not say that to question any member’s patriotism in this body, but I do not think you should play games with the ethos of our culture, because when you try to play games with the ethos of our culture and subvert the traditional underpinnings of what made this nation great, then we are fools all in this chamber, and that is no joke. So I would respectfully say this is a killer amendment and it is not germane and it should be soundly and roundly defeated and I am thankful for the roll call vote” (*HF2598/SF2411 2002c*).

Bachmann’s overtness—that to her the pledge was in fact a loyalty oath to the nation and that she was thankful for the roll-call vote regarding whether each member supported this declaration of loyalty by children or rejected it—aligned closely with her activism on behalf of the Maple River Education Coalition, EdWatch, and Education Liberty Watch. Through these organizations and through her Senate legislating, Bachmann actively promoted traditional Americanism elements like exceptionalism, a unified American culture and identity, and the preeminence of the

American Creed.²⁰ These concepts have a long tradition in America, but their interpretation and advocacy has gained in popularity and complexity due to the culture wars and the increasingly multicultural composition of the nation.

Bachmann’s rhetoric and history of activism showed her to be clear and consistent about her position regarding unity, identity, diversity, and multiculturalism; other senators expressed similar concerns, but several noted their personal distress that there even was a debate. Sheila Kiscaden, who at the time was a Republican, also opposed the Betzold amendment for broader patriotic education; she expressed at length her distress and puzzlement regarding the divisions emerging in the debate. Kiscaden asked: “How could this possibly be a partisan vote? How could it possibly be that we are going to define our patriotism along a party line? How could it be that having our children say the Pledge of Allegiance in our public schools is somehow undermining our basic freedoms that we hold as part of our democracy?” She continued at length about the power of the pledge to unite, especially after 9/11, and that pledging was a deeply meaningful civics lesson for children who needed to learn that preservation of the unified American democracy took work. Concluded Kiscaden, “We are upset that people don’t show up to vote, that people don’t take part in our country. The pledge is the way we can move

²⁰ As detailed in the previous chapter, the Maple River Education Coalition eventually transformed into Education Liberty Watch, which defines the American Creed as follows: “Good education in the United States promotes the American Creed (Principles of Liberty) as defined by the Declaration of Independence and U.S. Constitution, including national sovereignty, natural law, self-evident truth, equality, God-given inalienable rights of all people, the right to life, liberty and private property, the consent of the governed, and the primary purpose of government being the protection of citizen’s inalienable rights. The American Creed creates “e pluribus unum” (out of many, one), i.e. people from many nations gathered under one American Creed.”

forward and educate our children and have a symbolic unification of our country and protect our freedoms and honor those who fought for our democracy”

(HF2598/SF2411 2002c).

Bachmann and Kiscaden present an interesting contrast. Even though they shared party affiliation and both supported the mandate, they approached the politicking and the core issues very differently. Kiscaden specifically seemed not to connect the emerging divisions in the Senate with the culture wars or with the larger political gamesmanship and high political stakes regarding public perception of pledge positions after 9/11. Her trust in the pledge to provide “a symbolic unification of our country and protect our freedoms and honor those who fought for our democracy” echoed the trust of proponents like Cassell and Reiter who described the original mandate legislation as a “simple” and “crisp” solution to address problems of patriotism and unity. Bachmann, in contrast, shared those general views, but she was also a seasoned politician who both recognized the cultural division on this issue and embraced both this battle and the politicking as part of a larger conservative cultural cause to advance traditional values and Americanism in schools and the society as a whole.

David Johnson (D) rose to support the Democrats’ reframing of the pledge mandate as one of even more substantive patriotic civic education, and he responded specifically to Bachmann and then Kiscaden. Irrespective of the impracticality of truly overhauling civic and patriotic education in this single unfunded and heavily politicked amendment, Johnson attempted to gain patriotic

high ground by supporting not only the pledge but also other near-mythic representations of American ideals:

[Sen. Bachmann,] how does teaching students about the Constitution, the Declaration of Independence, and the Bill of Rights undercut the ethos of this nation? I don't know if we're talking about different amendments here or what. And I don't think it should be partisan either, Sen. Kiscaden, but what this says is not only are we going to talk about reciting the Pledge of Allegiance and discussing the history and the meaning of the Pledge of Allegiance, but we're actually going to talk about the U.S. Constitution, the Declaration of Independence, the Bill of Rights. We can get up here and give speeches trying to be more patriotic than others but we ought to take a look at who is offering this amendment.²¹ (*HF2598/SF2411 2002c*)

Republicans, however, maintained focus on their own arguments and were rarely tempted to engage in line of debate. Kiscaden, for example, remained unmoved in her support for a mandated pledge: "The difference between [the Betzold amendment] and [the Reiter bill] is that one is about talk and the other is about action. Let's say the pledge" (*HF2598/SF2411 2002c*). That single sentence illustrated the degree to which there existed among citizens an elemental divide about the core meaning of patriotic action. For Kiscaden, the act itself of reciting the Pledge of Allegiance was so numinously profound that she labeled it "action," while advocating study of the founding documents of American democracy to her

²¹ Sen. Johnson is making reference to amendment author Don Betzold, who served four years active duty in the Signal Corps of the U.S. Army, and who rose to Lieutenant Colonel in the U.S. Army Reserves. For more on Sen. Betzold, see <http://www.leg.state.mn.us/legdb/fulldetail.aspx?ID=10057>.

constituted just “talk” in a diminutive sense (at least in the context of this political debate). For proponents of a conception of patriotism based more on questioning authority and taking action in order to align lived experience with the aspirations of American democracy, the reverse would be true. The Democratic majority would eventually pass the Betzold amendment, which itself was amended so that the pledge was still a required element while encouraging schools to also include broader patriotic content. This amendment would later be stripped away in conference committee, however.

As evidenced by the Betzold amendment for more and broader patriotic content, Democrats had attempted a fairly cautious oppositional strategy in which they could argue against the mandate by arguing for even more patriotism than just the pledge; this circuitous route may have been politically sensible, but Steve Kelley was not amenable to this cautious approach. A vocal opponent of the mandate in the committee hearings due to the absence of deliberative civic action in the measure, Kelley would strike out on his own to amend the mandate bill. After the Betzold-amendment debates played themselves out, Kelley launched a detailed and quixotic defense of *West Virginia v. Barnette*, students’ civil liberties, and the importance of deliberative and participative civic education. He capped his speech-making by moving an amendment that would require that students at the start of the school year have a discussion about the Pledge of Allegiance and then hold a ballot in their classroom to determine how often and whether they would say the pledge. Kelley explained that that would be a practical lesson in democracy and in self-determination, “and it would put at the forefront of every student’s mind whether

we should say the pledge.” Kelley’s new amendment elicited no debate from either party and drew only a few brief comments. Reiter replied only that “this is not even something the little first-graders would be able to do,” and Warren Limmer said dismissively, “After looking at this, there really isn’t much more to say.” Kelley’s amendment failed by a wide margin—14 ayes to 47 nays—but not before substantiating members’ disinterest in debating substantial participation in the pledge debate by the children who would be affected by it (*HF2598/SF2411 2002c*).

Multicultural Complexity: ‘Bleeding-heart’ Liberalism or Valid Concerns?

Until this point, the Senate’s first full debate on the mandate revolved largely around defense of pledging as a unifying act versus the need for broader patriotic education; however, an isolated comment about protecting minority voices would trigger a debate about unity and diversity that would cast a pall over the Senate. Jane Ranum (D), a former teacher and a lawyer at the time of the hearings, rose to share her concern that mandated pledging was being cast almost exclusively as a patriotism issue rather than one of freedom of speech: “...If we have discussions on the Bill of Rights, we’d know that the First Amendment is really all about making sure that the voices of the minority on an issue are heard. I think that’s what we need to take really seriously here instead of having it framed unintentionally as one is less patriotic than another” (*HF2598/SF2411 2002c*).

Ranum’s ‘off-script’ comment—one of the first about First Amendment rights of minority-opinion voices—would trigger a new and revealing direction in the Senate debate regarding the latent fears of the impact of multicultural interests on American identity and unity. Michele Bachmann interpreted Ranum’s defense of

minority interests protected by the Bill of Rights as an element of the diversity Bachmann would describe as degrading America's traditional shared values, a degradation that Bachmann believed must be combatted by the unifying statement of loyalty and beliefs provided by a mandated pledge. Bachmann's position was reminiscent of hard exceptionalism, a concept that Bon Tempo (2011) uses to describe a version of American exceptionalism that limits the embrace of multiculturalism in order to protect traditional American identity and values. Bon Tempo attributes this exclusion-based posture as a pushback against divisive and fragmenting identity politics prominent since the 1960s. Bachmann addressed these concerns specifically when she asserted the incompatibility of certain types of diversity with traditional loyalty, shared American vision, and the Pledge of Allegiance:

When shared values are made secondary to a radically different fundamental set of values that ultimately undermine our national freedom, then we must particularly look at how that undermining will instead refute our basic reason for being. And there's a point where we have to make an uncompromising decision. Each one of us here most likely has come from a different culture that was not America... These cultures are precious to us—each one of us—but they cannot override in any way the legitimate expectation of loyalty to our nation and the commitment that each of us needs to make to its safety and wellbeing. The Pledge of Allegiance is fundamental to our expression of loyalty and wellbeing. For each one of us, we are entitled to freedom.... However, no one is free from the responsibility

to protect the nation's right to exist on its own terms, on the terms that made our nation great in the first place. And again, culture is dangerous when it's used to hijack the very ethos of our nation... Yes, we are a pluralistic society but we do believe in something. (HF2598/SF2411 2002c)

In essence, Bachmann was embracing melting-pot pluralism but rejecting the identity politics often associated with multiculturalism. In language common to the culture wars, she warned of the danger of American decline as directly related to the nation's increasing diversity and resulting tolerance for what she perceived as a radicalized multiculturalism. For Bachmann, one part of the solution to this fragmenting of American unity was a mandated Pledge of Allegiance. Bachmann continued her speech with bleak predictions for a future lacking in freedoms to speak and debate if "we do not maintain the core of our ethos, the core of our culture. This is what we are debating today, members—not a silly mandate, not something that is irrelevant. This is highly relevant to the ethos of our nation" (HF2598/SF2411 2002c). Bachmann's assertions and concerns reflect the scholarly analysis of cultural-based issues like pluralism, diversity, and multiculturalism and how immigration changes and identity politics fueled conservatives' concerns regarding the health and integrity of American culture and values (Bon Tempo 2011; Wood 2008; Appleby, Hunt, and Jacob 1994). Perhaps not surprisingly, pledge-advocating Americans in the 1890s and early 1900s who were also experiencing an influx of multicultural immigration shared similar fears and ascribed similar powers to the pledge, thereby asserting its critical importance to young people's civic development (Ellis 2005).

Bachmann may have expressed these sentiments more explicitly and in a more practiced rhetorical form, but they were concerns shared viscerally by a number of her colleagues, and not just conservative ones. Steve Murphy, the Democratic senator who helped sponsor the pledge bill that eventually passed into law in Minnesota in 2003, recalls in a recent interview about the Senate's pledge debates after 9/11 and the issue of diversity. He says that a perceived lack of patriotism on the part of students in general and especially low-income and non-white students was a motivating factor for the pledge initiatives: "...Well, first we had had several reports showing that a lot of our students were lacking in civic understanding and the education that they were getting in that regard was lacking, and especially kids of lower income or minority students and immigrants. You know, first- and second-generation kids weren't being exposed to a patriotic—you know, I don't know... I don't know what you would call it—the patriotic fervor that everyone was in at the time" (Murphy 2014).

Murphy, a former Marine, explains that he and several like-minded colleagues on both sides of the aisle saw the pledge mandate as a vehicle for schools to use as a starting point to more study and "a better understanding of the Constitution, the reasons for America becoming America, and things like statehood and things like that." He still laments that the legislation became so divisive and so politicized, especially when he saw it as having a larger purpose of grounding students in commitment to citizenship. Explains Murphy, "You know, a lot of people don't ever serve in the military. I did, and several other people did on the committee, and we were kind of flabbergasted at the lack of knowledge that some high school graduates

had of basics like the constitution, voting rights, of how that all became—so we were left no choice....” (Murphy 2014).

Michele Bachmann was the first to openly express concern about the connection between the pledge mandate and issues of immigration and diversity, but Murphy’s comments show that this issue also resonated with some moderate supporters of the mandate bill. The perception that low-income and non-white children were probably the students most in need of education in American unity and identity was unsettling and potentially inflammatory, but it also spoke directly to the challenge of educating immigrant students who arrived into the K-12 system at various ages and various levels of English-language proficiency and so would not have access to the full sequence of civics and history education. And Murphy and his colleagues’ concerns about student achievement in civic education and history were buttressed by assessment results reported to them. Still, the pedagogical disconnect remains in terms of attributing to mandated pledging the power to transform the curriculum and result in higher student achievement in civics and history.

Murphy and others involved in the 2002 debate had chosen not to make explicit those sidebar concerns about unity and diversity, but Jane Ranum’s comment about the mandate truly being about First Amendment protections triggered on the Senate floor a political collision between the abstract ideas of unity and diversity. This collision of previously latent or otherwise shrouded concerns would dominate the final hour of the first Senate debate and the proceedings to come. On its face, this would become a debate about whether and how diverse school populations should be accommodated, and it included the predictable politicking. But this topic also

elicited comments and implications that induced in the opposing sides both cringing and anger—but for opposite reasons. Legislators aligned with a softer exceptionalism perceived offense in statements implying that cultural diversity was a major reason the mandate was so badly needed and that pre-emptive protections for non-pledgers were inappropriate. In contrast, the more traditional-minded legislators who were aligned with a harder exceptionalism—those seekers of essential unity—would perceive offense and weakness in statements implying that protections for diversity were more important than promotion of traditional national unity.

Twyla Ring (D), for example, entered this fray when she shared her concern that if the mandate were to pass then teachers must require students to be respectful, both to the pledge activity but also to students who did not pledge. Said Ring, “Teachers out there, I hope you will help your students understand this kind of respect, despite ethnic or religious differences, and that you will help all students understand diversity. We must do so” (*HF2598/SF2411 2002c*).

Mee Moua (D), a St. Paul senator who was the first-ever Hmong-American elected to a U.S. state legislature, used this topical turn to move a controversial amendment meant to protect non-pledgers, an amendment that would be described derisively by Warren Limmer and others as “a disclaimer” to the pledge. Moua, before detailing her amendment and sharing her perspective as an ethnic minority, expressed her gratitude to Reiter for bringing a bill that could celebrate the pledge and the experience of saying it, but Moua’s support for the bill had a reservation that would appear minor to some but deeply controversial to others. Moua said:

...I have to tell you I don't know how many members in this room have had the experiences that I have had—that by the color of my skin and my racial ethnicity, my patriotism is questioned every step of the way. And I don't know that any of you have had the experience that I had, that on the Wednesday after September 11th, while my son and I were walking outside of our home, we had beer bottles thrown at us on the street, as people were driving by yelling 'Chinks, go home'... We've all heard from our constituencies about the consequences and we've seen it in the news about individuals who are as American as we are, who love their country as much, what they have experienced merely because of the color of their skin and their racial and ethnic background—the consequences they've had to experience as a result of September 11th. And as I'm sitting here hearing this debate, I'm getting a very weird feeling in my stomach—[a feeling] that someone who votes against this [will be accused of] voting against Americanism, against being patriotic, and I'm getting a very weird feeling in my stomach that any student in any classroom who—once this bill becomes law—rises up and says 'Please, teacher, may I be excused,' walks out of the room—the rest of their class members are going to look at them and say 'You're unpatriotic and you're un-American.' And where that scene is going to play out is not in the classroom where the teacher is going to be there to facilitate but it's going to be in some corner of the playground where that child will be beaten up because of the perception that that child is being

unpatriotic, un-American, and I don't think that is what we want to achieve here. (HF2598/SF2411 2002c)

Moua, who as a Hmong-American, a legislator, and a parent, possessed credentials and experiences unique among legislators, described the ways in which she was of two minds—simultaneously supportive of the positive power of pledging allegiance yet still knowledgeable and wary of the power of the majority to deliver retribution on those whom they deemed different, a situation for her that was particularly chilling when meted out to a child by peers who would be unsupervised by adult mediators. Moua explained that she was not born in the U.S. but became a naturalized citizen. In words indicative of soft exceptionalism (Bon Tempo 2011) that simultaneously embraced the nation's cultural diversity and its unified 'American-ness,' Moua described her path to citizenship as key to her developing an intense pride in the flag and in being American, and that she would take every opportunity to pledge allegiance, saying "I am probably more patriotic than a lot of people who don't look like me that are automatically assumed to be Americans just because of the color of their skin."

Moua, having cited her simultaneous support of the pledge and of the rights and protection of children who would be affected by this bill, moved that this sentence be added to the Reiter bill and that teachers read this to students at least four times a year: "For personal reasons, you may choose not to recite the pledge. For those of you who do recite the pledge, please understand that those who do not participate are not unpatriotic but may have personal or religious convictions that prevent them from reciting the pledge." Reminiscent of the concept of "essential diversity"

being central to American identity for liberals and progressives (Wood 2008), Moua explained that this amendment was given “in the spirit of diversity, given in the spirit of openness” that will help students who do pledge allegiance to understand that their peers who choose not to pledge may have “very profound reasons” not to join the recitation. Moua then reminded her colleagues that part of what had made the United States so special to immigrants lay in the protections of that freedom to act on one’s own beliefs. She lauded America’s protections for religious freedom, its rejection of governmental tyranny, and its protection of individuals’ rights and freedoms in accordance with its democratic ideals. Moua reiterated her support for the pledge and said her amendment would affirm to students that “ individuals do have a choice, and if they choose to exercise their freedom of religion, that doesn’t mean they’re being unpatriotic or un-American” (*HF2598/SF2411 2002c*).

Reiter rejected this amendment as unfriendly, however, and offered her own vision of a unified identity best achieved by blending in. In a response that likely satisfied some and made others cringe due to the diction and comparisons, Reiter congratulated “this young woman” on her accomplishments and equated her own brief experiences as a tourist in Turkey with Moua’s experiences as a Hmong immigrant to the United States before finally explaining why she could not support this as a friendly amendment. Reiter said:

I have the utmost respect for this young woman. She told me she came here in 1978 and she could not speak English, and look what she has accomplished. I have never been so proud to serve with anybody as I am with people here and especially with her. I believe her motives are very well

intentioned but I have to tell you, like Sen. Ring has talked about [visiting China], I have spent time out of our country. I've spent several weeks in the country of Turkey, which is a country in great turmoil and which is an ally of America, but they have significant problems. They have 15 million people in the city of Istanbul, where my daughter was on a Fulbright Teacher Exchange. And when I was getting ready to come there, she told me, 'Mother, you may not wear any jewelry; mother, you cannot wear anything but black, brown, and gray.' I'm not a very shy and retiring person. [She gestures to the bright red blazer and red-white-and-blue flag scarf she is wearing.] That was very difficult for me. And she told me, 'Most of all, Mom, you have to blend in.' Well, everyone there has black hair and light skin, so I stood out. [Sen. Reiter has strawberry blonde hair.] You could see us coming a mile away. And I didn't blend in very well, and I know exactly what you [Sen. Moua] mean by being a different co— [i.e. started to say "color" but stopped herself]—or standing out. The thing is, I tried to blend in very much. But when we draw attention to ourselves, as I'm afraid this amendment would do to children, rather than being part of a group, rather than that inclusiveness that immigrants want when they come America—they want to retain their heritage, but they also want to assimilate in a way that makes them acceptable—and I understand where you are coming from, but I think the opposite is what will occur. I found that when parades went by, when [people in Turkey] did their call to prayer, I did exactly as they did. And I found I did blend in better than expected, with the exception of the color of the hair, but I would ask you to

oppose this bill [sic]. I think it would have unintended negative consequences for our youth (*HF2598/SF2411*, March 12, 2002).

The cultural and ideological disconnect apparent in Moua and Reiter's speeches was stark. Reiter, who was 59 years old at the time of this floor debate, was addressing Moua, who was 32 years old. Moua had moved to the United States 24 years prior, and by this point she had attained a bachelor's degree from Brown, a master's in public affairs from the University of Texas, and a law degree from the University of Minnesota (Minnesota Legislative Reference 2014). Reiter's complimenting of "this young woman" who at some point in the distant past "could not speak English" was no doubt sincere, but it was likely perceived by many as patronizing. The degree of the cultural and generational divide illustrated by Reiter's response to Moua, however, was probably most evident in Reiter's story about her tourist trip to Turkey. To Reiter, the appropriate counterpoint to Moua's story of harassment after 9/11 and the ubiquitous suspicions regarding the patriotism of people of color, was to describe her own experiences not easily blending in while visiting her daughter in Turkey. In essence, Reiter was equating her experience as 'other' during a brief trip to Turkey to Moua's lifelong experience as an immigrant of color in the United States. The difference between Moua's position calling for the protection of diverse expression compared to Reiter's position of the value of blending in was further magnified by Reiter's statement that she herself blended in best when she "did exactly as they did," a strategy from her Turkey visit that she asserted was best for students who did not want to pledge but who no doubt would "want to assimilate in a way that makes them acceptable"—an

assumption no doubt perceived by some to hold loaded implications regarding religious and cultural diversity. Reiter's final comment that Moua's amendment to protect pledge decliners would have "unintended negative consequences" was also unsettling in terms of its multicultural context, though Reiter would later decline to specify what she meant by this warning.

Moua responded immediately to Reiter and explained how the circumstances of a tourist did not match those of a minority person living permanently in the United States, and that that was particularly true for children facing a lifetime of needing to "blend in":

Sen. Reiter, I understand the point that you are making, but there's a distinct difference here in that you were a visitor to a country where once you blended in temporarily you could then choose to go home if anyone objected to your behavior. I am talking about first-, second-, third-generation people who are here to stay and who are not going home. I was here for twenty-plus years and on the verge of becoming a state senator, and I had beer bottles thrown at me and epithets written on my doorstep. I am not in the business of blending in, but I am in the business of asking all of us to teach our children to respect one another's differences. Many of these children who are going to ask to be excused are not just going to need to blend in temporarily until they go home. And I think that the first lesson we can teach children, if we're going to teach them about being American, is to teach them to respect one another's differences and to teach them to be in solidarity with one another (*HF2598/SF2411 2002c*).

This core difference between Reiter seeing the pledge as unifying of diverse student populations versus Moua seeing the pledge as potentially divisive elicited strong reactions from the body and illustrated again the chasm between these two belief systems relative to mandated pledging as patriotic education and also the ways in which public schools become contested ground in culture-war conflicts. For Moua, being cognizant of the multicultural nature of school populations and anticipating incidents of classroom conflict and harassment regarding perceptions of patriotism warranted additional education and protection of students. For Reiter, seeing pledge recitation as a celebratory and unifying act for ‘one nation under God’ and assuming that immigrants and persons of other diversities wanted “to assimilate in a way that makes them acceptable” rendered this type of multicultural and multi-religious protection unacceptable and likely to produce “an unintended negative consequence for our youth.”

Part of the unmistakable irony in these positions is that *both* Reiter and Moua—as well as many of the other members of the Senate—wholeheartedly supported the heritage value and patriotic symbolism of pledge recitation, and they both wanted school children to partake in that heritage of schoolhouse pledging. Legislative opponents of the mandate, or supporters with concerns like Moua’s, were not the hard multiculturalists described by Wood (2008) and Appleby et al. (1994). They were not promoting rigid identity politics, a deconstruction of exceptionalism, or a denigration of the pledge or the vision it offered. Rather, their concerns were reminiscent of soft exceptionalists who were trying to offer a small measure of protection to children from diverse backgrounds. In essence, there was much shared

opinion but due to the emphasis on politicking and the entrenched position-taking, it was rarely if ever perceived or used as a springboard to collegial deliberation or compromise.

Moua's effort to diminish the possible harassment of non-pledging children garnered pockets of vocal support, but it also incited anger and frustration in several ardent supporters of the mandate. Dick Day (R), for example, responded with exasperation to Moua's amendment to better accommodate non-pledgers. Day blasted "bleeding heart" opponents whom he accused of muddying what to him was "one simple bill" and said disgustedly that "the whole discussion makes me sick."

Day went on:

I've watched all you bleeding-heart liberals come here with all your talks. All [Sen. Reiter] wants is to pledge allegiance. One simple bill... And I'm not a politically correct guy—you all know that—so none of this 'feel-good stuff' works for me. I'm interested in what Minnesotans think about things and what the United States people think about things, and they're getting sick and tired of politically correct whining about everything. If you come here to the United States, you are part of it. (HF2598/SF2411, 2002c)

Using the politically charged "bleeding-heart liberals" descriptor and the "politically correct whining" accusation, Day asserted bluntly the culture-war identity contention that "if you come here to the United States, you're part of it." Day also attacked Steve Kelley's earlier lengthy defense of *Barnette* and students' civil liberties, and he derided Kelley for delivering a "20-minute sermon." Day's speech

may have been raw in terms of language, but its sentiments were likely shared by many of his fellow conservatives.

Day's growing frustration in this three-hour debate with what he perceived as politically correct perseverating in order mitigate every possible diversity-oriented problem echoed analysis by Wood regarding a common irritant for conservatives. Wood (2008, 15) references the frustrations felt by do-ers when pressed to consider every diverse individual's circumstance before speaking or acting. Wood notes that conservatives often attribute this perseverating quality to liberals and multiculturalists. Wood writes, "Understanding the complexity of human affairs, seeing clearly both sides of all issues, knowing that few things work out the way we intend, may breed in us caution and indecisiveness. Imbued with a strong historical sense, we are apt to become one of Nietzsche's historically minded men who could not 'shake himself free from the delicate network of his truth and righteousness for a downright act of will or desire.'" Dick Day and others would reference those types of frustrations in the pledge debate—to them, something as simple, straightforward, and popularly embraced as the pledge should not need 'endless' anticipations of consequences and accommodations for diversity. In fact, both George Cassell in the House and Mady Reiter in the Senate would use the word "simple" numerous times to describe this legislation and to try to return legislators to a version of the bill unencumbered by amendments. But its culture-war connections, the fact that it was a mandate rather than a recommendation, that it included "under God," and that it was such a powerful political tool—all these qualities made it decidedly not simple for others.

Steve Kelley recognized immediately the reference to himself and Day's dismissal of the value of dissent and the value of proceeding with cautious regard to the impact of a pledge mandate on diverse Americans. Kelley addressed Day directly, invoking the nation's founders and the principles they established amidst their own issues of diversity, identity, and contentious decision-making:

The Puritans in New England couldn't have been more different from the Cavaliers in Virginia. There were Catholics of all things in Maryland, and Quakers in Pennsylvania, but somehow they came together and said, 'You know, our differences are not going to divide us.' We ought not let that happen again, and you know, Sen. Reiter, some of those folks stood up and got noticed because they had different opinions and there were loyalists and folks who wanted a revolution and the folks who wanted a revolution won, and I think they were suppressive of the loyalists. I think the first time this bill came up [in 2001] I asked you to ponder the Alien and Sedition Acts, because the debate continues. There were people who were more aligned with the French and people who were more aligned with the British. And you know what? We made a mistake, because back in the Adams Administration we passed a bill saying people could be arrested for their views. And it took a Jefferson election and a change in government to eliminate that law because the courts were enforcing it. We've had this, Sen. Day, for 225 years and I'll cut this short because it's going to continue if this country really is going to be strong. It's going to be diverse and it will find a way to include the Kelleys, the Catholics who used to be oppressed by the British government, and it's

one of the reasons we have a First Amendment guaranteeing a freedom of religion and it will include the Mouas, and the Days, and the Sabos and the Moes and everybody else from all these different places who come here not because of the flag but because of the concept of liberty that's in the Pledge of Allegiance. (HF2598/SF2411 2002c)

Like Moua, Kelley was not advocating for alienating identity politics but rather an 'essential diversity' that he expressed as central to the strength and future of the nation. Neither Day nor Kelley's comments brought any closure to the debate, however, and various members rose to back one position or the other.

Near the end of the increasingly tense debate, Ellen Anderson (D) observed that the Senate debate itself was indicative of the need for some small level of protection for students who could not or would not pledge. Anderson noted that at least the heated exchanges in the Senate were among adults, but that children would have to navigate potential pledge and patriotism hostilities on their own:

What [this debate] really points out, Sen. Day, is that you and I and all the other senators in this body can grandstand all we want about patriotism. We are grown-ups. We are adults. And we have put ourselves in this position. But our children should not be forced to pay that price. This [Moua] amendment is about taking responsibility for the children—and the grown-ups in the building, the grown-up teachers, the adults taking responsibility for our patriotic decisions. Our body makes a decision about patriotism. Why should a child have to suffer because we made the decision they had to say

the pledge to be patriotic? This amendment makes it possible for us to make that decision without us harming our children. (HF2598/SF2411 2002c)

Anderson's speech embodied the concerns of various members hesitant to endorse the mandate, but neither Day nor other advocates responded. And Reiter, who had fought so hard to get the bill this Senate hearing, had grown so frustrated with the direction of debate and amendments to her original mandate that she requested that the bill temporarily be withdrawn from consideration, saying that "it's very obvious to me that the bill no longer looks like it looked when it started out" (HF2598/SF2411 2002c).

Star Tribune columnist Doug Grow, who saw this trouble brewing in early 2001, devoted his whole column on March 18, 2002, to this Senate debate and to the undercurrents regarding diversity that had made it so contentious. Grow paid particular attention to the lingering pall in the Senate caused by the personalized nature of the clash over multicultural issues and the Moua amendment. He quoted Reiter as saying about the Senate after the debate that "it feels very heavy in here." Grow attributed that heaviness not to the pledge debate itself but rather to his perception that "the real passions driving the debate may have been about the changing faces of the country" (Grow 2002), a viewpoint reflected in the analysis of the complexities of multiculturalism in relation to perceptions of national unity and American identity (Wood 2008; Bon Tempo 2011; Glazer 1997; Diggins 1996; Finn 2001; and Appleby, Hunt and Jacob 1994). Grow spoke with Moua as well as Reiter, and he said Moua was saddened by the undertones of the debate. Said Moua to Grow, "For some reason, I think that when some people think about patriotism, they put a

Euro-face to it” even though patriots come from all racial, religious, and ethnic backgrounds. She told Grow that she was accustomed to the “go back to where you came from” taunts, especially after 9/11. “I think after September 11, all racial and ethnic communities were on guard. Every community went above and beyond to overtly say ‘We, too, are Americans.’”

Grow also noted that these touchy topics had only been partially addressed. He wrote that he asked Reiter to explain what she meant by her floor comment that Moua’s amendment would result in “unintended negative consequences,” but Reiter would only say that “I’ll leave it at that for now.” Reiter went on to explain that the outpouring of patriotism after 9/11 did not change the fact that all Americans needed to be concerned about patriotism further into the future. Said Reiter, “I just so passionately believe what we’ve had in our country is dying. I believe we’ve stopped teaching our children our history. All I wanted was a simple, straightforward bill that standardizes the pledge across Minnesota. It mystifies me that we have this horrible debate,” a debate that Grow (2002) attributed to fears and insecurities about those “changing faces of the country.”

Grow did not explore Reiter’s contention that “we’ve stopped teaching our children our history,” but she likely was referring at least in part to the overtaking of traditionalists’ favored ‘grand narrative’ by the more fragmented and less traditionally exceptional approach that included multicultural and relativistic perspectives that gained traction from the mid-1960s onward (Appleby, Hunt and Jacob 1994; Wood 2008; Diggins 1996). Wood in particular noted that Americans “have tended to think of their nation not just as different but as specially or

providentially blessed, as somehow free from the larger tendencies of history and the common fate of nations,” and he noted further that in the late 20th century Americans were for the first time “confronting the fact that the United States may be just another nation among nations without any special messianic destiny (2008, 196-97). Whether this accurately describes the source of Reiter’s angst is impossible to know, but Grow concluded his column by relating a conversation about the mandate debate that he had with Hy Berman, a retired history professor from the University of Minnesota. Berman noted that the pledge mandate itself could be dismissed as “probably innocuous” but that the nuances of the debate could be indicative of something deeply important. Said Berman, “The concern is when people start believing that anybody who doesn’t believe the way I do is unpatriotic. That’s what leads to things like loyalty oaths. Then you have trouble” (Grow 2002).

That the three-hour “horrible” debate, as described by Reiter, would end with rancor, no resolution, and virtually no sense of meaningful compromise was illustrative of the divisive potential in patriotic legislation and pledge legislation in particular. And that this divisive mandate was to be imposed upon subordinate school children was also illustrative, particularly in light of the tone and opinions related to multiculturalism and the inescapable fact that many American schools balance the challenges and benefits of 21st century American diversity and multiculturalism every day. Clearly, some mandate proponents were not comfortable with accommodations for diversity mitigating their conceptions of American patriotism and their vision for unity embodied by the pledge. Other legislators possessed competing conceptions of patriotism, of the diversity inherent

in the American identity, and of the limits of symbolic expressions. These divides were proving to be a difficult gap to breach in the Minnesota Senate, even after 9/11.

The Dark Side of Patriotism and References to the Thought Police

Even though Reiter pulled her bill from consideration after the initial three-hour Senate debate on March 12, 2002, the post-9/11 mandate bill had sufficient public support to motivate members of the party caucuses to negotiate privately to achieve a compromise, and when Reiter's mandate bill returned to the Senate floor six weeks later, a significantly different tone prevailed. Specifically, these private caucus negotiations had produced an informal agreement about what should be in the bill and that no more amendments would be offered by either side other than Moua's amendment to include a statement encouraging respect for students who opted out, an amendment that had been left hanging when Reiter pulled the bill during its initial Senate session.

Reiter reintroduced her mandate bill²² for its second debate in front of the full senate on April 25, 2002, and yielded almost immediately to Moua, who offered her amendment anew but not before providing a narrative review of the downside of questioning the nuances of patriotism and the Pledge of Allegiance. Moua explained again that she strongly supported this mandate bill and that in the weeks since the first full-senate debate on March 12 she had been meeting with leaders of the American Legion in order to craft an amendment that would satisfy both her concerns and theirs. Moua then shared some entirely new information, information

²² The Senate bill was still in its original form with the lone addition of an amendment to set aside additional time for civics each week.

that for her and for those supporting her position lent tremendous weight to the importance of additional protection for children who declined to pledge. Moua described how even though she was a supporter of the pledge and the mandate, her raising of concerns about non-pledgers seemed to have made her the “anti-Pledge of Allegiance queen,” according to her detractors:

I would like to share some of the letters that have come to me because I think they will help me prove my point that there are still some feelings out there that anybody who raises a concern about coercion or mandated speech or a mandated Pledge of Allegiance is un-American. This letter says ‘Dear Senator Moua, I want to comment on your amendment that says that some school children don’t have to pledge to our flag because of religious or personal reasons. What religious or personal reasons would stop someone pledging the flag in this great country? An action like yours would be a good reason for you to resign. This country has given you a wonderful life compared to where you came from.’ This other letter says, ‘As a person who had to relinquish my claim to any government assistance whatsoever to make possible the immigration of my wife, who has worked continually since 1962 without any an unemployment benefits, I believe I can state those that do not say the Pledge of Allegiance to this great country because they do not want to utter the words ‘under God’ might be more comfortable under a governmental system which requires no allegiance whatsoever. Do I believe that those who refuse to pledge are less loyal than those who want to? Yes, I absolutely believe that.’ This other letter says, “Dear Senator, I take offense

when you think that people automatically put a European face on the Pledge of Allegiance. It isn't about race; it's about where you live and what government protects your sorry butt. Welcome to the United States! Have you lived here long? Obviously you've been here long enough to get elected, but not to realize what America stands for.' And this last letter, I think, is very instructional: 'Dear Ms. Moua, your thoughtless attempt to put a qualifier on the bill to put the Pledge of Allegiance in our Minnesota students' days strained my tolerance level. You are a product of affirmative-action agendas. You have been insulated from the scrutiny that most students and legislators face. That novelty has worn off quickly. Perhaps in the next election, you and your questionably registered voters will need to attend to this fact. Hopefully you can teach your son and your other family members how to recite the beautifully written Pledge of Allegiance with great appreciation for what you have been given. In your spare time, I suggest you and your family volunteer to help out in the veterans' hospital in gratitude to those who saved you and yours from the from the rice patties of southeast Asia. These veterans have no problems with the Pledge of Allegiance.'

(HF2598/SF2411 2002d)

By voicing concern that non-pledging children might be bullied, Moua had become a target of pledge-related derision herself—even though she had expressed her support of the mandate. The letters expressed anger at her amendment and extended that criticism to various culture-war hot buttons like religion, immigration status, ethnicity, use of public assistance, affirmative action, and general loyalty.

After describing this backlash, Moua proceeded to describe her revised amendment, which would require that a classroom leader teach students at the start of the school year²³ that they might decline to pledge for personal or religious reasons and that fellow students should not deem them unpatriotic for declining. Democrats Deanna Wiener and Steve Murphy rose in support of the amendment, and Murphy, a former Marine, added an impassioned “one-minute history lesson” in regard to the letters Moua received. Murphy, his voice rising and his gestures sweeping, described in detail how “a lot of marines and a lot of soldiers and a lot of sailors and a lot of airmen would have never come home from southeast Asia had it not been for the efforts of many Hmong and South Vietnamese,” vast numbers of whom “were taken out and summarily shot by the communists” for their aid to American servicemen (*HF2598/SF2411* 2002d). Murphy’s defense of Moua and of Hmong-Americans illustrated the intertwining of ethnic and American identities and patriotism in a multicultural society—the Hmong-Americans provide a vivid example of an immigrant group that embraces simultaneously their ethnic culture and their affiliation as patriotic Americans.

Michele Bachmann rose after Murphy, not to respond to Moua or Murphy’s experiential speeches but rather to rebut Moua’s amendment as a repudiation of the pledge. Bachmann described Moua’s amendment as “a disclaimer regarding the Pledge of Allegiance, and this concerns me. We have a disclaimer on cigarettes—it’s a warning signal. We have a disclaimer on the use of alcohol, which is a warning signal. And it struck me that this was a warning signal, too—on saying the Pledge of

²³ This is reduced from the four times per year that was requested initially.

Allegiance.” Bachmann’s choice of the word “disclaimer” is denotatively confusing given that Moua’s amendment was not a disavowal or repudiation of the pledge but rather a formal acknowledgement that students possessed the right and reasons to decline to pledge, and that that right should be respected by others who should not judge patriotism based on pledge participation. Bachmann’s rhetorical choice to compare Moua’s anti-bullying concerns to warnings on cigarettes and alcohol also illustrated the deep divide regarding the consideration of multicultural concerns that might constrain the practice of traditional Americanism in public schools.

Bachmann focused on what she described as improper state-sanctioned presumption of intent and restriction of belief in Moua’s amendment language. Bachmann said that while she supported students learning the history and purpose of pledging and that students should know they do not have to participate, she could not abide the editorializing nature of the portion of the Moua amendment that said students should not be considered unpatriotic for not pledging. Bachmann then moved that that portion of the Moua amendment be removed.²⁴ Bachmann reasoned, “I don’t think the state should be in the business of presuming anyone’s intentions, whether they are patriotic or not patriotic. It’s not the business of the state to make assumptions about the intentions of anyone’s heart” (*HF2598/SF2411 2002d*). Bachmann eventually agreed to reword her amendment so that students could decline “without being penalized,” but this was an unsatisfactory substitute for

²⁴ Bachmann’s motion to amend the Moua amendment (quoted here) called for a period after the word “so” and deletion of the words following that period: “The person in charge shall inform the students that anyone not wishing to participate in the recitation of the pledge for any reason may elect not to do so[insert period here and delete of what follows] and not be considered unpatriotic by refraining from the recitation.”

Steve Kelley, who asserted accurately that the Supreme Court had already ruled that students could not be penalized (*West Virginia v. Barnette* 1943).

Kelley further asserted that Bachmann was ignoring the true issue of patriotism peer pressure addressed by the Moua amendment, an issue central to the protection of students' civil liberties and to the maintenance of inclusive atmospheres in diverse classrooms. Kelley implied that opposition to the Moua amendment was more accurately opposition to pledge decliners and an embrace of peer pressure to encourage patriotic conformation:

...[Sen. Bachmann] is ignoring the question of whether someone who declines to say the pledge can be accused of being unpatriotic—that is really the issue here. Because as many members probably already know, even members of the legislature who question the wisdom of having to mandate this get accused of being unpatriotic. What's going to happen to a school kid who doesn't want to go along with the class? So it's time to say what we are really talking about here, which is the kind of pressure that would be imposed on schoolchildren with respect to this whole question of being thought to be unpatriotic—that is to be disloyal to our country simply because by reason of religion or something else they declined to participate in the pledge. (*HF2598/SF2411* 2002d)

Gen Olson, however, shared Bachmann's concerns and pressed Kelley—not on his call to protect children but rather on the telepathic intricacies of how one would know whether children were perceiving decliners as unpatriotic, based on Moua's choice of wording. Said Olson, "Are we going to have to have some thought police to

go and determine whether someone is actually thinking [that a non-pledging student is unpatriotic]? How do you know if it's not overt? This says 'they may not be considered unpatriotic.' I don't understand how you know that" (*HF2598/SF2411* 2002d).

Kelley latched on to the specter of thought police as evidence that a mandated loyalty pledge in any form invited precisely those kinds of worries, which in itself was evidence that they were inappropriate in public schools. Said Kelley: "I don't want there to be thought police. And that you think that might come out of this whole discussion casts a really interesting light on Sen. Reiter's bill—that the concept of thought police comes in here at all. I don't want there to be, I'm just saying that each student ought to be able to be reassured that his or her free decision made in a free country about what they're going to say will not lead to them being accused of being disloyal or having a lack of patriotism" (*HF2598/SF2411* 2002d).

Even though the party caucuses had reached an informal agreement to limit this debate, this new exchange regarding disclaimers and thought police illustrated again the incendiary nature of the pledge and patriotism as symbols in the culture wars. Bachmann contributed further to this perception when she rejected comments that she was trying to weaken the Moua amendment to protect decliners and declared instead that she was committed to protecting free speech as guaranteed in the First Amendment, in this case the free speech of children to openly declare non-pledging classmates as being unpatriotic. Bachmann said: "The state does not have the power to keep anyone from becoming stigmatized, whether

we want people to be stigmatized or not. I would give everyone in this chamber the benefit of the doubt that they don't want anyone to be stigmatized. But when the state of Minnesota makes statements that you may not stigmatize another person, then the state of Minnesota is infringing upon the First Amendment free-speech rights of every individual in this state. That's what we do not want to do" (*HF2598/SF2411 2002d*).

Both Bachmann and Kelley were expressing a commitment to preserving the rights and freedoms in the First Amendment and the Constitution. But Bachmann's advocacy for the American Creed and a conservative conception of traditional Americanism in public schools resulted in a position in which the pledge needed to be mandated, and those who wished to decline had the constitutional right to do so but did not warrant additional accommodations. Kelley, in contrast, emphasized the First Amendment in a liberal conception in which its protection for diverse opinions and religions was in itself a sort of American creed that repudiated the mandate element of the pledge as incompatible with American ideals.

This latest skirmish aside, the prior agreement by the caucuses to constrain the growingly deleterious debate appeared to work. Bachmann's motion to amend the Moua amendment failed on a voice vote, and Moua's amendment passed by a large margin—again on a voice vote rather than a roll call. The light participation in the debate and the absence of requests for roll-call votes provided evidence that the off-the-record caucus negotiations after the last "horrible" debate had held sway in terms of constraining the politicking on this bill—at least for the moment. Moua's work with the American Legion on co-crafting her amendment also indicated

broader cooperation after that first Senate debate. Apparently, as politically advantageous as patriotic politicking can often be, the mandate debate's crossover into rhetoric and position-taking on prickly issues of multiculturalism, diversity, and bullying had significantly decreased the political dividend of patriotism politicking that had begun to garner a lot of public attention.

The Reiter bill, with amendments for more time for civic education and for Moua's statement to protect of non-pledgers, passed out of the Senate and on to a conference committee to reconcile the House and Senate versions, but the bruising undercurrent of the debate lingered. *Pioneer Press* reporters Rachel Stassen-Berger and John Welsh (2002) interviewed senators the day after this latest effort to compromise on the pledge mandate, but even though Moua's amendment and the bill itself had passed the Senate, few senators seemed inclined to celebrate. Moua said that while she expected to hear from citizens who disagreed with her position, she did not expect the vitriol, racism, and bigotry evident in numerous letters, three of which she had shared with her Senate colleagues during floor debate the prior day. She singled out the references to "rice patties" and "rescues," noting how those types of comments were not applied to other politicians in this debate. Moua said, "If my predecessor [then St. Paul mayor] Randy Kelly was here and had offered this amendment, I don't think he would have received a letter that says, 'Be grateful that American veterans rescued you from the potato fields of Ireland.'" House author George Cassell, interviewed for the same story, avoided the topic of the bigoted backlash and rather lamented that the amendment to share with students Moua's opt-out statement once per school year would diminish the special aura of pledge

recitation. Said Cassell, “This could be a statement that degrades the Pledge of Allegiance.”

Public reaction to the debate over a mandated pledge tended to show divisions similar to those in the legislature. St. Paul elementary teacher Jean Jones said her students pledged each day and that that they were capable of understanding “that the flag represents our country and we are all citizens of the country” (Lonetree and Walsh 2002). Junior Liz Varco also said that she pledged weekly at her school but that a state mandate ran counter to religious freedom, the separation of church and state, and the personal nature of patriotic belief: “It’s been real easy since the September 11 attacks to be pro-America and feel like you want to do anything for your country,” Varco said. “But patriotism is something personal. Forcing someone to say it won’t make it mean something to them” (Lonetree and Walsh 2002). Orin M. Smith, a disabled World War II veteran from Chisago City, took that a step further, asserting that a mandate not only impinged on individual rights but that it “will take away [the pledge’s] dignity and respect” (Smith 2002). Fellow letter writer Bill McDonald suggested that the pledge be taught along with the Bill of Rights, asserting that “rote has a place, but it’s far more effective when combined with reason” (McDonald 2002). Doug Grow and Hy Berman’s earlier concerns about tone and the underlying sentiments of the pledge-mandate issue were also borne out by various letters. For example, Pat Clark wrote, “Yes, students should be required to say the Pledge of Allegiance. Actually, they shouldn’t be required, they should want to. Those who don’t might bear watching. Saying the Pledge of Allegiance shows patriotism and a common bond, something we should all be proud to do...I would

suggest that anyone not wanting to recite the Pledge of Allegiance might want to consider not living in this country..." (Clark 2002).

Newspapers in the state also devoted columns and editorials as well as news stories to the topic, and they too picked up on the culture-war tenor of the debates and the resulting cultural divisiveness. *Pioneer Press* op-ed writers D.J. Tice and Deborah Locke offered point-counterpoint columns. Tice marveled at the long debate over such a minor matter, but he attributed that to his perception that what "we're dealing with here is an issue that is itself a symbol—a skirmish in the 'culture war.' The pledge is a relic of traditional American values—god and country and all that—values some would de-emphasize in favor of diversity, tolerance, environmentalism, and so on. In theory, those value systems shouldn't have to be antagonistic, but they often are. One's position on the pledge seems to serve as a kind of declaration of allegiance to one camp or the other," Tice theorized. He further asserted that schools "exist to influence hearts and minds," and therefore they will always be contested territory in the culture wars, and he suggested that approving a pledge mandate could be offered as a small concession to traditionalists faced with continual change. Said Tice, "Today, schools are busy telling children what to think about sex and race and recycling and a thousand other things on which opinions differ. Inviting students, if they choose, to declare allegiance once a week to the republican form of government 'for which' the flag 'stands' seems at worst a harmless addition to the values they are being schooled in." But being cognizant of what he described earlier as a "skirmish in the 'culture war,'" he noted as conclusion that "not all small matters are trivial" (Locke and Tice 2002).

Locke, in her counterpoint, joined Tice in seeing the pledge-mandate debate as referential to larger issues, and she was especially critical of social conservatives. Locke called out the social conservatives in the legislature and compared their behavior and rhetoric to “McCarthy-era tactics with their puffed out chests and hot air about what constitutes today’s definition of an ‘un-American activity.’” Locke reminded readers that these legislators described themselves as “sickened” by Moua’s legislation to protect children from being labeled as unpatriotic for opting out, and she criticized them for insisting on battling over the pledge when truly urgent issues loomed: “What’s genuinely un-American is to cloud the horizon with so much nonsense that you never get down to the serious work of government,” Locke wrote. “Legislators play the patriotic fiddle while school districts throughout the state lay off teachers, patch buildings together and try to figure out how to get by with 10-year-old textbooks” (Locke and Tice 2002).

Locke and Tice both recognized the central role that multiculturalism and diversity had come to play in citizens’ perceptions of the character and unity of the nation. The more conservative Tice, in particular, recognized and described the sense of fear and threat that traditionalists perceived in the ‘liberalizing’ and diversifying of school curriculums and environments and the correlational need to defend something as traditional and unambiguously American as the pledge.

While Locke and Tice focused on insights regarding the policy and critiques of groups of legislators, a third *Pioneer Press* columnist crossed a line—that of sarcastic racial and ethnic referencing of an individual—in terms of the pledge debate. Joe Soucheray, a lifelong Minnesotan and career sports reporter who became a *Pioneer*

Press columnist in the mid-1990s, offered his printed response to the Moua amendment on April 28, three days after the Moua-amended bill passed out of the Senate. Soucheray, whose current radio talk show “Garage Logic” airs on ESPN radio, is described in his show bio as “the Twin Cities’ preeminent purveyor of Common Sense,” and is known by his common-man slogan that “anything that needs to be figured out can be figured out in the garage” (Garage Logic 2014).

Soucheray, in that *Pioneer Press* column, took digs at mandate opponents in general and at Moua in particular when he asserted that pledging allegiance to “the republic that offers liberty and justice for all hardly seems to construct a moral dilemma for an American, and yet, there are opponents who think that the pledge time might be used for what they call ‘teachable moments.’” Soucheray went on to claim inaccurately that Moua had never expressed her reasons for her amendment to inform children of their right to opt out and to explain that individuals who made that choice should not be considered unpatriotic. And then—as a prime example of Grow’s (2002) belief that the vitriolic debate around the pledge conflict was more “about the changing faces of the country” than it was about the pledge—Soucheray went on to explain sarcastically that he had called Moua’s Senate office in search of an explanation and got her voice recording, which this prominent columnist used as an opportunity for not only an ethnic dig and an opportunity to question her American-ness, but also a dig at the erosion of Minnesota’s white northern-European ethnic majority. Wrote Soucheray, “We are a long way from the Sven and Ole jokes when a state senator leaves on her answering machine a message in

English followed by the same message in Hmong that seemed to be flavored with a lovely lilting of a French accent.”

Soucheray, who has built his radio-talk career on off-color humor and his self-ascribed ‘common-man’ commentaries, then asserted that he too could exercise his First Amendment right to “say that a kid is unpatriotic” if he does not pledge. He also marveled that anyone would object to the “under God” element considering that “the founders founded with God on their minds.” He ultimately concluded that the pledge legislation was likely unnecessary given that no laws prevented schools from pledging, but he also concluded that providing an opt-out from the pledge should also mean students could opt out of other school activities such as the Pledge to the Earth and similarly subversive liberal “proselytizing” (Soucheray 2002).

In and of themselves Soucheray’s comments about the First Amendment and the opt-out are common arguments in the continual cultural tug-of-war regarding whose curricular priorities and moral interpretations should obtain in public schools, but it was his use of Moua’s answering-machine message that appeared to cross a line. Soucheray used Moua’s recorded message to deliver thinly-couched digs at Moua’s ethnicity and what he implied were her split loyalties that were most illustrative—particularly when combined with his reference to “Sven and Ole jokes,” which are a locally embraced inside nod to the longstanding predominance of Scandinavian immigrants in Minnesota history.

That opinions similar to Soucheray’s punctuate the pledge debate among varied citizens is no particular surprise, but that those views would appear so prominently and so unapologetically in the *Pioneer Press*, a major daily, is indicative of the larger

issue of a pledge mandate imposed upon minors in public schools. Namely, as some legislators noted, this was a school mandate created by non-school-related adults, the impact of which would be delivered exclusively upon children who would have to navigate alone the consequences of opting out. As Grow, Berman, Locke, and Tice all noted, this was a battle in the larger culture wars for the course and content of public-school classrooms and the competing emphases on “essential unity,” “essential diversity,” and contemporary multiculturalism (Wood 2008; Bon Tempo 2011)—but this battle for culture in the schools and in the larger society occurred with relatively little substantive discussion of schools and students by proponents of the bill.

The ‘Heaviness around Here’ Continues

Because of differences between the House and Senate versions of the 2002 mandate legislation, the companion bills were sent to conference committee for reconciliation in May of 2002. House conferees included the following: George Cassell; Jeff Johnson (R); and Paul Marquart (D), a social-studies teacher described by Ellis (2005) as the most conservative Democrat in the House and whose school would be in the news a few years later for punishing a pledge decliner.²⁵ The Senate conferees included Mady Reiter, Steve Murphy, and Mee Moua.

No official minutes exist from that conference committee, but the result, which was presented to both bodies as a committee report,²⁶ produced a compromise bill

²⁵ I attempted to contact Paul Marquart several times in order to gain his perspective on the issue and events, but he did not respond to my request for an interview. I also attempted unsuccessfully to contact George Cassell and Mady Reiter.

²⁶ See Appendix B to see the committee report.

dominated almost entirely by the House version of the bill. Both the Moua and Betzold amendments from the Senate version were discarded, and the House version was amended to include content about the history of and reasons for the pledge; also, school policy guides, if they existed, must “include a statement about student rights and responsibilities” relative to reciting the pledge (*Journal of the House-MN* 2002). Upon receipt of the conference-committee report, which was nearly identical to the pledge-only House version, the Minnesota House voted immediately, passing the final version 116 to 11.

The Senate’s final vote on the reconciled bill also occurred on May 17, 2002, but it was not without further conflict; Sen. Moua announced that she withheld her signature from the conference-committee report and that though she remained supportive of requiring the pledge in public schools, she was deeply disappointed in the final version of the bill due to the lack of regard for non-pledging students. Moua explained how some of her fellow conferees rigidly insisted that her amendment be stripped because it would be too difficult and too inviting of chaos for teachers to tell students they did not have to do something that children perceived as required. Moua dismissed this claim and asserted to the Senate that those conferees had no interest in encouraging critical thinking in children or in respecting the diverse beliefs among school populations. Moua said:

As a parent and as a policymaker, I would think that our aim in life is to teach our children about our differences, to teach our children about what really makes America America—and that is tolerance and the freedom and liberty to truly be who they are. Our goal in educating our children is to teach

them to be critical thinkers so that they can become critical active citizens in our state and in our country, and the fact that that language could not be left in the bill—that it had to be stripped out so that we could bring it back here—I’m highly disappointed, and I have been disappointed with how we negotiated this bill. (*HF2598 2002b*)

Moua’s deep disappointment at the stripping of her amendment to protect students cast an even deeper shadow over the mandate debate, particularly given that Moua’s Democratic Party controlled the Senate but failed to gain significant compromise on the bill. After Moua’s declaration, fellow conference-committee member Steve Murphy attempted to explain why none of the Senate provisions appeared in the report, and in the end he deflatedly conceded that the House conferees were very assertive about their demands and this was the best that could be achieved if any pledge bill at all were to come out of the legislature in 2002. Several other senators commented, and Sen. Leo Foley, the Korean War veteran who had opposed the bill in earlier Senate debates, in an act of defiance moved that a new conference committee be called. Ultimately, the Senate voted to accept the report, and the bill itself passed out of the Senate 46 to 10—but with the specter of a possible governor’s veto hanging over the bill’s passage out of the House and Senate.

The Ventura Veto: ‘No Law Will Make a Citizen a Patriot’

The pledge-mandate bill still faced a major hurdle in the person of Governor Jesse Ventura, a former Navy SEAL, professional wrestler, writer, and a political independent. Undeterred by the certain knowledge that he would be widely criticized, Ventura followed through on his previously expressed concerns about the

bill and vetoed HF2598 on May 22, 2002. In a letter to the leaders of both bodies and germane individuals, Gov. Ventura (2002) wrote the following:

I have vetoed and am returning Chapter Number 391, House File Number 2598, a bill requiring school pledge of allegiance recitation.

I am vetoing this bill because I believe patriotism comes from the heart. Patriotism is voluntary. It is a feeling of loyalty and allegiance that is the result of knowledge and belief. A patriot shows their patriotism through their actions, by their choice.

Chapter 391 is not about choice. In Chapter 391, the State mandates patriotic actions and displays. Our government should not dictate actions. The United States of America exists because people wanted to be free to choose. All of us should have free choice when it comes to patriotic displays.

According to *West Virginia Board of Education v. Barnette* (U.S. Supreme Court, 319 U.S. 624, 1943), 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.

This case went on to state that words uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. In other words, a government wisely acting within its bounds will earn loyalty and respect from its citizens. A government dare not demand the same.

There is much more to being a patriot and a citizen than reciting the pledge or raising a flag. Patriots serve. Patriots vote. Patriots attend meetings in their community. Patriots pay attention to the actions of government and speak out when needed. Patriots teach their children about our history, our precious democracy and about citizenship. Being an active, engaged citizen means being a patriotic American every day. No law will make a citizen a patriot.

For these reasons, I vetoed this bill.
Sincerely,
Jesse Ventura, Governor

Ventura had intimated on multiple occasions prior to its House and Senate passage that he would consider vetoing a mandatory-pledge bill because of the inconsonance of state-mandated patriotism. In fact, the governor had compared mandated pledging to the compelled-allegiance behaviors required of children by the Taliban and by the Nazi regime (Ragsdale 2002). Ventura, in his explanatory letter to the House and Senate, was far less incendiary but was pointed in his assertion that coerced allegiance begets a false loyalty and that “patriots serve. Patriots vote. Patriots attend meetings in their communities. Patriots teach their children about our history, our precious democracy and about citizenship.” This conception offered by Ventura is very much aligned to Westheimer’s description of democratic patriotism.

The editorial boards of Minnesota’s daily newspapers tended to laud Ventura’s veto based on the belief that patriotism should be self-initiating and that school children should not feel pressured to pledge. The *Duluth News Tribune* editorial said that Ventura was right to ask what was wrong with the enthusiastic and *self-*initiated patriotism as it was being expressed after 9/11, and they agreed with him that children would not be in a good position to decline to pledge, that even though the right was explicitly protected that children who declined could expect “ostracism and marginalization” (*Duluth News Tribune* 2002). The *Mesabi Daily News* also sided with Ventura, as did the *Minneapolis Star Tribune*, the *St. Paul Pioneer Press*, and the *Rochester Daily News*. The *Daily News* described Ventura’s veto as “the patriotic thing to do,” noting that nearly 75 percent of Minnesota public schools already were regularly pledging and that patriotism may be shown in many

other ways, as well. This editorial also pointed out the irony of legislators' and other adults' do-as-I-say approach to children and schools: "And why make schools and children a battleground on yet another issue? If adults aren't required to say the pledge regularly at work or elsewhere, children and their teachers should not have to bear the brunt of well-intentioned but misguided attempts to make society more patriotic" (*Rochester Daily News* 2002).

The opinions of letter writers varied more than the editorials and included various culture-war themes. Jerry Rogers of Minneapolis described Ventura as being in "his libertarian stupor," and he asserted with that in such a diverse culture the pledge was a unifying activity and an activity that trained free will. Wrote Rogers, "Ventura would have us believe a free will doesn't need training. A child has a lot of self-motivated passion, but it mostly has to do with street hockey, bubble gum, crickets and rap. Which idea is more absurd: that people who invest in union can live more peacefully, or that the innocent but simple minds of children should teach themselves?" (Rogers 2002). Tom Mullon of Eagan also took issue with Ventura's veto, asserting that with the opt-out provisions for individuals and for school boards the final bill "included no such requirement" to pledge (Mullon 2002).

Senate author Mady Reiter, interviewed after the veto, continued to express her confusion about why there would be opposition to a mandated pledge. "My initial reaction is one of just abject disappointment," Reiter said. "I just don't understand why the governor of the state of Minnesota would want to veto a bill that passed so unanimously in both houses of the legislature" (Walsh and Lonetree 2002).

Presumably, she had read Ventura's letter detailing his reasons and the reasons in

Barnette (1943), and she had been present for all of the argument in the Senate proceedings on the bill, so she was likely expressing her disagreement with those views rather than not understanding them. Her assertion of the bill passing “so unanimously” out of both houses did not acknowledge the reality of the debates she herself described as “horrible,” the repeated threats of exposure of opponents as unpatriotic, the political leveraging of 9/11, or the fact that a conference-committee member was so dissatisfied she refused to sign off.

Korean War veteran and Minnesota state senator Leo Foley, who had spoken repeatedly against the bill on the floor of the Senate, commended Ventura for defending free speech, which was “one of the rights the veterans were fighting for,” Foley said. But fellow veteran and Legion legislative chairman Orville Otterness said that, speaking for himself, veterans would start questioning the governor’s patriotism. “I think they’re going to wonder why he’s a Navy SEAL and he’s against it,” Otterness said (Walsh and Lonetree 2002). Otterness said the Legion had mounted a phone campaign to press Ventura to sign, but to no effect. Otterness, in the heat of the moment, predicted that losing the pledge mandate would lead to catastrophic consequences: “If we don’t get this into our history, we’re going to have to start all over,” he said, noting that the names of Pearl Harbor, Iwo Jima and Normandy were unknown to many young people. “If he thinks we shouldn’t pledge to the flag, well, I’m a Norwegian. Maybe I’ll go back and fly the Norwegian flag” (Walsh and Lonetree 2002).

Because the passage and subsequent veto in May of 2002 had occurred so late in the legislative session, there was no opportunity to attempt an override in that

session. However, legislators in 2003 would again take up the pledge-mandate issue, and their next iteration of the legislation was signed into law by new Republican governor Tim Pawlenty in the late spring of 2003. (See Appendix C for the 2003 mandate that remains state law today.)

Conflict Arises When New Governor Signs Pledge Mandate Bill in 2003

Like the previous debates, the 2003 legislative proceedings around the mandate were characterized by politicking and divisiveness, and the debates included references to individuals' patriotism and to whether opponents supported the troops newly at war in the Middle East. The pledge issue was further politicized by another attempt by some conservatives to attach to the mandate the repeal of the Profile of Learning reform, an attempt that failed in the Senate. By the time the mandate legislation had passed both bodies and arrived at conference committee for reconciliation, new Senate sponsor Steve Murphy said in a recent interview that the conferees were weary of the multi-year fight and knew they needed to move it quickly and quietly through to final passage by both bodies (Murphy 2014).

When the law took effect in the fall of 2003, the St. Paul Public Schools would again be in the news for the Pledge of Allegiance. On September 15, 2003, St. Paul Central High student Ebony Jaja exercised her constitutional right to remain seated during the state-mandated Pledge of Allegiance. Jaja's choice to do so would have passed without publicity except for the fact that her homeroom teacher of four years ordered her to stand and show respect to the flag; when Jaja declined, she was told to leave the room. The situation escalated the following day—a non-pledging day—when teacher Nancy Orr detailed her personal views about each American's

obligation to respect the flag and her personal expectation that that respectful behavior would occur in her classroom. Jaja again shared her preference to remain seated at the next pledge recitation, and again she was told to leave the room (Welbes 2003; Walsh 2003).

Orr asserted that since students stand for the school song, standing for the pledge should not be an issue. Orr said she understood the requirement to be that students must stand but could choose not to do the recitation. "All these people have died to protect our rights," Orr said, so students should at least stand while they "quietly opt out" (Walsh 2003).

Jaja declined to give a reason for remaining seated and emphasized that she was exercising a constitutional right: "The issue here isn't why I won't stand up. The issue is that it's my right not to. I shouldn't have to explain it" (Walsh 2003). Principal Mary Mackbee tried to resolve the student-teacher conflict by seeking agreement that Jaja would arrive late to class on Mondays in order not to be in the room during the pledge. Jaja declined it, noting that "that is my right. I should not have to go outside" (Welbes 2003).

Callers peppered the schools in support of the teacher and critical of Jaja. Fellow student Madeleine Wolfgramm said she supported Jaja's stand and that "it reminds me of ninth-grade social studies, just learning our rights." Central senior Jessica Gipson said she too declines to stand: "I don't feel a need to stand, and they should respect our rights. We did that in kindergarten. We don't even have flags; we have to pledge to the TV" (Walsh 2003).

Many of the letter writers, however, were angry at Jaja—and at Mackbee for not punishing the student. Lezlie Johnson noted that her son was a Central grad in the Air Force Reserve and he had taken an oath to protect people like Jaja and that maybe she should “think about that the next time she is inconvenienced and asked to stand.” Vicki Mansour dismissed Jaja as a defiant adolescent who does “not exercise respect for the authority in her life.” Barry Shoultz preached to her about how “Uncle Sam stood up for you with determination to create a free nation” and yet Jaja would not stand to say thanks. Barbara Eliason suggested that Jaja be forced to write book reports about American heroes (*St. Paul Pioneer Press* 2003). And Leif Hildebrandt (2003) called pledge decliners “spoiled brats” and asserted that defying compelled patriotism was an appalling affront to the freedoms guaranteed in the Bill of Rights.

Bloggers and commenters proved much less restrained. “Free Republic,” which describes itself as “the premier online gathering place for independent, grass-roots conservatism on the web,” posted a link to a *Pioneer Press* article about Jaja and let the commenters have at it. A number suggested that Jaja, an African-American teen with braided hair, be shipped to Afghanistan or Africa, another said derisively “a picture is worth a thousand words,” another that if you don’t pledge to the American flag you should not be allowed in an American school, that “the name ‘Ebony’ just about says it all,” that her parents must be on welfare, and so on for more than 150 comments.

Joann Knuth, an area superintendent for the St. Paul Schools, reflected on Jaja’s constitutional stand within the context of her being a Central High student. Knuth

noted that the historically liberal-minded school has both an International Baccalaureate program and a humanities magnet program and also a lively civics culture led by students. Said Knuth, "Quite frankly, they have a student body and a history of students who are very engaged in deep discussion about issues." Knuth described Jaja's actions as "a moment for us to learn what it means for us to be American. The Constitution and the Bill of Rights give us freedom of expression" (Walsh 2003).

The tone and content of this conflict in St. Paul was reminiscent of some of the diversity-based debates in the legislature in 2002. This school-based conflict was also a microcosm of other facets of Americans' varying attachments to the Pledge of Allegiance: It indicated a split between cultural-conservative traditionalists versus cultural and political liberals; it drew emotional energy from the 9/11 crisis and subsequent wars; it surfaced darker elements of race, class, and otherness; and it hinted at the deep divide between belief in the pledge as effective patriotic education versus belief in democratic deliberation and active civic participation as patriotic education.

Jaja's pledge controversy was not the only one to arise in Minnesota's public schools. As a result of the legislation and the conflicts, the ACLU of Minnesota developed an informational guide to First Amendment freedoms and students' rights related to pledging allegiance, and it has remained active in advocating for students when issues have arisen (ACLU of Minnesota 2003).

In Retrospect: Moua Reflects on Mandate and Patriotism Post-9/11

Mee Moua was a central figure in the pledge-mandate debates in Minnesota in 2002, and in a recent interview she shared her recollections on the impact and actions related to the mandate legislation in Minnesota. Moua's perspectives as a liberal St. Paul senator, a parent, a first-generation immigrant, and a woman of color helped shape her views regarding anticipating and wanting to mitigate the potential consequences of group patriotism mandated for children in diverse public schools.

These qualities that she brought to the Senate were sufficiently distinctive among legislators that when Moua was sworn in in February of 2002, the *St. Paul Pioneer Press* ran a front-page feature describing the event. The story described Moua as receiving "a celebrity's welcome at the Capitol. Secretaries, janitors, and security guards rushed up to shake her hand." Moua also received a formal escort to her office from Hmong Boy Scout Troop 100, and members of the Hmong community immediately hurried to try to get one of the 200 tickets available for Moua's swearing in. Seventeen-year-old Scout Patrol Leader Tou Vang said at the event that "it really feels great to see someone who knows what you have been through and is able to represent you. Many of our elders don't speak English, and their voice is really quiet here. Mee Moua can be their voice in the Senate," Vang said (Salisbury 2002).

Moua, who was born in Laos and fled to a refugee camp in Thailand as a child, had been in the U.S. for 23 years when she was first elected to the Minnesota Senate. The first-ever Hmong-American elected to a state legislature, Moua said after her swearing-in that the large and joyful crowd was "humbling—this is speaking to

millions of millions of (immigrants) about their hopes” (Salisbury 2012). During the interview in 2014, Moua shared some of these perspectives particular to the mandate and to her own experiences with patriotism when she rose to defend the civil liberties and emotional wellbeing of children who would be subject to the state’s legislative mandate.

Moua vividly recalls her initial legislative experiences—experiences that occurred in a period very soon after the September 11 attacks. She describes this period as uncharacteristically conservative for Minnesota and recalls that even bigoted legislation and caustic debate found traction after 9/11. Moua cites as examples not only the vitriol surrounding the pledge mandate, but also the civil-rights and culture clashes over such proposals as color-coding drivers’ licenses to identify immigrants and similar other profiling and surveillance legislation made possible and more palatable by post-9/11 fears.

These types of debates around unity, diversity, civil liberties, and national identity have been a hallmark of the nation throughout much of its history, and these are positional issues central to varying conceptions of patriotism described in the literature (Chen 2004, Abrams 2011, Apple 2002, Ellis 2005, Ornstein 2003, Westheimer 2006, 2007). But as Chen (2004) describes in detail, periods of national crisis make manifest what is often largely latent or less socially acceptable. That was Moua’s experience with these civil-rights clashes and the acrimonious and accusatory atmosphere in the Senate at the time of the pledge mandate in 2002. Moua recalls:

“I felt like it was the convergence of a whole series of circumstances that created a political atmosphere that actually was permissive for the type of debate that I think wouldn’t have been acceptable at any other time. But in the immediate aftermath of 9/11, what we experienced in Minnesota was a bit of a microcosm of what was happening nationally. I think that people’s sense of vulnerability and people’s sense of insecurity almost gave a tacit permission for not only the legislative action that took place but also in the type of debate that took place. It really permitted people to speak and to behave in ways that I think would have been unacceptable in any other circumstances.” (Moua 2014)

Looking back at her thought processes at the time, Moua says that she found herself engaged in these constitutional and civil-rights issues like the pledge both intellectually as an expert in public policy and the law but also emotionally both as a person of color and a comparatively recent immigrant to the United States:

There was the intellectual battle of good public policymaking—I was a freshman state senator, and I was very earnest about my job and I could hear my public-policy professors lecturing about good public-policy making—paying attention to unintended consequences, do the benefits outweigh the price that we have to pay for it? Are we paying attention to the equity concerns? These were on my internal policy-wonk policymaker checklist. And then there’s the other side of me who is sitting there as a young woman of color coming from an immigrant refugee community. And as I was hearing a lot of the debate and the discussion, I was battling with myself to see which

lens should I be reviewing these amendments or discussions through. At times, it felt deeply personal to me. I just remember second guessing myself to say, "Are you being overly sensitive? Or were they being really as offensive as they sounded?" (Moua 2014)

Moua describes getting lots of hate mail—not just on the Pledge of the Allegiance legislation, which she largely supported, but on related 9/11-energized “public-safety” bills to single out and surveil immigrants and people of color who otherwise were unremarkable. In addition to both explicit and implicit bigotry during floor debates, she said that at times a certain individual in a conference committee would get so angry and unrestrained that he would use his considerable physical stature to add to his strategy of verbal intimidation.

Regarding the traction of the pledge and ‘public-safety’ bills, Moua again mentions the impact of 9/11 in giving a foothold in Minnesota where there had been very little prior: “All of this contributed again to the sense of convergence and the social and cultural condition that permitted these bills in progressive Minnesota—the land of Hubert Humphrey and the home of Paul Wellstone—that these types of legislation could move forward,” Moua said (2014).

Moua (2014) recalls the pledge-mandate debate with particular interest because of the way the media and others tried to frame her student-protection amendment about her Hmong heritage rather than about the protection and civic education of all students. Fifteen years after the events, she still marvels that “they couldn’t wrap their heads around the fact that I kept saying: That actually...this has no bearing on my Hmongness. But I do understand that in this diverse community

that we live in, there are cultures and there are communities whose children will get put in very awkward positions for religious reasons.” She adds that there was a sort of surreal realization that she as a progressive Democrat was raising the issue of protecting religious rights while “my Republican colleagues [were] using patriotism, coming hard at me to say that somehow religious rights are not enough—I mean that was just so weird. That was just really weird.”

The debate in the Senate did fall fairly along party lines, but as Moua noted there were unusual turnabouts. While in most circumstances conservatives tend to be the staunch defenders of religious liberty on behalf of Christian conservatives, the melding of traditional religion and patriotism found in the “under God” phrase in the Pledge of Allegiance post-1954 has made the pledge both a religious and patriotic symbol for conservatives and traditionalists. As a representative of both ethnically and religiously diverse St. Paul, the liberal Moua found herself arguing on behalf of diverse religious interests against conservatives who in defending the pledge were also defending the traditional American Christian conception of God, which had been inserted into the pledge as a further cultural counterpoint to the atheism of Cold War Communism.

Moua says that she pushed for her pledge-mandate amendment to verbally inform students about their rights and the rights and respect due to others not only because of the importance of respecting cultural and religious differences but also for the simple fact that children who act outside the norm so easily become targets of their peers. Recalls Moua:

One of the other things that I remember very clearly from my own childhood is how hard it is on the playground... Sometimes when we legislate we forget that one of the unintended consequences is not what happens in the classroom and with the teacher present but it's what happens to the kids when they are out on the playground, the kind of bullying that takes place when a person in a position of authority deems a particular kind of behavior to be deviant from the mainstream. In essence, we're aiding and abetting-- giving permission to kids actually to bully and pick on kids who are 'different.' That's what for me was so important [in my amendment to protect non-pledgers]--that the teachers, the people in positions of authority, be the ones to make it explicitly clear that it is a matter of policy that those who choose to pledge may stand up and participate but it is equally okay for those who may have reasons not to do it—and very valid reasons— even if it's no reasons at all-- that it's okay not to do it too and there wouldn't be any adverse consequences.

Moua remembers her considerable surprise that something she perceived as so basic and mild as protecting children from harassment for declining to pledge would draw such heated and sustained pushback. She noted, too, that most of her colleagues' avoidance of the human element in this and related 9/11 legislation was especially disheartening and isolating but also illuminating:

I feel like I was able to offer up the human perspective, the human voice, of someone who would [know] the position of children who are different and who have been picked on. I thought my sharing of that personal

experience coming from that authentic place of experience would hopefully be emotionally persuasive, and it wasn't. And in fact, I felt like I was dismissed. What was interesting about that was that during all of these debates, whether it was on this issue or the driver's-license issue or the background-check issue, in a lot of these debates to be so alone in those positions—when I was among the majority of Democrats in the Senate and yet to be so alone or to feel so lonely, articulating my voice on these positions or these issues—was enormously eye-opening. (Moua 2014)

Moua says that the reaction and contrary positions of her Republican colleagues could be attributed to their pre-determined political stands, but she was baffled initially by the overall lack of engagement from her progressive and liberal colleagues. She says she eventually realized that for many of them legislating was just a “head issue,” an intellectual exercise, on issues that did not particularly touch on their own life experience. While many colleagues possessed little to no personal experience in the lives of immigrants or people of color, most of them were attached to their personal connection to the Pledge of Allegiance and to their personal sense of patriotism. She said that once the pledge became a proxy for patriotism in the post-9/11 environment, it became a “zero-sum game.” Recalls Moua:

The verbalization of the Pledge of Allegiance got equated to the exercise of patriotism and that somehow if you were unconditionally willing to recite the Pledge of Allegiance, then you were a patriot. But if you were not willing to recite the Pledge of Allegiance, then you were not a patriot. It was a zero-sum game; it was very much either/or. There was no room for the

consideration that you could be tremendously patriotic, country loving, appreciating the opportunities as an immigrant and refugee and having your family's lives be saved and having a haven in this country. That doesn't negate the fact that many people for whatever reason cannot recite the pledge—but I bet at least one of them has a flag in their front door. It's almost this absolute equating of the recitation of the pledge to patriotism or non-patriotism, which is so un-American." (2014)

Moua worked with her Senate colleagues to offer some of the amendments for additional civics and study of the founding documents as a more substantive solution to the perception that students needed more exposure to American ideals, some of which are referenced in the pledge. Moua (2014) recalls that if the key is "ensuring that all of our children grow up not only with a sense of patriotism but nationalism and an appreciation for the love of this country, then the mere recitation of the pledge alone is not going to achieve that... Reciting the Pledge of Allegiance without understanding all of the history that has contributed to make meaning of every single word in that pledge—it's just an empty recitation from memory. Or you could not recite the pledge at all but have experienced all the learning of every nuance contained in the pledge, and you will still be equally patriotic."

She notes that while that may have been an arguable position in terms of civic education, it did not resonate given that that was a period in America when "national security, state security, and public safety trumped everything else." She said that it was a period in the Minnesota Legislature when even progressive

liberals wanted to show themselves as “hard-nosed public-safety minded” and legislators were in “a race to the bottom of how harsh we could be from a law enforcement and public-safety standpoint,” which at the time was a key to reelection efforts and gaining public support. Says Moua, “You know, people were feeling insecure, people were feeling unsafe and there was almost a public mandate—a cultural mandate—people consenting to letting go at the margins of their civil rights, consenting to it in the name of public safety and national security.”

Moua recalls that after the pledge mandate was passed in 2003, teachers in her district of St. Paul adapted to the new requirement but many pointed out that while the legislature pushed hard for three years for the mandate, proponents never provided resources for the purchase of flags. Moua recalls one teacher telling her that she thumbtacked an Old Navy flag t-shirt to the corkboard for the pledging routine. Moua explains that it was not lost on the teachers that the legislators could spend three years on the legislation but still did not attempt to fund their own mandate, nor did they understand the complexities of schools with diverse student bodies like St. Paul’s: “Most teachers understand the value behind why we should engage in civic education and citizenship and understanding our history and the nation, but many many teachers also appreciate the diversity of the students they have in their classrooms because they live with those challenges every single day,” Moua said. “Instead of it becoming an embracing exercise in patriotism, which was how it was billed, it became yet another unfunded mandate at the local level. And that’s why I was getting the letters and these anecdotes [from teachers]. You know, it was communicated in almost a tongue-in-cheek fashion, but they wrote to me

because they understood that whatever the result was, it was counter to what the stated pretext was for why [legislators] wanted to do this.”

Moua said she didn't see teachers feeling pressured or resistant to the mandate and that they were more resigned than anything else: “It wasn't a big deal in that for them they are so resigned to the idea of being tugged around that the depth to which we've fought about and debated this issue [in the legislature] was more enhanced than the practical issue in the classroom,” Moua said. However, there were incidents after passage in 2003 of students declining and being punished for their declining. Moua describes this as “a really sad reaffirmation. I just remember taking a really deep breath and feeling really deflated that the sum of what I was concerned about was actually coming to pass. I just felt really deflated,” she said (2014).

Moua asserts that this type of “if you're not with me you're against me” legislating in an environment of fear provides openings for opportunistic advancement of agendas that would otherwise be exposed as bigoted or socially regressive. She again groups the pledge mandate with some of the other 9/11 ‘public-safety’ action that when legislated after 9/11 “led naturally to some of the anti-immigrant stuff. The Pledge of Allegiance is tied to new Americans or [the idea that there are] people who don't deserve to be here, which translates into ‘Are you an immigrant?’ or...‘Are you a terrorist?’ Even the current immigration debate today at the federal level, even all the immigration legislating that is taking place—you know, the national security, the secured community stuff, the Arizona stuff that is going on, the Alabama stuff that is going on; even leading to some of the voting rights and voter suppression and drivers' licenses and Real ID—all of this decade of

public policymaking in response to a so-called enemy that doesn't really exist in our midst."

In contrast, Moua describes how protecting students from the unexpected consequences of a pledge mandate was very personal and very immediate: "I was deeply emotionally connected to this issue at a deeply personal level," Moua said. "Not because it was a Hmong issue, but because of my experience growing up as a person of color and still being very connected to my childhood experiences and the bullying on the playground." In fact, Moua sponsored bills that session to prevent bullying and cyber bullying, and she was rebuffed because these were too intrusive in reaching into people's homes—but many of the biggest opponents to preventing bullying were the biggest proponents for the mandated pledge (Moua 2014). This type of contrast—insisting simultaneously on mandating a pledge and not mandating bullying prevention—speaks to larger issues and lessons to learn, according to Moua (2014).

"It's really about taking the lessons learned from these types of experiences," Moua (2014) said. "It may be something little like the Pledge of Allegiance but without vigilance that's how we end up with the Japanese internment camps and that's how we end up with the arbitrary rounding up of our Arab-American brothers and sisters in New York City in the aftermath of 9/11. These [issues like mandated pledging] are the little things that contribute to that and it's really a big deal to me.... I think there's a bigger lesson embedded in here."

Conclusion

The clash between patriotism and multicultural interests in the Senate along with the Ebony Jaja events at St. Paul Central High highlight the multicultural complexities of state efforts to mandate the pledge in diverse public schools. The tenor and content of the Senate mandate debate in Minnesota in 2002 in particular illustrated the sharp objections to multicultural accommodations—even one as small as Moua’s once-a-year reminder that students might have religious or personal reasons for not pledging and that that did not make them unpatriotic. What seemed lost among the tense divisions and culture-war rifts in the Minnesota debates in 2002 was the fact that all sides seemed to share a belief to some degree in American exceptionalism, but mandate opponents perceived America’s strength to come from ‘essential diversity’ while proponents emphasized ‘essential unity.’

The 2002 pledge debates in Minnesota also highlighted the power of 9/11 to provide political advantage to conservatives who sought to employ patriotism as a political tool in the pledge-mandate debates and beyond. This put Democratic legislators on the defensive in Minnesota, and their strategic response in the mandate debates was not to argue directly against the mandate but rather to argue unsuccessfully that the Pledge of Allegiance was insufficient to the task of improving the patriotic and historical knowledge of students; therefore, instead of the mandate, students would be better served by broader patriotic content and more time spent on civics, according to opponents.

The nature of the politicking meant that while some Senate Democrats would argue for broader patriotic content than just the pledge, aside from Steve Kelley’s

isolated argument for deliberative and action-oriented civic education there was virtually no substantive discussion about promising practices in civic education or about the most important qualities of a young citizen.

Ch. 3: Colorado Passes Rigid Mandate with *Barnette* Bypass

When Zachary Lane was a seventeen-year-old senior in high school in Denver, Colorado, he was cornered one evening by the father of a good friend who wished to engage him in a discussion. As Zach tells the story, he and some friends were meeting up at one of their homes. Zach, by chance, was the last to arrive. Prior to his arrival, the host's father had engaged the boys in a passionate monologue about the importance of the Pledge of Allegiance and the disgrace of the court case that had been filed by several students and teachers in the state of Colorado to gain an injunction against the state's newly legislated mandate requiring students and teachers to participate in daily recitation of the Pledge of Allegiance. As a final point to his concerns, this father directed the boys outside so that they could stand together and pledge allegiance to a flag located in the front yard. It was only after this encounter that the boys proceeded to tell the father that it was their friend Zach who was the first plaintiff of the lawsuit against the governor of Colorado and that he would be arriving shortly (Z. Lane 2013).

The year was 2003, and Colorado was one of nearly forty states that had passed or was attempting to pass some manner of legislation requiring increased patriotic expression in its public schools (Westheimer 2007; Ellis 2005). As described in the previous chapters, the events of 9/11 had shaken the nation's sense of safety and security, and the terrorist attacks had raised questions about the state and nature of national unity and the sinister and secret presence of dangers from within (Chen 2004). Ellis (2005, 203-06) describes in detail how Colorado Republicans led by Senate Minority Leader John Andrews in 2002 capitalized on the political dividend

of patriotic politicking in the aftermath of 9/11 by proposing a pledge mandate and other patriotism legislation and then maneuvering them out of committee in order to record floor votes by reluctant Democrats. Senate Democrats in Colorado held a one-seat majority in early 2002, but they lost that advantage in the fall elections based in part on negative campaigning about their votes against patriotism bills that were unconstitutional but were popularly embraced (Ellis 2005, 203). After the 2002 elections, Republicans in Colorado held the governorship and majorities in both the House and Senate.

It was in this politicized-patriotism environment that new Senate President John Andrews and his fellow conservatives in the Colorado State Legislature began their second press for a law mandating daily recitation of the pledge by public-school students and teachers who were citizens of the U.S. Unlike Minnesota, however, Colorado lawmakers were choosing to push a mandate with limited opt-out provisions. According to the Colorado legislation, American teachers could opt out only for religious reasons, and American students could decline without threat of penalty only if “the parent or guardian of the student objects in writing to the recitation of the pledge on any grounds and files the objection with the principal of the school” (Colorado Revised Statute 2003).

Even though this 2003 iteration appeared to violate civil liberties protected by *Barnette* (1943), it was a significant concession from the politically advantageous but defeated attempt in 2002 when no opt-outs whatsoever were to be accommodated either for teachers or students (Ellis 2005, 203). Colorado would prove distinctive from Minnesota in both these regards—not only did legislators

here attempt to tightly constrain the right to opt-out of a mandated pledge, they explicitly and assertively included teachers in both the mandate and the constrained opt-out.

Neither of these positions would be easily defensible in terms of prevailing constitutional law, but that was not an argument that gained traction with Colorado Republicans, whose actions seemed to illustrate Hunter's analysis (1991, 42-43) about the ways in which the "competing moral visions" of the culture wars are characterized by positional inconsistencies created by "polarizing impulses." For example, Colorado conservatives favored lofty rhetoric about the preeminence of the U.S. Constitution, and their legislative efforts showed they strongly asserted a literalist interpretation of their 2nd Amendment right to bear arms. Simultaneous to that, however, existed their strong impulse to forcibly align both students' and teachers' patriotic sensibilities and expressions to traditional norms via a mandated Pledge of Allegiance. This case will show that the power of polarizing impulses central to the culture wars would override obvious constitutional concerns in favor of cultural imperatives to restore to Colorado schools a greater atmosphere of traditional morality and respect, national unity, and an embrace of traditional Americanism. And as a further consequence of these impulses, legislators as a group would not engage in cohesive discussions about the qualities most important in young citizens or the value of the Pledge of Allegiance relative to research-based promising practices in civic education.

The Pledge as Loyalty Oath and Builder of Moral Character

Colorado's 2003 mandate legislation began its House journey in the State Affairs Committee and featured immediately the cultural and moral dimensions of support for the pledge mandate. Rep. Bill Crane (R) stood as the primary sponsor of the bill, which by the time it was passed into law had 34 co-sponsors from the House and 13 co-sponsors from the Senate.²⁷ Crane, in his introduction of the bill to the committee, related a traditional-values story that would be used at various times in explaining his motivation for the bill: "When I was considering whether or not I'd run this bill, I went home and I asked my son a simple question. I said, 'Bobby, when is the last time you stood in a classroom and recited the Pledge of Allegiance with your classmates?' He said, 'Dad, it was when I was in fifth grade.' He's now a junior in high school.... And I said, 'Bobby, that is not good enough. You're missing out'" (*Daily Recitation*, April 29, 2003). Crane, after sharing his personal story, asserted his culture-driven belief that the pledge was "fundamental and foundational in building patriotism, community, and pride in America" and in pledging loyalty to each other and to soldiers and the country's forefathers. Crane also ascribed to the mandate, which would later be adjudicated as a violation of the Constitution, the power to build moral character and appreciation for the Constitution:

...By students reciting the pledge daily they will be building into their lives good citizenship, patriotism, responsibility, and moral character, not religious moral character but good secular moral character. And hopefully

²⁷ The Colorado House has 65 total members, and the Colorado Senate has 35 total members.

over time they will know and understand what the words mean, words like ‘pledge allegiance,’ ‘republic,’ ‘one nation,’ ‘liberty and justice for all.’ Those are words we should all know and understand. We find those very words in our Constitution, in our Bill of Rights, our state constitution (*Daily Recitation* 2003a).

Crane’s introductory comments set the stage for the legislative debates to follow, debates that would illustrate on one side the traditional faith that mandating the pledging of loyalty would build traditional unity and moral character on behalf of the nation, and on the other side the belief that patriotism should be voluntary and that this mandate violated constitutional civil liberties. The debates would also feature a varyingly explicit undercurrent of conservative sentiment that students had lost their moral compasses and that teachers had lost their moral authority, opinions that clearly were driving the polarizing impulse that resulted in a strong attachment to a mandate that was not expected to withstand legal scrutiny.

As discussion opened in the full House on April 30, 2003, the initial strategy of Democratic opponents was to oppose both the logic and the constitutionality of a mandated pledge with tightly constrained opt-out provisions. Rep. Paul Weissmann (D) asserted that a forced oath was a meaningless oath and that true patriotism developed within an individual rather than by government imposition. Fellow Democrats Tom Plant and Terrance Carroll derided what Carroll deemed “bumper-sticker patriotism,” and Plant employed an anecdotal imputation about Timothy McVeigh to warn members about the consequences of ritual and belief not connected to knowledge or personal accountability: “The Pledge of Allegiance

doesn't say a darn thing about how patriotic you are. You don't recite something and become patriotic any more than you talk about food and become fat. How many times did Timothy McVeigh say the Pledge of Allegiance before he blew up the Murrah Building? I would imagine he said it a lot of times through his life. I imagine he said it every single day in school. It didn't make him any more of a patriot, did it? What you say doesn't make you love your country; that comes from in here [pointing at heart]" (*Daily Recitation* 2003b). Plant and Weissmann did not agree with Crane that the mandated pledge in and of itself would help create good moral character; they further implied that the mandated word was meaningless unless it was buttressed by intrinsic belief and the behaviors that that belief would engender.

Unlike mandate opponents in Minnesota who lacked a strong constitutional argument due to the unqualified opt-out provision, opponents in Colorado immediately attacked the constitutionality of the mandate bill. They also attempted to gain political advantage by directly questioning the integrity of proponents who had sworn to uphold the Constitution in their oaths of office. Plant argued:

The second reason you should vote no is that it's unconstitutional. We have taken an oath here not to pass laws in violation of the Constitution. We have disagreements of what might be seen as constitutional, and those are valid disagreements. But this has already been decided—1943 by the Supreme Court.... It's unconstitutional. If you value this country, if you value

our democracy, if you value the oath that you took when you won this hallowed office,²⁸ you will vote no on this bill (*Daily Recitation 2003b*).

Initially, proponents of the bill simply ignored Plant's challenge regarding constitutionality and their own conduct relative to their sworn oaths, and instead they redirected the focus. Legislators discussed various implementation-oriented topics that included how best to stipulate when during the school day students must pledge and whether private-school students should be made to pledge, as well (*Daily Recitation 2003b*).

The constitutional issue loomed, however, and the impulse to intervene in schools' perceived patriotic and moral decay motivated legislators to provide alternative interpretations of the law that would mitigate constitutional arguments. Rep. Al White (R) eventually dismissed Plant's constitutional concerns on the grounds that there was an opt-out for religious reasons. But in his dismissal of the original constitutional concern, White asserted that non-pledgers should leave the room "or stand in the coatroom or wherever" if they did not want to pledge, an alternative requirement that had been adjudicated as unconstitutional (*Frain v. Baron 1969*). Alice Madden (D) countered White's coatroom alternative as an untenable solution to the constitutionality issue given the humiliation factor, an argument that has been affirmed by the courts (*Frain v. Baron 1969*). Madden replied to White, "You really think kids are going to go stand in a coat room during this? Most, of course, would just say it and violate their sense of religious difference

²⁸ The Oath of Office for elected officials in Colorado reads, "I, [state your name] do solemnly swear by the everliving God, that I will support the Constitution of the United States and of the State of Colorado, and faithfully perform the duties of the office of [fill in the blank] upon which I am about to enter."

because they are too embarrassed to do otherwise. Is that what America is about? You're going to embarrass a kid into saying the Pledge of Allegiance?" (*Daily Recitation* 2003b).

This effort by mandate proponents to mitigate the constitutional questions with alternative interpretations appeared repeatedly in the Colorado legislative proceedings. For example, a primary strategy was to reframe the pledge mandate not as unconstitutional compelled speech but rather as a state behavioral mandate on par with compulsory education, compulsory school attendance, compulsory school curriculums, traffic laws that compelled certain driving behaviors, and federal and state laws that compelled the paying of taxes. However, long-established precedents of constitutional law like *Barnette* (1943) and *Tinker* (1969) had, respectively, explicitly forbade mandating of the pledge and had affirmed the protection of political expression of students (Fischer et al. 2007), so while equating the mandate to other state-governed compulsions may have been a popular strategy, it could not claim existing precedent in constitutional law.

Given these prevailing interpretations of protections for freedom of expression, the assertion from the next speaker was illustrative of the personal positioning and politicking common to this debate. Shawn Mitchell (R), an attorney by profession, argued that people are always forced to do things, and he made the comparison that compelling the pledge is akin to compulsory education. Mitchell explained further: "It's not a violation of freedom to provide an opportunity for learning—even to *require* an opportunity of learning and accepting the wisdom of those that went before." He then enlisted culture-war rhetoric to equate opposition to the mandate

with opposition to loyalty to the nation: “In fact, I think the problem that someone has with this bill is not that it infringes on freedom, but it is the particular subject matter that we’re infringing with—an affirmation of loyalty to our country and an understanding of the values our country stands for. Members, that’s just sad, that’s just disappointing,” Mitchell said (*Daily Recitation*, 2003b).

The polarizing impulse in Mitchell to characterize the conflict over the mandate’s opt-out restraints not as one of constitutionality but rather one of morality and values reached its zenith in Mitchell’s conclusion. Mitchell addressed the constitutional question directly, but he wholly inaccurately described pledge mandates as “an old and settled issue” determined by the Supreme Court to be entirely constitutional as long as religious exceptions were made:

This is not unconstitutional. It’s plainly constitutional. Don’t let anyone else deceive you otherwise. I think what’s really at issue here is a lack of moral confidence in some people that we have anything worth handing down to our school students... It’s just very strange that when the subject is an acknowledgement of the values and aspirations of American society, that people lose their nerve and lose their will to teach and lose their will to require—yes require—our young people to be exposed. That’s sad. That’s a lack of courage, that’s a lack of conviction, that’s a lack of vision (*Daily Recitation*, 2003b).

Given his profession as a lawyer, Mitchell’s assertiveness regarding the legality of a mandate with opt-outs only for religion was bewildering. Constitutional-law cases regarding a mandated pledge from 1943 to the Colorado debate in 2003 had

ruled repeatedly in favor of students' rights not to pledge for any reason.²⁹

Proponents in the Colorado legislature post-9/11 had had considerable success with patriotic and pledge politicking in 2002, and they continued to gain political advantage with pledge politicking in 2003 due to broad popular support for a mandate irrespective of potential constitutional violations. Still, Mitchell's use of words like "values and aspirations"; his references to courage, conviction, and vision; and his obvious inaccuracy in relating case law appear to speak to the larger issue of inconsistencies that arise from impassioned polarizing impulses in the fight to impose moral authority in the public sphere (Hunter 1991).

Most proponents in the Republican-majority House agreed with Mitchell's explanation of religion being the only opt-out provision required, but fellow Republican Mark Larson tried to soften the opt-out provision with an amendment that would allow students to opt out for any reason as long as they put that reason in writing and submitted it to the principal. Larson faced immediate pushback from the bill's sponsor Bill Crane, who asserted that only the parent should be able to opt out a child—not the child himself. Keith King (R) agreed with Crane on the parent opt-out and was also concerned about the unsavory permissiveness of opting out for "any" reason, as stated in the Larson amendment. Don Lee (R) concurred: "What if a kid says 'I don't want to.' Where's it going to stop? This is a bad amendment because it lets kids do what they want for reasons that are not good enough" (*Daily Recitation* 2003b).

²⁹ For more on these cases, see Appendix A.

Lee's sentiment that recalcitrant students must not be accommodated was a popular one, and proponents strategized further how to adjust the language without softening the impact. The Colorado ACLU was actively communicating to legislators the unconstitutionality of their limited opt-out, and Crane would later bring a retooling of Larson's failed amendment to specify that while a student may indeed opt out for any reason, that was not at the discretion of the student but rather the parent who must provide permission in writing. Crane's effort to bypass the *Barnette* (1943) ruling still ran afoul of *Tinker* (1969), however, in that students themselves—and particularly older students—did not surrender their constitutional rights when they entered “the schoolhouse gates.”

As further evidence of concerns regarding teachers' trustworthiness regarding acceptable moral authority, Crane's amendment further specified that teachers with American citizenship may opt out only for religious reasons, a provision for which Representatives Mitchell and three conservatives immediately voiced their support. Mark Larson, at this point, sounded incredulous, especially regarding the focus on teachers and on taking agency away from young adults of high school age: “We are forcing patriotism—that's in fact what we're doing. This makes no sense,” Larson said. The Crane amendment passed, however, by a vote of 36 to 28 (*Daily Recitation* 2003c).

This impulse to require of teachers oaths of loyalty has a long and troubled history in the United States. Foster (2000, 124-132) describes these efforts at length, and he notes that California passed the first loyalty-oath requirement for teachers in 1863, and other states followed close behind. Wartime periods and communist ‘red

scares' in the 20th Century provided particularly fertile and pernicious ground for the proliferation of oaths across the country, and frequently they were used to “discredit teachers, to place them under constant public suspicion, and to undermine their academic and personal freedoms” (Foster 2000, 127).

Among the states included in this research, Colorado was alone in including in its legislation this conservative hardline requirement limiting teachers opting out of the pledge. Comments later in the legislative debate would further implicate liberal teachers as a potential problem in the civic development of students, although no details were provided by legislators voicing these concerns. Colorado was and remains home to Rev. James Dobson’s powerful and popular Focus on the Family organization, which emphasizes conservative-Christian values and causes that span many of the culture-war battlegrounds. Dobson himself had advocated in 2002 for parents to pull their children out of public schools if they adopted “Safe Schools” programs that advocated acceptance of gay and lesbian students and families and similarly multicultural-friendly environments.³⁰ And Colorado’s congressman at the time was Tom Tancredo, who described himself as a conservative culture warrior on immigration, school prayer, school vouchers, and similar topics. Tancredo, for example, in 2006 would argue that the “cult of multiculturalism” was responsible for illegal immigration (Bon Tempo 2011, 160).

Conservatives in the House embraced the Crane amendment and its approach to limiting the opt-out provision for students and teachers, but Jerry Frangas (D) attempted on behalf of opponents to argue again that the bill as written violated the

³⁰ For more, see a sample of Dobson’s views in Christianity Today at <http://www.christianitytoday.com/ct/2002/julyweb-only/22.0a.html>

First Amendment. Frangas related that a Republican colleague encouraged him to read *West Virginia v. Barnette* in its entirety: “I read the whole thing. It’s an amazing decision that was written by Justice Jackson. It’s a piece of our history that’s just phenomenal.” Frangas quoted from Jackson’s opinion and further summarized its finding, but shortly afterward pledge-mandate HB1386 with Crane’s restrictions on opting out passed out of the House by a margin of 50 to 13, evidence not only of the popularity of the pledge and of the provision to constrain the expression of students and teachers but also of the political dangers of opposing the pledge in a roll-call vote (*Daily Recitation* 2003c).

Colorado Senate: Decidedly Different Conceptions of Compelled Behavior

The debate in the Colorado Senate would also feature conservatives advocating for the pledge and liberals advocating for First Amendment rights—but opponents would more frequently press mandate supporters to explain their inconsistent defense of the Constitution. However, because proponents held the tremendous political advantage of mandating an especially popular pledge after 9/11, opponents struggled to gain traction with their arguments about potential violations of the constitution.

Like the House, the Colorado Senate began deliberations on HB1386 in its State Affairs Committee where the pledge would be promoted as a builder of patriotism and respect for the nation. Sen. Doug Lamborn (R), a practicing attorney and currently a U.S. Congressman from Colorado, had agreed to sign on to Rep. Crane’s bill as the primary sponsor in the Senate. Lamborn introduced the mandate bill to the State Affairs Committee and reminded them that the Senate version provided an

opt-out for religious reasons and for non-citizens. Lamborn, in stating the purpose of the bill, said the following: “What it comes down to is ‘Does [the Pledge of Allegiance] foster a good attitude and patriotism among our students?’ which I believe it does. Versus those who might say that forcing students to do it—they say it by rote and don’t develop the proper attitude—or something like that” (*Daily Recitation 2003d*).

Lamborn’s opening statement does introduce the idea that there exists an educational question of efficacy in the mandate debate, but he dismisses it quickly as a matter of differing opinion rather than a pedagogical question that might be examined in relation to evidence or expert reasoning that might guide that decision about educational effectiveness. Maryanne Keller (D), who had taught elementary school in Colorado for 23 years, contested Lamborn’s assumption about the pledge automatically creating good attitudes when she related her experiences as a teacher with non-pledging students in her class: “It does get awkward—real awkward—when you have a student who is a Jehovah’s Witness.” Keller described devising errands for those students, errands such as submitting the lunch count, so they would not be singled out and teased for not pledging and for appearing different (*Daily Recitation 2003d*). Keller, whose inclination in her role as a teacher was protection of non-pledgers rather than punishment, did not invoke constitutional-law precedent in her comments, but her concerns mirror those of the courts (for example, *Frain v. Baron* 1969), which have consistently forbidden schools and teachers to direct non-pledgers to leave the classroom because that is perceived as punishment or as a negative consequence of exercising one’s right not to pledge.

Lamborn countered Keller's concern by introducing an argument that would arise repeatedly in the Senate debates: If the pledge is good for the majority, then that is justification enough. He noted as an example that while one student might feel left out, there were 25 others who would benefit from the mandated pledging.

Lamborn also introduced to the Senate debate one of the primary points in the House: That legislatively mandating the pledge was in line with other government requirements and so the mandate was neither unconstitutional nor was it overreach by state government. Both positions appear to reflect Hunter's analysis (1991) of the smoothing over of positional inconsistencies in service to the polarizing impulses of the culture wars. As described earlier, conservatives who rhetorically embraced the Constitution simultaneously justified the constraining of freedom of expression in order to promote the pledge. Conservatives also consistently advocate for smaller government, but in service to the values of the pledge Lamborn embraced the strategy of the state mandate rather than leaving the issue to local school boards, a less restrictive alternative urged by Keller. Lamborn dismissed Keller's concern about the importance of local control, and he defended the mandate lever in a way that sounded almost liberal relative to the value of governmental involvement: "Well, Senator Keller, we force schools to do all kinds of things, and so do the school boards and so do the national organizations—force what to teach, what you can say to them, force them what to wear" (*Daily Recitation 2003d*).

Although a lawyer, Lamborn chose not examine the legal distinction between political speech and other kinds mandated behaviors and instead maintained that the pledge was just like other mandated behavior in schools. As the debate

continued, many other senators would echo Lamborn's sentiment that there was nothing special about the pledge and it should be mandated just as other essential aspects of the curriculum and school routines were. However advantageous as a political strategy or appealing on a personal level, this argument appeared differently in the precedential cases of constitutional law related to students such as *Barnette* (1943) and *Tinker* (1969). As evidenced in those cases, political speech in particular—as opposed to speech that is lewd, obscene, or slanderous—receives the highest Constitutional protection granted to students as a matter of protecting the Marketplace of Ideas and its role in sustaining the health of the participatory democracy.

Alice Nichol, a tradition-minded Democrat who supported the mandate wholeheartedly, concluded the committee debate on the bill with her emphatic embrace not only of the value of the pledge but also the preeminence of traditional values and majority interests. Nichol used personal stories to illustrate her support for mandating the pledge, and she agreed with Lamborn that the potential harm to the minority who did not say the pledge was less important than the benefits of the majority saying the pledge. Like many of her fellow proponents in Colorado and in the other case states, she also emphasized the meaningfulness of majority opinion in a topic like the pledge in public schools, and she warned about political correctness unfairly constraining majority opinion:

To me, the majority still rules. ...And certainly the United States flag is not just a local [issue]; it doesn't just belong to Colorado or to that local school. It belongs to our country. I just don't see that this is a local issue that

should be decided by a local school board. Or the fact that yes, some of the arguments are made that when you force patriotism—My god! We better teach something to our children. I grew up that way. It was an honor every morning to salute the flag. That’s the way I was raised. Maybe that’s an old-fashioned tradition [in contrast to] today where everything goes. Well, nothing goes! Because we want to be politically correct. Maybe I kind of think it’s time we rein that in a little bit, and certainly a bill of this nature does just that, and I’ll support it one thousand percent. (*Daily Recitation 2003d*)

Nichol’s focus on her personal views and experiences and her concerns about the decline of contemporary values compared to her “old-fashioned tradition” presaged much of the testimony to come from proponents in the Senate during both scheduled debates. Throughout much of the discussion, proponents would focus their comments on the importance of the pledge in improving young people and improving American society, and opponents would attempt to reframe the debate to address the constitutional problem of compelled speech.

Once the bill reached the floor of the Senate, Ron Tupa (D), a former government teacher at the high school level, initiated the strategy of explicitly questioning the constitutionality of a law that compelled political speech. He reminded the assembly that, according to the Constitution, they could not compel speech even if they wanted to and that the Senate addressed and rejected the same pledge mandate in 2002 due to the constitutional problem. Lamborn responded that a mandate could not compel a Jehovah’s Witness to pledge, and so the bill included a

religious opt-out, and it was also amended in the House to allow a parent-approved opt out for other reasons (*Daily Recitation 2003e*).

Ken Gordon (D), the lead figure in stalling the pledge mandate the previous year, emphasized the constitutional reframing that compelled speech of any kind was “a violation of freedom of speech just as much as preventing somebody from saying something.” Gordon referenced *Barnette* and emphasized that the mandate bill did not simply encourage daily pledging or mandate that a pledge be included in schools’ activities but that instead it compelled pledging by each teacher and each student, arguably the most rigid mandate option available to the legislators. Said Gordon in his attempt to recast the issue as one of political compulsion rather than beloved pledging: “Totalitarian governments, because they are insecure about the value of their own regimes, are very big at compelling pledges, speech—but in America we haven’t needed.... We don’t need to compel it. ...People naturally have allegiance to a country that has good values and respects democracy like we usually do” (*Daily Recitation 2003e*).

Proponents responded by sharing personal stories of their embrace of the pledge as children, its positive presence in their lives, and their desire for other children to share in that legacy of the Pledge of Allegiance in public schools. Tupa remained unmoved, however, and attempted to re-engage Lamborn in providing more specific justifications for the bill that Tupa had already reframed as unconstitutional: “Is there a political statement we think is important? ...Is there a problem we are solving with this? Are we saying that kids aren’t loyal to the United

States? ...Are you saying there are too many anti-war protesters? What is the problem?"

Tupa pressed this line of questioning and sought to illustrate that not only was there no problem in schools, but that this particular solution would actually create problems. To support his contention, Tupa explained that he grew up in a military family and lived in a lot of different states and that he said the pledge in every elementary school in every state in which he resided. He also asked whether local school districts lacked the authority to have their schools pledge, and he asked what the punishment would be for students who declined to say the pledge if they were found to be flouting state law (*Daily Recitation 2003e*). Through his rhetorical questions and personal pledge experience, Tupa was attempting to draw Lamborn and his fellow proponents into a debate that would cast the *mandate* element of the legislation both as unconstitutional and unnecessary—and accusatory toward children's patriotism. In response to Tupa's questioning, Lamborn gave a rambling speech alluding to threats posed by multiculturalism and questions about the nation's greatness. In one portion of the speech, Lamborn said:

One troubling trend that bothers me some—and I think other people here [in the Senate]—it hasn't taken over our society by any means but there's enough of it out there that it's disturbing, and that is there is a multiculturalism viewpoint that only puts America on the same level as all other countries, and there's nothing special about America, and when it comes to the press saying there is nothing special about America and maybe we're even worse than some other countries for this reason or that reason, I

take real objection to that. And I think America is special, I think we all here do, and the Pledge of Allegiance helps point that out. So that's really the reason behind it, Senator Tupa. (*Daily Recitation 2003e*).

Lamborn covered various topics including the will of the majority in his nearly three-minute response, but it was this initial portion where he described his concern about multiculturalism and what he perceived as an erosion of belief in American exceptionalism that offered new insight. Until this speech, Lamborn and others had framed the mandate as heritage-laden patriotism in support of students' patriotic and moral development. Lamborn's reference to the dangers of the "multiculturalism viewpoint that only puts America on the same level as all other countries" as "the real reason behind it" points to larger fears about the decline of transmitting to students the knowledge and unquestioning embrace of traditional exceptionalism, a stance that was central to the worldview of many conservatives and traditionalists and significantly less appealing to liberals and progressives.

Joan Fitz-Gerald (D) encompassed concerns of fellow mandate opponents when she zeroed in on Lamborn's justification relating to honoring the interests of the majority of Coloradans at the expense of those with diverse views and religious practices. Said Fitz-Gerald: "Sen. Lamborn, I am kind of floored by what you just said. So if the majority are happy being mandated and compelled, we shouldn't worry about the damage to the minority? I think that is what you just said, and I have to stand up and tell you that I'm going to be a 'no' vote. We have a present statute on the books that says we teach civics, we recommend the Pledge of Allegiance, but what you are doing here, Sen. Lamborn, is you are compelling speech. This is

America, the land of free speech, and last time I looked this was not called the land of compelled speech" (*Daily Recitation 2003e*).

Fitz-Gerald may have been technically accurate in her assertion about the mandate being compelled speech, but neither she nor Tupa had gained much ground so opponents tried other strategies. They first suggested that private schools also be required to pledge, a concept unacceptable to conservatives given their desire to limit the reach of government into private and religious enterprises. When that failed, James Isgar (D) attempted to make the opt-out provision more palatable by moving an amendment to replace the opt-out for religious reasons to an opt-out for any reason. This elicited an immediate negative reaction from Lamborn, who echoed the House position that teachers must not be allowed to opt out for any reason other than religion or not being a citizen of the United States: "I don't want to go into it...[pausing] I can think of poor reasons for teachers not saying the Pledge of Allegiance and maybe in that case being a bad example for those students," Lamborn said (*Daily Recitation 2003e*). Lamborn did not elaborate on the reasons that teachers might have for not pledging, but they likely were related to his explicitly stated concerns about the influence of liberal-minded multiculturalism and the de-emphasizing of American exceptionalism. This type of concern was well represented among many conservatives who perceived that liberal postmodern-influenced teachers and pedagogy were more likely to diminish young people's patriotic affections rather than to inspire them (Appleby, Hunt, and Jacob 1994).

Lamborn's explicit defense regarding the necessity of compelling the speech of teachers provided another opening for opponents to press their reframing of the

mandate as unconstitutional. Dan Grossman (D) opted for an incendiary rhetorical scenario in which he predicted a slippery slope toward totalitarianism, a comparison that drew heated reaction. Grossman asked rhetorically:

What would be the repercussions? First we mandate [reciting the Pledge], then we criminalize not doing it, then what? We round up people who refuse to recite the pledge? Throw them in jail? Saddam Hussein would be proud, Sen. Lamborn. [Indecipherable negative exclamation from Sen. Ken Arnold, to whom Sen. Grossman next responds.] Hey, it's the exact same theory, and I'll get into why. The moral problem with this bill is that it cheapens patriotism, Sen. Arnold. (*Daily Recitation 2003e*)

Grossman's choice of totalitarian imagery sought to recast the mandate not as positively patriotic but as ominously unconstitutional and anti-American. At no point did Grossman or other opponents deride the pledge itself but rather they ridiculed the *mandate* as anti-democratic, a position that contrasted sharply with proponents' commitment to a preservation of traditional patriotism and unity that for them warranted the mandate of the beloved pledge. Grossman's choice of the Saddam Hussein reference would ratchet considerably higher the emotional tenor of this contrast, however, and the debate would get increasingly heated as both sides tried to ridicule the other as anti-democratic and anti-American. Ken Arnold immediately replied to Grossman that if Grossman spoke like that in Iraq, "you wouldn't even have a tongue left in your head, let alone a head on your body." Arnold then rejected proponents' rebuttal of the constitutional compelled-speech issue by asserting again that compelling the pledge was no different from other

compelled behaviors that were widely accepted, and he implied that the moral decline of students and schools further necessitated this particular compelled speech:

You've never been compelled to do anything? I get tired of hearing that. We've been told that you can't compel anybody, that if you do they rebel against you. Do you obey the speed limit? Do you stop at red lights? Do you pay your taxes? What's the difference? Were you required to go to school? We don't allow the children to make up their own mind whether they go to school or not. We tell them where they are going to and what they are going to do. If we don't, what are we doing? Are we training meth makers for tomorrow? And that's about what is happening. (*Daily Recitation 2003e*)

This compelled-behaviors argument was a popular strategy among proponents responding to the claim of constitutionality regarding compelled speech. But proponents chose wisely not to extend this politically advantageous argument into a more legalistic analysis of these types of compelled behaviors compared to compelled political speech. Under no circumstances would a court equate traffic laws with state-sanctioned rules about what statements of political expression a citizen would be required to make.

Arnold's final comment implying that lax schools were training meth-makers rather than citizens was off-script compared to the arguments of other proponents, but it illustrated the undercurrent of perceived moral decay. The timing of the comment may have simply been a product of Arnold's pique with Grossman's Saddam Hussein analogy, but it also revealed his perception that overly permissive

contemporary culture and the culture of the schools were responsible for some of the ills of society—ills that a value-laden pledge mandate might help curb.

Exchanges like Grossman and Arnold's and the additional examples that follow reveal the cultural dissonance underlying the political debate. Proponents of the pledge mandate saw themselves as protecting the nation's identity and national pride and as reinvigorating the traditional moral quality of students and schools. In contrast, opponents perceived themselves as defending the civil liberties that made the nation great. These exchanges tended to cleave along Westheimer's (2007) authoritarian and democratic descriptions of patriotism. Proponent Alice Nichol (D), for example, focused again on her life experiences and warned more explicitly about the impositions of non-majority non-conformists and misapplied multiculturalism:

Should we have to demand [recitation of the pledge]? Maybe we shouldn't have to. But let's face it: If we leave all the free-thinking people in our public school system to do as they choose—I for one was a part of one of those free thinkers that's in our college system who thinks I should not have a Columbus Day parade—that's our free thinkers. I do not want my First Amendment taken for granted for everybody else but me. And the symbolism of the flag and the pledge to that flag mean that we are a common cause for a common country. If we are truly—if multiculturalism is the politically correct word to say—then the flag unites us all, and it should be taught in our public school system and [the pledge] should be recited every day (*Daily Recitation* 2003e).

Nichol, in her statement, revisited the common theme of regretting the need to require the pledge but recognizing that that need existed due to “free-thinking people” in public schools and colleges. She provided as an example a college professor who criticized the celebration of Columbus Day, the framing of which is a common point of contention in the larger culture wars.³¹ Nichol also emphasized her perception that multiculturalism challenged the traditional American identity of exceptionalism and symbol-focused expressions of national unity like the pledge that had the power to bring together culturally diverse individuals as unified Americans.

Lamborn also addressed the compelled-speech issue when he asserted that there was no intent by the mandate to force patriotism, and he again compared it to other compulsions necessary to the good of society. Lamborn described compelled school attendance as a “positive, and enriching, and rewarding thing, and that’s the way I’m viewing [compelling] the Pledge of Allegiance.” Sen. Ken Gordon, who led opponents in the Constitution-based arguments against the mandate, rebutted Lamborn’s personal position that compelled political speech was legally equal to compulsory school attendance. Gordon said:

Maybe the problem we’re having is that you see compelling people to say something as being similar to forcing people not to speed or to attend school, and it’s not the same. That’s why we have the First Amendment to the

³¹ The Denver area has an active “Transform Columbus Day Alliance” group, which has frequently protested the yearly Columbus Day parade. The group at various points has called for “respect, decency, and justice” in the treatment of American Indians and other minorities and has described Columbus as a racist imperialist who committed genocide against the indigenous peoples he encountered. For more, see <<http://www.transformcolumbusday.org>>.

Constitution. It's because it understands that speech is something different. And it might take a moment to think this through because speech is an act like going to school or speeding or driving a car. But it is a different kind of act, because through speech human beings express what is in their soul and in their heart and in their conscience and people have the dignity of expressing those things, which no other species has. (*Daily Recitation 2003e*)

As the coming court case would show, Gordon had constitutional law in his favor, but personal and political arguments for the mandate retained their traction irrespective of Gordon's explanation of the differences in types of compelled action. Jim Dyer (R), for example, countered Gordon's explanation of the special protection given to political speech by noting that flag-related compulsions do exist. Dyer said that young men must register for the draft and that has "a great deal to do with the flag," and when you are in the military you must salute the flag according to regulation, and "we don't find that a fundamental violation of rights." Dyer also asserted that young people in schools do not possess First Amendment rights because schools and teachers have control of those students. Dyer said:

I think trying to force people to be patriotic is pretty tricky, but I think citing First Amendment rights for grade school, junior high, high-school kids really doesn't rise to the question of a serious discourse because kids in school are told to sit down, shut up, and listen. And they can't say, 'Uh, no way, teacher. I want to talk.' We don't afford them that same right because they are supposed to learn the responsibilities of one thing and another."

(*Daily Recitation 2003e*)

Dyer's assertions illustrate that the legalistic constitutional arguments of the mandate opponents did not sway supporters. Mandate supporters either ignored or denied references to current constitutional precedents, perhaps hoping that they could erode or challenge those constitutional decisions with new legislation or because they were genuinely unaware of constitutional law such as *Tinker v. Des Moines* (1969).

Tinker is especially important regarding Dyer's misconceptions. He accurately implied the fact that society has entrusted to school personnel the reasonable regulation of student behaviors during the school day, and in fact courts have been reluctant to interfere with that discretion and substitute their own judgment on the wide array of standard school rules (Fischer, Schimmel, and Stellman 2007, 123). However, Dyer used that truism to extrapolate inaccurately that this general discretion to set boundaries for acceptable behavior extended into constitutional matters like freedom of expression. The landmark *Tinker* decision from 1969 established unequivocally that students in public schools do in fact have constitutional rights, and those rights are not surrendered simply by entering "the schoolhouse gates." *Tinker* dealt specifically with students' rights to freedom of expression, and to freedom of political expression in particular. So while students may not be protected for lewd or profane speech or encouraging illegal activities such as drug use, they clearly are protected for political speech such as wearing a black armband, declining to say the pledge, discussing the merits of legislation related to medical marijuana, and so on—so long as that speech is not "materially or substantially" disruptive to school operations. Notably, older and more mature

students can expect greater protection by the courts of their right to freedom of expression in public schools; cases pertaining to elementary-age students have varied in their protections for pre-adolescent students (Fischer, Schimmel, and Stellman 2007).

Recognizing in the speeches by Dyer and Lamborn that there would be no accedence to the legal argument regarding the unconstitutionality of the mandate, opponent Joan Fitz-Gerald closed the debate during the bill's 2nd Reading with a political jab at what she perceived as conservatives' selective embrace of the Constitution, an inconsistency that Hunter (1991) generally ascribed to those powerful "polarizing impulses" so common in the culture wars:

I begin to be troubled by some of the arguments I hear that free speech is only free as long as we agree with it or as long as a majority of us agree with it. I know your side of the aisle [i.e. the Republican side of the aisle] is very defensive of the Second Amendment to the Constitution, and I have a very strong attachment to the First Amendment of the Constitution. And so respectfully, I am troubled by some of what I heard: 'If it's only a minority that gets hurt by this and the majority is better served, well then let's go along with it.' That troubles me, and I think if we were to look in history books and be a student of history, it would trouble you, too. (*Daily Recitation 2003e*)

The next day, Ronald Teck (R) referenced the back-and-forth over issues of compelled behavior, national unity, and issues of constitutionality, noting that he had changed his mind "six times in the last two days" because speakers were making

a lot of good points. In his final analysis, Teck said, he supported the pledge but not the mandate: "I would wish that every child would say the pledge and would do it their own volition. But I wrestle with the fact that compelled speech doesn't accomplish what we want it to accomplish. In their rebelliousness, they could decide they don't like and it could stay with them. So the Pledge of Allegiance is important, but the mechanism is wrong." Bruce Cairns (R), however, defended the mandate mechanism, asserting his belief that these types of external pressures to attend to patriotic unity "eventually lead to internal beliefs," which were essential for children after 9/11 and the resulting "trying times in this country" (*Daily Recitation* 2003f).

Lamborn's mandate bill passed out of the Senate that day by a vote of 19 to 16, and Governor Bill Owens would sign it into law on June 6, 2003.³² Debate in the Senate showed that opponents were mainly concerned about civil liberties and supporters were largely unmoved by this concern because of their view that multiculturalism and internal political critique posed a threat to the nation. John Andrews, the Colorado Senate president in 2003, identified strongly as a Christian conservative and advocate of these positions in the culture wars, and he noted frequently in his various bios³³ his priority to "reassert the timeless political principles of the American founding, together with the moral and spiritual truths of our Judeo-Christian heritage." Andrews and his fellow proponents would achieve a

³² To see the final version of HB1368 signed by Governor Owens, see Appendix E.

³³ Andrews created the group "Backbone America," and he is the director of the Colorado Christian University think tank The Centennial Institute. To see his bios, see <http://www.backboneamerica.net/andrews-bio/> or <http://www.ccu.edu/centennial/people/>.

portion of that with the passage of the pledge mandate, but a court challenge loomed.

As Predicted, The Court Intervenes on Behalf of Students and Teachers

Proponents of the pledge mandate in the Colorado General Assembly carried the day in regard to HB1368 in 2003, but their mandate victory was short-lived. Immediately after the initial passage of the rigid mandate in 2003, Zachary Lane joined two other students, six teachers, and the ACLU of Colorado to file suit against Governor Bill Owens, the Commissioner of Education in Colorado, and four Colorado school districts. The plaintiffs argued successfully that the pledge-mandate law was unconstitutional in that it compelled speech and so violated the First Amendment to the Constitution. In an oral ruling in August of 2003 that granted an injunction against implementation of the new law, Judge Lewis Babcock concurred with the plaintiffs' claims that the state may not in any manner compel the recitation of the Pledge of Allegiance, a precedent that was first established in *West Virginia v. Barnette* in 1943.

Ken Salazar, then-attorney general of Colorado, requested that the judgment against the state include a temporary restraining order of nine months in order for legislators to revisit the wording of the bill. The result, House Bill 04-1002, removed the mandate for individual pledging and instead required that each school provide students with the opportunity to pledge each day.³⁴ This revision brought Colorado's pledging law in line with constitutional law, and the legal issue was

³⁴ See the 2004 revised statute in Appendix F.

resolved to the satisfaction of the ACLU and the plaintiffs in *Lane v. Owens* (Issue Brief 2004).

In an interview³⁵ in 2013, lead plaintiff Zachary Lane recalls some of those feelings of fear and uncertainty immediately after 9/11, but he also notes that the Colorado legislature did not pass the mandatory-pledge requirement until the summer of 2003, more than a year and a half after the terrorist attacks in Washington, D.C., and New York City. Lane, now an attorney, recalls:

Politically, there used to be this phrase of ‘This is a post-9/11 world,’ and it was used to justify things people wouldn’t do under normal circumstances. At the time people were grasping for anything that would make them feel safe and patriotic. I think there was a really negative attitude toward dissent because we had gone to war. The whole environment turned on this notion that you were unpatriotic if you expressed dissent of any kind, and that was not what America was built on but that was the prevailing atmosphere (Z. Lane 2013).

Lane said he learned about the newly passed mandate from his chemistry teacher and he immediately discussed it with his father, David Lane, who is a prominent civil-rights lawyer in Colorado. The decision to file a lawsuit seemed like

³⁵ In addition to these plaintiffs involved in *Lane v. Owens* (2003), I attempted to interview former governor Bill Owens, former attorney general Ken Salazar, Congressman Doug Lamborn, and Rep. Bill Crane. A representative of former Governor Owens responded to my correspondence with a message that the governor needed to decline because he had attended to very many issues during his leadership period and did not recall details related to this legislation. None of the other contacts responded. I also sought to interview Ken Gordon, who led the opponents in the Senate, but he passed away unexpectedly in December of 2013. I also corresponded with Democratic senator Ron Tupa, who remembered the general details but did not recall specifics of his opposition to this legislation.

a natural one given the longstanding precedent prohibiting such mandates of compelled speech, and particularly the pledge as compelled speech. Lane says the case was opened and closed before very many students became interested or involved. He said he would be approached by classmates and criticized for opposing the pledge, but he said he explained repeatedly that he was not protesting the pledge itself but rather the mandated recitation of it. “The kind of discussion I would have would be with somebody that thought it was outrageous that I was suing the state over the Pledge of Allegiance, and then by the end of the discussion it would be very clear that that’s not why I’m suing them, that it didn’t matter that it was the Pledge of Allegiance or pledging my allegiance to the governor directly. Compelled speech was compelled speech. And once people would understand that, the tide would turn and people would walk away agreeing” (Z. Lane 2013).

Keaty Gross, another student plaintiff in *Lane v. Owens (2003)*, shares Lane’s recollection of the issue’s importance and the initial perception by acquaintances and friends that she was anti-pledge rather than taking a stand against compelled speech. “My point of view was one that was not often expressed, and that was that I very much did respect the Pledge of Allegiance—and that I was happy to say it,” Gross said in an interview in 2013. “But I felt that it completely depleted its significance when it was forced, and the idea of dictating that you have to pledge allegiance to the symbol of the rights that you’re eroding by forcing somebody to say the pledge was ironic. So for my part, it bothered me because it made it less significant, and it didn’t feel right” (Gross 2013).

Gross experienced less interaction with peers about the case and the issue than Lane did. She said, in fact, that most students she knew in her high school of approximately 3,000 students had no idea that there was a court case, much less a new law mandating that students say the pledge. Moreover, her decision to get involved was a result of being recruited by a friend of a friend who had adult connections to the Colorado chapter of the ACLU.³⁶ She recalls that when she agreed to consider signing on, she received a phone call from an ACLU representative who interviewed her briefly about her interest and ability to join the case. Much to her surprise, that single phone call served as her testimony to the action, and approximated quotes that she doesn't remember saying during the call showed up as quotes in news stories about the case. She reflects that that style of the ACLU handling from above, so to speak, was disconcerting and significantly different from her expectation that there would be actual involvement. Even so, she describes that involvement as a formative event in her thinking and acting "as a civic-minded person going forward" (Gross 2013). After her involvement, Gross took the initiative to start a student chapter of the ACLU in her school, she organized monthly speakers and occasional events about students' rights, and she eventually interned for the state ACLU organization.

Gross says that while she recognized the fear engendered by the 9/11 events and the degree to which the conflict was made personal and local by sending

³⁶ Allen Potter, a teacher plaintiff whom I interviewed December 5, also said he was recruited by the ACLU and while he agreed entirely with the stance against compelled speech, his personal involvement in the case was limited to the use of his name as a plaintiff.

hometown soldiers to war, she did not empathize with citizens who believed that a mandated pledge was the answer:

It sent the wrong message, and it sent the wrong message ultimately to children at an age when that would be one of the first messages they were receiving. We didn't really get that much civic education in public school from my recollection... So if your first experience with the state or with law is that, you get a really skewed perception of what's acceptable, of what being patriotic means, and how you can be engaged in it. So if you're being told you have to say this, it becomes more of a one-way relationship and how can you be involved with your government or your community or anything going forward when you do gain more of an understanding of what's going on around you if one of your first impressions was this idea that you could be forced to say something, that it didn't really matter what the words were, that you were just going to be reciting it everyday? It gave the wrong impression of what civic duty was, and what your role in being a good citizen should be. It just frustrated me on a lot of levels. (Gross 2013)

Gross said that for years when her name was searched on the internet, the search would return "angry, angry articles" from proponents of comprehensive mandated pledging of allegiance in public schools. Suggestions similar to the one that she would surely be happier worshipping Karl Marx were common, she said, and she would also get the occasional stranger contacting her via MySpace or Facebook.

In recollecting about those high-school days, she expresses regret and surprise that she never had the opportunity to discuss the case with representatives of the ACLU or the legislators driving the passage of the bill. And she barely had conversations with friends and teachers, much less other students who didn't seem to know that the issue existed at all. If she had had the opportunity to talk with proponents, she would have wanted to know how they believed this initiative would benefit students in the process of learning about civic education: "I didn't think that people who really valued the pledge would be mandating it," she said. "That was a strong opinion, but I didn't empathize with the proponents of the bill at all. I didn't understand how they could possibly think that it was something that could stick or something that would make sense for students. And I didn't think it was done with remotely any thought of students in mind... I didn't think that there was any thought in the governor's mind or other proponents' minds of actual student welfare or welfare in the school" (Gross 2013).

Lane, who had significantly more opportunities to discuss the case and the legislation, both in his school and with his participating-attorney father, recollects that he had gained greater understanding of the opposing viewpoint during and after the experience: "...People were grasping for whatever it was that would make them feel safe inside again, so I didn't fault them for wanting something that would bring the students of Colorado together everyday and be patriotic, and I think the motivating factor was just to feel normal. I think people tend to have this view of the past where they idealize it and say 'Well, these things didn't used to happen. When I was a student, we used to say the Pledge of Allegiance everyday and whatever

happened to that?' [But] passing laws like this don't resolve that. And they don't effectively build community or make you safer, but people start digging for all kinds of ways to feel better about a scary and uncontrollable situation in the world (Z. Lane 2013)

Lane also empathizes with the difficult position that schools find themselves in when trying both to be apolitical and still teach "the foundational tenets of democracy... On the one hand, the constitutional issue is pretty clear and on the other hand it's the state legislature initiating it.... " Lane (2013) said. This tension between what is legal according to students' constitutional rights and what is popular based on community and state values illustrates the essence of the problem of practice encountered by school leaders and teachers who seek to provide a rich and varied introduction to civic education and civic action for students.

Zachary Lane's father, David Lane, was less empathetic, both in terms of the impulses behind Colorado's initial mandate law and the ways that schools tend to submit to those kinds of political pressures when determining how and what to teach: "It always amazes me that the people that wrap themselves in the flag most frequently are the people that have the least understanding of what the constitution is all about," David Lane said. "The people that claim to be the most patriotic want this country to be a flag-saluting Christian country. They have very little tolerance or room for anything other than their own dogmas, and they evince virtually no understanding of the true meaning of the Constitution and the Bill of Rights" (D. Lane 2013).

David Lane said that in his experience as a civil-rights litigator, professional academics are among “the least courageous people on earth” and that schools tend to submit to whatever pressures are applied by their communities. He said that the passing of the pledge mandate—regardless of whether or not it was going to be enforced in schools—sent all the wrong signals to students: “This is all bad messaging. Forcing kids to take the pledge was bad. Ignoring it when they didn’t is bad. [To opt out], you had to say it was based on religious grounds or out yourself as some sort of freak to get out of it—that was bad. So whether [schools] did or did not intend to enforce it was irrelevant to me. The law in the state of Colorado was you have to say it; therefore you are going to be a lawbreaker or you are going to follow the law. Neither was good as far as I was concerned” (D. Lane 2013).

David Lane said students are much better served in schools by grappling with ideas and evidence and being encouraged to ask questions and engage in challenging discussions. Both Zachary Lane and Gross agreed that the most powerful element of their in-school civic education lay in the classes and teachers who opened the classroom to debate, discussion, and construction of well-supported positions independent of the teachers’ own opinions. Gross cited AP Government and a few International Baccalaureate classes as her best experiences in civic education, and Lane especially remembers a chemistry teacher who pushed students to think and act on things that mattered to them.

As for his friend’s father who was appalled that students were suing the governor over the pledge mandate, Zachary Lane said this parent pressed him about the illegality of pressing the case on constitutional grounds because the language of

the First Amendment says that only “Congress shall make no laws” abridging freedom of expression. Lane said he tried to explain to the man that a foundational tenet of constitutional law is that this applies to states as well, but the man wouldn’t believe him. That type of message from home, according to Lane, is part of why schools need to teach students to think and reason and support their positions from research rather than general impressions.

“There’s a real tension between what people know to be correct and what they feel to be important in terms of fostering civic engagement, so I understand when people look at the world and say ‘We need people to feel more American and place their hands on their hearts when we say the pledge and do all these things that show real commitment to America,’ so it doesn’t surprise me [that pledge mandates still happen], but people can be misguided about how to foster love of country versus just the appearance of allegiance,” Zachary Lane (2013) asserts.

Conclusion

Even though legal action sponsored by the ACLU resolved the violation of First Amendment rights inherent in the original mandate law, the debates in both the House and the Senate illustrate the pressures that public schools face as focal points for ideological and political initiatives grounded in competing conceptions of patriotism and America’s democratic and cultural identity. Mandate opponents defended the civil liberties of students and teachers and highlighted the constitutional violation inherent in the rigidly constrained opt-out. In contrast, mandate supporters emphasized the overall societal good of cultural unity,

reinvigorated moral uprightness, and traditional patriotism that would result from regular pledging, which could only be guaranteed by a mandate.

Unlike Minnesota, the Colorado debates also included multiple references to concerns about the moral reliability both of teachers and of students. This manifested, for example, in Ken Arnold's comment about schools training meth-makers and in comments like Lamborn and Crane's related to the imperative of minimizing opt-out opportunities for teachers. This hard line on opt-outs caused a few moderate Republicans like Mark Larson to break from their caucus and vote against the mandate legislation. Democrat Alice Nichol also broke from her caucus to vote for the mandate; in contrast to Larson, Nichol explicitly supported the limited opt-out and noted repeatedly her concern about the importance of unity and of majoritarian interests in reasserting traditional moral values through activities like the Pledge of Allegiance. While topics in the Colorado debates were certainly school-related, neither proponents nor critics of the mandate substantively addressed the specific qualities they most wanted to see in young citizens or the best-practices civic education that would engender those qualities. In contrast, Zachary Lane and Keaty Gross, both of whom were high school students at the time of the legislation, recall specifically their interest as students in inquiry and debate about civic-related issues and their opposition to the mandate because it was a mandate.

Another especially notable feature of the Colorado legislative debates was the unconstitutional position-taking and defending by conservatives who pushed the hardest for the mandate legislation and the rigid opt-out. Like most politicians, they

were quick to embrace in their rhetoric the supremacy of the Constitution, and they even asserted that mandated pledging would help students gain in knowledge and appreciation of the Constitution and Bill of Rights. But their position-taking was decidedly unconstitutional, and they argued the constitutional position by arguing that rules like stopping at a stop sign or obeying the speed limit provided proof of the constitutionality of the pledge mandate. Moreover, they maintained these positions even when confronted with details of *Barnette* or detailed explanations about the difference between public-safety traffic measures and constitutionally protected political speech. These types of positional inconsistencies were described by Hunter (1991) as resulting regularly from polarizing influences that arise as we seek to advance our own worldviews and senses of moral authority.

These popular and political variations in interpretation of constitutional rights—both then in Colorado and among the general public today—remain constantly in play irrespective of contemporary constitutional law. This, too, illustrates the challenges that schools and teachers face in their efforts to educate students according to prevailing legal interpretations of civil liberties that may conflict with their own values or the values of the public that sets community mores. The battle in Colorado to mandate a pledge for individual students and teachers reflected an atmosphere among Colorado's popularly elected leaders following 9/11 that implied that broader, multicultural, and inquiry-based approaches to patriotic and civic education might be unappealing.

Partisan majorities in the Colorado House and Senate would shift back and forth in the years after these events, but the struggle for leadership in cultural and

content debates would continue. Even after the 2003 pledge mandate was halted in order to rewrite the opt-out provision, students in Grand Junction created a stir in the fall of 2003 when they protested the pledge legislation by offering a Nazi-reminiscent salute with arm extended and palm down during their classroom pledge recitation (Bender 2003). Conflicts also occurred at city and county commission meetings that sought to include the pledge and prayer as part of regular agendas. And in September of 2014, students and school board members from Jefferson County, Colorado, would make national news over this type of cultural-control conflict. In actions that participants described as civil disobedience, hundreds of students from across the district staged walk-outs from school in protest over proposed curriculum changes that would de-emphasize teaching about “civil disorder, social strife, or disregard of the law” in favor of “more positive” aspects of U.S. history and government.³⁷

These incidents together with the legislative debates illustrate how the pledge and traditional conceptions of American identity can serve as school-based battlegrounds in the effort to shape and control the predominant worldview in a state or community’s public sphere. The teenagers in Grand Junction who decided to protest the pledge-mandate legislation by their Hitlerian gesture—which actually was similar to early protocols for the Pledge of Allegiance—were not protesting the pledge or American unity but rather were expressing their dismay at the legislators

³⁷ For examples of news reporting on these events, see the LA Times story at <http://www.latimes.com/nation/nationnow/la-na-nn-colorado-student-protests-story.html>, an NPR story at <http://www.npr.org/2014/10/03/353327302/school-board-wants-civil-disorder-deemphasized-students-walk-out>, or a Denver Post story at http://www.denverpost.com/news/ci_26588432/jeffco-high-school-students-plan-walk-out-their.

who sought to *mandate* their personal patriotic beliefs. But the community backlash was not interested in their political statement directed toward the legislature; the resounding reaction was that the students were disrespecting the flag and the nation and needed to be punished for doing so (Bender 2003). Such was the power of the flag and the pledge—and this was a power readily available to politicians irrespective of the consequences of this type of cultural politicking on public schools.

Ch. 4: Pennsylvania—Viewpoint Discrimination in Opt-out?

Pledge-mandate controversies rooted in the culture wars also occurred in Pennsylvania after 9/11. Like Colorado, Pennsylvania attempted to enlist the power of parents to control the behaviors of children relative to pledging allegiance. Unlike Colorado, however, Pennsylvania would stand by its attempt to bypass *Barnette* protections and would commit state resources not only to the initial trial but also to an appeal to the U.S. Court of Appeals for the 3rd Circuit. This decision by the state provides an invaluable juxtaposition of the publically popular political arguments for a mandated pledge with the apolitical legal arguments. Though political justifications for a mandate with a punitive opt-out may have played exceedingly well after 9/11 in the legislative and public arenas, these justifications held no standing in courts of law, thus requiring the state to create unconvincing legalistic arguments specifically for the court.

Recent school-related conflicts in Pennsylvania will further illustrate, however, that in matters as personally and emotionally engaging as recitation of the pledge, the letter of the law may be significantly less powerful in the moment than the power of personal or community preference. Given that, attempting to satisfy both their community and staff standards along with the rights and interests of individual students and families can present various problems of practice for schools and individual educators.

A Sweeping Mandate with Punitive Parental Notification

Pennsylvania's legislative effort to compel *every* student in Pennsylvania to pledge was introduced early in 2001, but it was the events of 9/11 later that year that mobilized broad support for House Bill 592, whose main sponsor was C. Allan Egolf (R), whom Ellis (2005, 201) describes as one of the state's most socially conservative legislators. Even though a long-standing Pennsylvania patriotism law already required either weekly pledge recitation or a weekly hour of instruction in flag history or similar traditional patriotism, Egolf sought to pass a new law requiring all students—public and private—either to pledge allegiance or sing the National Anthem each day. HB 592 also included a requirement that each classroom in the state must display a U.S. flag at least three feet in length (Journal of the House, Oct. 16, 2001).

When questioned on the House floor in October of 2001 regarding the need for additional pledge legislation, Egolf said that veterans' groups wanted mandated pledging and so he said he researched the issue by asking his wife's piano student if she said the pledge at her school. Egolf also mentioned that while he knew of an area school that pledged once a week, "I have been told of other incidents. I do not know the numbers, but yes, there certainly are schools that I have been told that do not have this as a regular tradition" (Journal of the HOR 2001, 1836). Egolf's reliance on personal experience was similar to legislators' predilections in the other states included in this research. As a group, legislators in these states relied on personal perception, and they did not reference efforts to gain a full and accurate picture of

school practices, nor did they describe consulting experts in civic education regarding best practices.

Later in that floor session, Egolf asserted twice in succession that schools would be expected to “handle any disciplinary action” for students who did not comply with the mandate, which at this early stage in the bill’s journey required prior parental permission to allow an opt-out (Journal of the HOR 2001, 1836). This choice of language about schools handling “disciplinary action” for pledge decliners would be referenced repeatedly in the coming court cases as evidence of legislative intent to impose punitive consequences on students who exercised their constitutional right to decline to pledge. Egolf and representatives for the state would later contend, however, that there was no punitive intent.

Rep. Greg Vitali (D), one of the few House members to question Egolf about the bill, noted that the Pennsylvania School Boards Association declined to support the bill because it believed that pledging was not a problem and that patriotism and pledging requirements already existed. Vitali also had begun to inquire about the appropriateness of punishing decliners when the Speaker of the House caustically interjected the following question to Vitali: “Are you going to advocate that those who do not comply be drafted?” And when Vitali responded in the negative, the Speaker added out of order, “That would have been my suggestion” (Journal of the HOR 2001, 1837).

The Speaker’s retort to Vitali’s concern about decliners being punished would not be an isolated incident. The popular embrace of the mandate by both parties and by the public emboldened similar behaviors. The next floor questioner, Rep. Babette

Josephs (D), asked Egolf what would happen to teachers who themselves did not want to recite the pledge, and Egolf began to respond that “it is in the School Code now as to how the school would handle teachers who become a problem and do not fulfill the requirements—” Before he could finish describing the consequence for non-pledging teachers “who become a problem,” Egolf was interrupted midsentence by Rep. Anthony DeLuca (D), who blurted out the following: “Mr. Speaker, I was just sitting back here, and I just had to make this comment: I would hope there would never be a teacher in our schools who would not follow this bill, and if they are in our schools, then I hope we terminate them.”

DeLuca’s comment and the minimal questioning of Egolf regarding the mandate showed the strong bipartisan support for a new and stricter pledge law in Pennsylvania after 9/11. The virtually unchallenged embrace of punitive measures both for teachers and students who declined to pledge further indicated a willingness to embrace the pledge and its symbolic representation of a unified America at the expense of students’ civil liberties. This feature of the Pennsylvania legislative proceedings would contrast sharply with those of Colorado, where the restrictive opt-out provision generated substantial pushback from legislators concerned about civil liberties. In Pennsylvania, broad bi-partisan support for the bill meant that legislators barely addressed the issue of civil liberties because the benefits of the pledge appeared to them self-evident. Lead proponents like Egolf did not need to explain or defend their position due to near consensus in this context as

evidenced by the mandate's initial passage out of the House³⁸ by a vote of 200-1 with Babette Josephs being the lone dissenter (Journal of the HOR 2001). While not explicitly addressed by legislators in the records available, the 9/11 effect may have been considerably stronger in Pennsylvania given its close proximity to New York and Washington, D.C. and especially due to the fact that the fourth plane crashed in a field in Shanksville, Pennsylvania, due to resistance by the passengers and crew.

The version of the bill that eventually returned from the Pennsylvania Senate had dropped the prior-permission requirement and instead added a requirement that a school notify parents if a student declined to pledge (Journal of the HOR 2002). This was an attempt by the Senate to accommodate the constitutional right of students to opt out of pledge recitation but to discourage opting out by notifying parents, the majority of whom who could be expected to confront the child about that decision. Notably, students who chose to join the recitation would not be subject to parental notification, a fact that would be central to the coming court cases.

Even though the House had initially passed the pledge mandate by a landslide vote after little deliberation, the bill's return to the House floor to achieve concurrence with the Senate version resulted in an unexpected protest regarding civil liberties. Rep. Kathy Manderino (D), who earlier had voted for the bill, announced from the floor that she could no longer support the mandate because of a letter she received from Helen Mangelsdorf, a Quaker constituent who was also a

³⁸ The mandate bill would come back to the House after it passed out of the Senate with slight amendments. The House would vote again on the amended bill to achieve concurrence with the Senate so that the passed bill could move on to the governor for signing.

teacher. Mangelsdorf described her anguish at the legislation and at the thought that students and teachers in a state founded on the basis of religious freedom would be compelled to pledge allegiance. Mangelsdorf related in the letter that she had always taught her students that no one could make them say anything that they did not want to say: “I spoke those words with complete assurance, that in our country—which is great precisely because we have cherished freedom of expression and freedom of religion—that this was the case. I am absolutely horrified now, to discover that our state representatives would consider taking that freedom away from our children, as well as away from the people we have chosen to teach them and guide them” (Journal of the HOR 2002, 2306). Egolf did not respond to the Mangelsdorf letter other than to say that the bill did not require teachers to lead but rather required schools to provide daily pledging. No one pressed for clarification about punitive measures suggested for teachers and students in the previous House debate on the bill.

Clearly, however, a number of legislators were uncomfortable with the parental notification component of the Senate version of the bill, which was about to be adopted by the House. Greg Vitali alone rose to make one last attempt to drop the parental-notification requirement, but his motion failed 103-92, a vote that fell largely along party lines and that indicated that there was some unspoken concern about the bill’s effect on civil liberties. Vitali in a final attempt to stall the adoption of the Senate version moved for a non-concurrence vote that would force the House and Senate to continue deliberating the final wording of the bill. He noted bitinglly that coercing patriotism by threatening to tell one’s parents “is really not what

instilling good citizenship is all about” (Journal of the HOR 2002, 2307). Vitali’s effort failed, however, and the final version of the bill with the parental-notification provision intact passed out of the House and onto the governor’s desk by a vote of 179 to 16. Even though nearly half the body had voted to drop the parental-notification requirement, that concern did not override their larger support of the pledge mandate for public and private schools in Pennsylvania.

Signed into law, Pennsylvania’s new pledge mandate was commonly known as the Patriotism Law or Act 157. As passed, Act 157 amended current state law to require that every classroom—public and private—have a U.S. flag at least three feet in length and that every student—public and private—recite the Pledge of Allegiance at the beginning of every school day. Act 157 included the requisite opt-out provision for students based on personal or religious reasons but required that “the supervising officer of a school subject to the requirements of this subsection shall provide written notification to the parents or guardian of any student who declines to recite the Pledge of Allegiance or who refrains from saluting the flag.” Act 157 also allowed for parochial schools to claim school-wide religious-based opt-outs (Commonwealth of Pennsylvania 2002, Act 157).

Within the politically structured confines of the legislature, lawmakers had easily dismissed the few objections that the mandate violated civil liberties, but that type of rejection out of hand would not obtain in a court of law. Once the governor signed the pledge mandate, concerned individuals and civil-liberties organizations immediately mobilized to halt the implementation of Pennsylvania’s Act 157—the Patriotism Law. District Judge Robert F. Kelly issued a temporary injunction on

February 6, 2003, at the request of the ACLU, which had filed a federal lawsuit on behalf of the Circle School; Project Learn; Upattinas School; The School in Rose Valley; and The Crefeld School—all of which were private schools now required to comply with the state’s Patriotism Law. Other plaintiffs included James Rietmulder, a founder of the Circle School; Maxwell Mishkin, a public-school student; and Phyllis Hochberg, a parent of a private-school student (Hardy 2003; *Circle v. Pappert* 2004). This collection of plaintiffs—a mix of private and public educational interests—provided evidence of the range of individuals and organizations who sought relief from the new pledge law and sought to assert their constitutional protections provided in the First Amendment.

Sandra Hurst, director of the Upattinas School and Resource Center, appreciated the injunction stopping the law and asserted that her school would not comply under any circumstances. She described the pledge—and especially a mandated pledge—as “antithetical to our fundamental philosophy of having a free and open environment where anyone has the right to choose their own views” (Hardy 2003). The Upattinas School, which closed in 2014 due to funding shortfalls, operated by a mission to “nurture and inspire interest-driven, non-coercive learning in an open and democratic community” (Upattinas School, 2014).

Hurst’s stand on behalf of the philosophy of her school reflects the challenge of compromise on the pledge and patriotism in the context of American cultural divides. The Upattinas School by its very mission emphasized a free and open environment in which students choose their own views—very much a liberal conception of education. Hurst’s repudiation of a mandated pledge as antithetical to

freedom and openness was the type of opinion that riled traditionalists and conservatives who saw in the experience of schoolhouse pledging an entirely positive, affirming, and uniting embrace of American identity and democratic ideals. Legislators' desires to impose that experience of schoolhouse pledging not only on public schools but also on private schools reflected the depth of commitment to pledging and all that it represented to them. These personal commitments and politicking regarding the pledge may have been popular with the majority of their colleagues and constituents, but courts of law would require a different type of argumentation in order to justify mandated pledging for private and public schools and for punitive recourse for students who chose to opt out.

Courts Reject as Contrivances State's Argument for Parental Notification

Judge Robert F. Kelly heard the case in July of 2003 in the U.S. District Court for the Eastern District of Pennsylvania. Kelly ruled resoundingly for the plaintiffs and made permanent the injunction against Act 157 of 2002 that he first issued in February. Kelly noted that while "it is certainly desirable to support the voluntary recitation of the Pledge and Anthem as a sign of support for this great country and doing so in a group setting does promote a communal bond," the parental notification provision of Act 157 clearly was intended to chill the preferred political speech—in this case silence—of students who wished to decline (*Circle v. Phillips* 2003, 6). Kelly noted that the court did not have to make a leap to draw that conclusion, and that the legislative floor debate in the Pennsylvania House provided additional evidence of the punitive intent of parental notification. Using as evidence the *Journal of the House of Representatives*, Kelly noted that bill sponsor C. Allan

Egolf responded to a fellow legislator's question about punishment for student non-compliance by asserting that the school should use "whatever sanctions the school does for other disciplinary things." Egolf in floor discussion reiterated his position twice that a student who declined to pledge should incur disciplinary action from the school (*Circle v. Phillips* 2003, 9). Judge Kelly noted further that the provision in the law to notify only the parents or guardians of non-pledgers clearly resulted in viewpoint discrimination, specifically that only parents of decliners would be notified of their child's lack of participation while parents of voluntary participants would not be so notified. This amounted to discrimination based on the child's viewpoint, a restrictive stance anathema to First Amendment protection of freedom of speech and of political speech in particular.

The Pennsylvania Department of Education, named as the first defendant based on its oversight of schools in the state, could not argue for the law based simply on its legislative rhetoric and public popularity; instead, the state DOE found itself in the difficult position of offering a weak legal defense of the parental-notification requirement. Specifically, the DOE asserted that the exclusive purpose of the parental notification was as an administrative function to inform parents about the pledge activity as a whole, an argument that never surfaced in the legislative hearings. Attorneys for the state also compared this parental notification to clinics notifying parents that their minor daughters were seeking abortions or the Megan's Law notifications about the whereabouts of sexual predators.

Judge Kelly dismissed all of these defenses and noted that if there truly were need for an administrative notification of pledge activity at the school, it would have

been done much more effectively and efficiently—and absent the unconstitutional viewpoint discrimination—by sending a note home at the start of the year that the pledge would be recited daily by those students who wished to do so (*Circle v. Phillips* 2003). Kelly concluded his opinion by noting that while states do in fact have a compelling interest in providing a full educational experience that includes teaching about civics and patriotism, a mandated pledge with a viewpoint-discriminatory punishment built in was not a narrowly tailored measure to achieve the least-restrictive means of accomplishing the compelling interest of teaching about civics and patriotism. Kelly noted in contrast that the state’s prior patriotism law requiring either a school offer the pledge or an hour of patriotic education per week was an example of using less restrictive means to accomplish the goal of patriotic education (*Circle v. Phillips* 2003).³⁹

This reaffirmation of students’ civil liberties was a resounding win for the plaintiffs, who received both the permanent injunction and also the paying of their legal fees by the Commonwealth of Pennsylvania. However, this did not discourage the commonwealth from appealing to the 3rd Circuit of the U.S. Court of Appeals, which heard the case in August of 2004.

Tasked with pursuing the appeal, Pennsylvania Attorney General Gerald Pappert continued to maintain that the parental-notification provision held no punitive purpose whatsoever despite the lower court’s clear rejection of this assertion. As in the first *Circle* case, the state found itself in the difficult position of

³⁹ The portions of the Act that pertained to requiring private and parochial schools to adopt compulsory pledging was not severable from the act and so was summarily dismissed along with the already unconstitutional portion of Act 157.

constructing a legal and educationally sound argument for a parental notification that was the product of legislative politicking rather than a best-practices debate. Like Judge Kelly, the 3rd Circuit panel cited the legislative-floor comments by Egolf as evidence of the punitive intent of the parental-notification provision (*Circle v. Pappert* 2004, 11, Fn 3), and they cited Supreme Court Justice William Brennan's belief that "viewpoint discrimination is censorship in its purest form" (*Perry Educ. Association v. Perry Local Educators Association* 1983).

The 3rd Circuit also affirmed the lower-court ruling in dismissing Pappert's claim that the parental notification served an administrative function. The 3rd Circuit opinion went so far as to describe the state's argument as "makeweight" and went on to describe a scenario illustrating the administrative and procedural absurdity of requiring teachers to observe every student every day for pledge participation, then record the names of non-participants, then report the names to school authorities, and then these authorities notify parents one by one—all that administrative effort in contrast to a single note sent home in the school's informational packet announcing that there would occur a voluntary Pledge of Allegiance each day (*Circle v. Pappert* 2004).

The 3rd Circuit ruling also summarily dismissed the state's argument that every student at every private school must pledge daily unless a school claimed a religious exemption. The 3rd Circuit opinion made special note of the indefensibility of the state's argument that asserted that because the pledge was "only 31 words," and the National Anthem was only "80 words," the recitation only consumed a "very short period of time each day" and schools were free to make a "general disclaimer"

before leading students in the pledge. Judge Sloviter, in writing for the three-judge panel, responded: “Certainly, the temporal duration of a burden on the First Amendment rights is not determinative of whether there is a constitutional violation, especially when the burden imposed by the state carries a clear and powerful message that is to be disseminated every school day” (*Circle v. Pappert* 2004, 13). The panel also wholly dismissed the concept of a “general disclaimer” as a palliative for violations of the First Amendment, noting that all manner of censorship would be permissible if the only constitutional qualifier were the inclusion of a general disclaimer (*Circle v. Pappert* 2004).

The 3rd Circuit panel concluded its statement on the case by emphasizing yet again the purpose of Constitutional rights in protecting the individual from government overreach:

It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, most particularly in the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection. (*Circle v. Pappert* 2004, 14)

Egolf, in his many public comments about the parental-notification requirement, never acknowledged as substantive the viewpoint-discrimination findings of the court. In February of 2003 when the temporary injunction was first issued, Egolf described the notification provision as the same as notifying parents when students

were taking psychological surveys in school (Lee 2003). In July of 2003, Egolf again denied the court's classification of the notification as punitive, asserting that "the judges are saying that somehow it's punishment to keep parents informed of children's activities. I think that's pretty bad. To me, the key to education...is to get parents involved" (First Amendment Center 2003). Egolf, a social conservative actively committed to traditional values, essential unity, and traditional American identity, apparently did not understand or refused to give credence to the constitutional issues at stake in the legislation.

Egolf also expressed surprise at the outcome of the permanent injunction, saying "we didn't think that they would come to that conclusion because we did pretty good research on previous challenges in other states, and it was upheld because they allowed students to opt out" (Associated Press 2003). The Pennsylvania legislature's attempt to bypass *Barnette* with an opt-out provision adjudicated as punitive and viewpoint discriminatory, however, was distinctly different from Minnesota's unqualified opt-out for students and teachers. Circuit Judge Richard Nygaard during the appeal testimony pressed the state's lawyer how parental notification could not be considered punitive and quipped that if a parental notification for not pledging had existed when he was a boy, "I wouldn't have just saluted the flag—I would have climbed the pole" (Slobodzian 2004).

The courts' dismissals of the state's arguments illustrate the degree to which the state legislation represented an obvious disconnect from constitutional provisions for civil liberties; so few legislators challenged Egolf's legislation, however, that he and fellow supporters did not have to explain to the legislature the problems that

the mandate was intended to solve or how their strategy was the best approach. However, in 2004 Egolf sat for an extensive oral-history interview arranged by the state legislative archives, and he recollected at length about his pledge legislation, which he brought again in a similar form in 2004. Unconvinced by the detailed court opinions delineating the constitutional violations inherent in his mandate legislation, Egolf continued to maintain that his various pieces of pledge legislation did not constitute mandate or viewpoint discrimination and that they were intended simply as a respectful and unifying tribute to the greatness of the nation. He asserted further that the pledge requirement in Act 157 was no different from other requirements made of students: "... The school is a place for children to learn. We mandate other courses that they have in school so all we're doing is mandating that they essentially have a course—in other words, offer the Pledge. And it was in already existing legislation, existing law combined with giving—that they should be studying in school—civics, the history of our country, the constitution, what the flag stands for. So it was intertwined" (Egolf, 2004).

Egolf (2004) went on to explain that for him the requirement to pledge allegiance had a larger purpose, as well. He wanted students to learn about the extraordinary origins of the nation, its continuing exceptionalism, and its constitutional foundation:

It was not just the thing of the pledge, but they were supposed to be studying all the reasons the flag is a symbol of our country; why our military men and women fight to uphold those things that the flag stands for and why it is important—and hopefully they will learn patriotism from that. You can't

force patriotism on somebody. It should be something that they realize themselves after learning about the uniqueness of our country and our great constitution that we have—something that was a whole new experiment in government. What the founders meant and why, and what they had experienced that gave them that wisdom. It was almost a miracle that we got the constitution that we have and the country that we have and that we are a different country from every other one in the world. That’s what I wanted them to learn and this is just part of it.

This articulation of his larger vision for students’ patriotic education contrasts sharply with the narrower scope of Egolf’s viewpoint-discriminatory pledge mandate, especially given his decision after the court defeat to reintroduce multiple pledge bills with similar opt-out provisions.

Egolf may have been so rigidly committed to his pledge mandate because he feared leaving patriotic commitments to uncertain development from inadequate curriculum, a perception borne out in his oral history. Egolf asserted that the values of patriotism were in decline, and he said his research had revealed that textbooks had very little content dedicated to the Founding Fathers. Instead “they talk about a number of other things, you know—race relations and so on, which is important, but I think the most important thing they ought to be learning is about our Founders and what they went through...and why they thought it was important to have our Bill of Rights” (Egolf 2004). Egolf’s desire for greater attention and commitment to the principles of the Founding Fathers and the Bill of Rights—the first of which includes the right to freedom of expression—stands out given the court’s

determination that his pledge law would withhold from students their constitutional right to freedom of expression. Egolf concluded his interview with a final affirmation of his primary commitment to the principles of the Founding Fathers—“you know, limited government and individual freedom” (Egolf, 2004, 29).

Egolf’s pledge mandate with the parental-notification provision seemed to contradict that emphasis on individual freedom, however. Perhaps Egolf and fellow supporters in the legislature were intentionally challenging constitutional law. But this is unlikely given that Egolf never seemed to understand that the legislation actually violated the Constitution. As he described it, pledging allegiance seemed like all other school activities. In the eyes of the court, however, the recitation of the pledge constituted political speech that could not be compelled using the implicit threat of parental pressure on non-conforming students.

Regardless of Rulings, Conflicts Continue to Arise in Pennsylvania Schools

Plaintiffs in the *Circle School* cases in 2003 and 2004 may have won the day when they prevailed in court rulings that the state’s pledge-mandate law was unconstitutional, but school-based pledge conflicts continue to arise in the Pennsylvania regardless of constitutional law. For example, the Easton Area School District waited until 2010—six years after the 3rd Circuit decision in *Circle*—to revise its policy that teachers should notify parents when their children declined to pledge. And when the school district finally moved to change that policy at the advice of its legal counsel, various educators, parents, and community members complained that that policy should remain in effect even though it was a clear violation of the court ruling regarding the mandate (WPVI TV 2010).

Examples involving punishment of students who decline also arise periodically. In 2012, for example, a 13-year-old student in the Brownsville Area School District declined to stand for the pledge and was kicked out of class, given detention, and assigned multiple days of in-school suspension for violating school expectations that every student stand during the Pledge of Allegiance. The student's mother complained to the principal and other school officials that the expectation and the punishment violated her daughter's constitutional rights, but officials and even school board members who took up the issue insisted that the school enforce the penalty, and the school board even approved the threat of future punishments if the girl did not begin to participate. At this point, the ACLU of Pennsylvania filed a lawsuit on the child's behalf (Harr 2012).

After being pressed by its legal counsel and its insurance provider to settle the matter out of court due to the obvious unconstitutionality of these actions, the Brownsville Area School District board had initially agreed to pay \$16,000 to the girl for attorney's fees and settlement costs. However, the board on final vote refused to ratify the agreement after 50 military veterans and community members packed the meeting to complain that the girl and the settlement disrespected the flag and the service of soldiers. Board president R.W. Brashear joined the 8-0 vote to reject the previously acceptable payout, noting that he "could not in good conscience vote for something that would allow anyone to make money off the flag of the United States of America" (Pickels 2012a). After the rejection of the settlement, the board's insurance company announced it was prepared to exercise its right to withdraw its coverage in the matter, a move that would leave taxpayers liable for any settlement

or inevitable legal judgment. This move later motivated the board to reconsider its rejection and approve the settlement in order to retain insurance coverage for the matter; board members placed the accountability for the settlement on the insurance company rather than their own preference to withhold payment to the girl and her lawyers (Pickels 2012b). The district's solicitor acknowledged publically that the courts were clear in this matter and that the girl would not be subject to any further punishment and that all mention of the conflict would be removed from her record (Pickels 2012a).

And in an incident in April of 2015, an 8th-grader at Wilson Middle School in Carlisle, Pennsylvania, describes how the school nurse berated her for remaining seated during the Pledge of Allegiance. The student explains that she typically remains seated without incident, but that on April 2 she happened to be seeking care from the nurse during the pledge recitation (Wenner 2015). When the student declined to stand after being told to do so by the nurse, the nurse scolded her and told her to leave the office because she had the right not to serve the student. According to the student's account, she left the nurse's office in tears and went to the administrative office to call her mother, at which point the nurse appeared again, saying "She isn't calling a parent until I have a long conversation with her!" A school counselor then intervened to comfort the student, but he also instructed the student that she would either need to stand for the pledge or leave the room and stand in the hallway. Even after the student tried to explain about the right to remain seated in the classroom, the counselor said that district policy required her to stand or leave the room (Miller 2015).

The American Humanist Legal Center took up the issue on behalf of the student and was pursuing both an apology for the student and a review of district policy regarding students' freedom of expression and assurances that such incidents would not happen again (Miller 2015). The school district acknowledged that it had received a complaint about the incident and that it would be investigating the matter (Wenner 2015).

Conclusion

These school-based incidents in Pennsylvania illustrate that even though the state's unconstitutional pledge mandate was overturned as violating the First Amendment, public opinion, public knowledge, and the personal preferences of school personnel continue to affect the civil liberties and patriotic-education experiences of students in public schools. This case considered as a whole illustrates the persistent disconnect between popular public and legislative support for rigidly mandated pledging and the clear legal protections for the rights of students in the context of the pledge. For many individuals who embrace the traditional values and cultural symbolism of the pledge, the prospect of a child being free to choose whether and how to participate in a patriotic tradition as widely embraced as the pledge—particularly during wartime—is too great an affront to traditional values and to conceptions of shared identity and respect irrespective of the legal issues of constitutionality.

Ch. 5: Florida—Pledge Pressures Remain in State Law

The state of Florida shared Pennsylvania's predilection for parental involvement in enforcing its mandated-pledge initiatives, but with much greater symbolic success and a longer history. While legislative success in the other states demonstrated close ties to the events of 9/11 and only upon closer examination revealed a rootedness in the culture wars, the contemporary legislative efforts in Florida first gained prominence in the late 1980s and were definitive symbols of the state's growing cultural and social conservatism. The effects of 9/11 would still remain significant, however, in that they helped motivate pledge-based nation-at-war conflicts that would arise regularly in the state's public schools. A prominent example of one of these conflicts manifests in the case of Cameron Frazier, a high school student who was widely condemned for exercising his First Amendment right to decline to pledge. The *Frazier* cases will not only illustrate the public pressures to conform to mandated pledging, but they will illustrate the persistence and creativity of the state in defending its culturally embraced but constitutionally untenable pledge mandate.

As a testament to that commitment to cultural conservatism, Florida's rigidly mandated pledge remains written into state law even though one portion of it has been adjudicated as unconstitutional in all circumstances and another portion has been ruled unconstitutional when applied to mature students. Furthermore, school-based incidents and the public's reaction to them illustrate that these unconstitutional pressures to pledge continue to retain substantial appeal among citizens and among some members of the school community. School leaders in

Florida must accommodate not only the constitutional rights of students but also navigate state law that explicitly requires violation of those rights, a violation that continues to garner public support.

Perhaps most significant of all, this intentionally unconstitutional Florida law and the opinions that surround it point toward other complexities in ideological positions embraced by participants in the culture wars and in their constructions of American exceptionalism. Elements of this were evident in Colorado in conservatives' constitutionally untenable justifications for compelled pledging, but events in Florida illustrate more extensive and more persistent examples of this ideological complexity. For instance, Florida legislators would write into the state's education code explicit and detailed protections for religious expression by students in public schools—presumptively but not explicitly for fundamentalist evangelical Christians. But legislators would choose not to accommodate students' right to opt out of the pledge for religious reasons—an imperative for Jehovah's Witnesses, for example—unless pre-approved by a parent. Other complex culture-war ideologies that emerge in this case include selective embrace of freedom of speech and the nature of state authority.

Florida Repeatedly Declines to Align State Law to U.S. Constitution

Florida passed its first school patriotism and pledge law in 1943. This law required that students—whether they were pledging or not—stand at attention, a requirement that was implicitly forbidden in *Barnette* (1943) and would be

explicitly forbidden as other court challenges to such rules arose.⁴⁰ In fact, a major challenge to this type of law occurred in Florida in 1970 when students Andrew Robert Banks, Robin Mobley, and Michael Hill sued the Dade County Board of Public Instruction after being suspended for refusing to stand at attention during the Pledge of Allegiance (*Banks v. Board* 1970). The federal court affirmed their right to remain seated, and it declared unconstitutional the local policy that required students to stand. Because of the narrow scope of the students' challenge, however, the court's decision addressed only the local school policy and left the state law unchallenged—though obviously vulnerable to challenge. Regardless of this legal precedent affirmed in their own state, Florida legislators repeatedly proved unmoved by the fact that the courts had declared unconstitutional a popular provision of state law imposed on public schools (Fla. Stat. Ann. Section 1003.44).

State legislators in the nascent years of the renewed culture wars further cemented their pledge-related departure from constitutional law when they amended the longstanding school-patriotism law to specifically mandate daily pledging. And in order to bypass constitutional protections of students' civil liberties,⁴¹ state lawmakers in 1987 crafted an opt-out provision to allow declining only with the prior written permission of one's parent or guardian. Moreover,

⁴⁰ *Barnette* should have been enough to forestall these kinds of requirements, but there were various efforts after the decision to circumvent it, as this dissertation repeatedly shows. Taken together, the Supreme Court decisions in *Barnette* and *Tinker v. Des Moines* provided an even stronger bulwark not only for the right to decline to pledge allegiance but also the constitutional right of students in public schools to First Amendment freedoms, including freedom of expression and especially political expression, when not creating a "material and substantial disruption." For more on this, see Appendix A.

⁴¹ See Appendix A for a review of germane court cases.

legislators who amended the law in 1987 left intact the provision—already adjudicated as implicitly unconstitutional in *Barnette* and explicitly unconstitutional in *Banks v. Board* (1970)—requiring all students to stand at attention (Senate Staff Analysis 1999; Fla. Stat. Ann. 2014).

Seventeen-year-old Christa Polley of Gulf Breeze High School in suburban Pensacola and her mother Melissa Foard-Polley challenged this newly amended and more rigid pledge law in 1992 (*Orlando Sentinel* 1992) and settled out of court with the Santa Rosa County School District,⁴² which had indicated it would retreat from its position that Polley must show a note of permission and stand at attention (*Boca Raton News* 1993). According to Foard-Polley, her daughter’s pledge-period teacher day after day required Christa to produce a written note in order to pressure her to stand and pledge. In rhetoric and cultural positioning indicative of culture-war conflicts, Christa experienced other pledge-related harassment at school, and the family also received “threatening calls and letters telling us to move out of the country—they said ‘Love it or leave it,’ that we were communist pigs,” Foard-Polley said (Bergal 1992).

And even though district leaders in charge during the Polley case had offered to adopt a new policy regarding the pledge in order to end the lawsuit (*Daytona Beach News-Journal* 1993), the *2014-2015 Santa Rosa County Public School District Student Code of Conduct* today includes the following official statement about the mandated Pledge of Allegiance: “Patriotic Programs: Rule F.S. 1003.44 requires that the pledge

⁴² The final disposition of this case was not publicized. Various newspaper accounts noted that the district had come to terms with the Polleys on a settlement arrangement but that it was awaiting final approval.

of allegiance to the flag be recited at the beginning of the day in each public elementary, middle, and high school in the state. The pledge shall be rendered by students standing and placing their right hand over their heart. Upon written request from his or her parent, a student must be excused from reciting the pledge. When the pledge is given or the national anthem is played, all civilians (including students) must show full respect to the flag by standing at attention, men removing headdress, except when the headdress is worn for religious purposes” (“Santa Rosa County...” 2014).

This is a near verbatim rendering of state law, and it illustrates the line that Florida districts straddle: If they assertively comply with state law, they expose themselves to obvious and certain violation of students’ constitutional rights. That said, the Santa Rosa County School District has openly courted recent similar court involvement and intense culture-war controversy for its overt advocacy of school prayer and the inculcating of “every Christian virtue.” This was particularly egregious at Pace High School due to the explicit instructions to do by former principal Frank Lay, who was brought up on charges of contempt of court.⁴³ The district has also made national news and generated lawsuits for its frequent and formalized use of corporal punishment as part of student discipline, a practice that was removed from official policy in 2014 not because it was deemed ineffective but because the district sought to stem lawsuits against teachers (DeNinno 2014). Based

⁴³ To read more about this case, see *Does v. Santa Rosa County School District (2008)*. To read about the ACLU’s advocacy on behalf of plaintiffs seeking relief from school-sponsored prayer and proselytizing, see <https://www.aclu.org/does-v-santa-rosa-county-school-district-top-5-myths-and-facts>. For more on the accusations against Principal Frank Lay, see <http://www.cnn.com/2009/CRIME/09/17/florida.school.prayer/>.

on these types of cultural norms in the school community and active support for them across the district, culturally conservative social views predominate in this part of Florida, and some individuals like Christa Polley who seek a different experience from their schools have found they needed to enlist the courts to gain a more formal protection of their constitutional rights.

The Christa Polley lawsuit would not have a lasting effect either in her school district or in the state as a whole as evidenced by new legislative action in the late 1990s—action undertaken to preserve the pledge law even though legislators possessed a prime opportunity to let the unconstitutional mandate quietly disappear. Specifically, in an effort to reduce the overreach of government, a 1997 legislative committee had been charged with the task of scrubbing from state education law language that was overly regulatory and prescriptive. Part of that deregulatory editing effort included changes to the pledge-mandate language. In the spirit of deregulation and the return of schools to more local control, the rigidly prescriptive mandate was quietly transformed into a “broad policy direction” to “encourage patriotism and greater respect for the country” that was to be implemented independently by each school district⁴⁴ (Senate Staff Analysis 1999).

Even though conservatives traditionally advocate for decentralization and reduction of state authority, a decentralizing of authority regarding a mandated pledge proved incompatible with the same conservatives’ cultural imperative to

⁴⁴ Upon passage, Florida House Bill 137 from 1997 repealed section 233.065, F.S., which had included the mandate and protocol for pledging, and replaced it with section 233.0612, F.S., which authorized the broader policy of “programs to encourage patriotism and greater respect for country.” For more of this history, see “Senate Staff Analysis and Economic Impact Statement: SB 330,” 1999.

rigidly mandate the pledge and all that it symbolized. When mandate proponents realized that the rigid mandate had been broadened as part of the larger deregulatory effort, they responded immediately to reinstate the rigid mandate. Lisa Carlton (R) led the charge in the Senate when in the next session she introduced Senate Bill 330 to reinstate the prior mandate wording. Carlton, in an interview with the *St. Petersburg Times*, inaccurately described the previous law as being inadvertently removed the prior year. However, the Senate Staff Analysis (1999) shows that the 1997 rewrite was an intentional effort to reduce state involvement in local affairs by removing prescriptive language and replacing it with language promoting broader policy objectives to be achieved by local school boards. Carlton acknowledged that she knew of no school district in the state that did not already pledge allegiance as part of the broader option, but she wanted to protect the guarantee of pledging present in the 1987 version of the law. Carlton said further that she was joined in this desire for a guaranteed commitment to pledging by the state's veterans' groups, who had complained to her that the pledge was no longer formally mandated in Florida state law (Hauserman 1999).

A stinging editorial in the *St. Petersburg Times* (1999) chided Carlton and other lawmakers' efforts to "promote patriotism by violating the Bill of Rights," noting that not only did students have the constitutional right not to pledge independent of their parents' permission, but that it was an unnecessary mandate that in the deregulation effort of 1997 had been "deemed too fussily rigid to survive" the culling of overly prescriptive state law. The editorial went on to criticize the legislation as a solution to a non-existent problem when in fact there were many

serious problems in Florida public education that needed attention, and it noted caustically that Carlton had not bothered to update the 1942 Flag Code language about “men removing their headdress.” The editorial noted, too, that Christa Polley in 1993 had successfully challenged the constitutionality of the parental-permission opt-out and that this bill would reinstate “those same unconstitutional provisions back into law, inviting another lawsuit” (*St. Petersburg Times* 1999).

Carlton and others’ effort to reinstate the rigid pledge mandate nonetheless succeeded, and it included not only the parental-permission provision but also the requirement that all people regardless of vocal recitation stand at attention. Notably, Democrats had frequently held majority leadership in Florida until a Republican surge began building in the mid-1980s, a surge that in 1987 included the first Republican governor in 20 years and by the mid-1990s included Republican control not only of the governorship but also the House and Senate.⁴⁵

This culturally conservative turn in Florida was evident in the pledge-mandate debates from 1987 onward, and it would be illustrated again in 2002 when the legislature possessed a second opportunity to soften the edges of its unconstitutional pledge statute. House Bill 1-D was a major effort focused on “rearranging, renumbering, rewording, streamlining, consolidating, and updating the education code to reflect current law” (Journal of the Florida HOR 2002, 384). However, these efforts did not include revision of the pledge mandate even though a court challenge appeared inevitable and unwinnable. For conservative legislators in

⁴⁵ For more on the partisan shift toward Republicans in the last 30 years, see Ballotpedia’s “Interactive Almanac of U.S. Politics” at dia.org/Florida_State_Legislature or the Florida Republican Party’s website at <http://www.rpof.org/about-us/>.

Florida, the rightness of a rigidly mandated Pledge of Allegiance was consonant with a worldview that simultaneously promoted smaller government and embrace of the Bill of Rights to limit government interference in the lives of individual citizens.

The ideological intricacies of this worldview were especially evident in the section of House Bill 1-D (i.e. the updated state education code) titled “Rights of Parents or Students.” This section articulated explicitly these rights in a numbered list. Number eleven in this list was Basic Religious Freedoms “in accordance with the joint statement of current case law by the American Jewish Congress, the ACLU, the Anti-Defamation League, and others.” Even though House Bill 1-D was explicitly intended to streamline the education code, legislators allotted 436 words to this section in defense and articulation of religious freedoms of students in Florida public schools. The bill provided details about students’ right to pray, to read Bibles,⁴⁶ to discuss religion with other students, to express their religious beliefs in their school work, to proselytize, to distribute religious literature, to convince other students of the rightness of their religious beliefs, to meet on school grounds and have access to student media commensurate with other non-curricular clubs, and so on. The crafters of this portion of the education code referred repeatedly to students’ constitutional rights guaranteeing freedom of religion and that students would be accorded every constitutional right to practice and promote their religion in Florida public schools (Journal of the Florida HOR 2002, 420-421). This detailed articulation of students’ religious rights appears targeted to satisfy conservative evangelical

⁴⁶ The code explicitly names the Bible. It accommodates other religions by adding “and other scriptures” after the Bible.

Christians who want formal affirmation of their children’s First Amendment right to include personal religious expression including proselytizing in public schools.

However, the 436-word articulation about students’ constitutional rights to religious freedom contrasts sharply with the attention—and constrained religious freedom—given to the next item: “12. Pledge of Allegiance.” Lawmakers allotted this section a mere thirty words, and there is no mention whatsoever of acting in accordance with federal law or the U.S. Constitution. Here in its entirety is the statement of students’ rights regarding the Pledge of Allegiance (421): “A public school student must be excused from reciting the Pledge of Allegiance upon written request by the student’s parent,⁴⁷ in accordance with provisions of s. 1003.44”⁴⁸ (Journal of the Florida HOR, 2002, 422).

This vivid side-by-side contrast showing selective affirmation regarding First Amendment rights certainly illustrates the ascendance of conservative cultural values in the Florida school code in 2002, but it also illustrates the ideological complexities intrinsic to culture-war position-taking. On one hand, legislators provide in the school code a comprehensive, categorized, and explicit affirmation of majority religious interests, but on the other they assert an outright constraint of minority religious interests by requiring pledge decliners to gain prior parental permission. Consider, for example, students who are Quaker, Jehovah’s Witness, atheist, or otherwise religiously disinclined to pledge. Their student peers may of their own volition proselytize, recite scripture aloud in the cafeteria, or engage in

⁴⁷ The code noted elsewhere that in general eighteen-year-olds were allowed to give themselves permission only if their parents did not claim them as a deduction on their taxes (Journal of the Florida HOR, 2002, 422).

⁴⁸ To see this law in its entirety, see Appendix G.

other similar constitutionally protected religious behaviors; those minority-interest students, however, may not even decline to pledge for religious reasons without first producing an excuse from their parents. Though these disparate constructions of First Amendment rights for students in Florida might accurately be described as a gap in logic, for its creators it no doubt represents a successful cultural construction of moral behavior necessary in public schools. This type of cultural construction innately intertwines evangelical religiosity with traditional Americanism in a form of American exceptionalism favored by conservative Christians (Vandivinit 2014).

Despite both the logic issues and clear unconstitutionality, Florida legislators from 1987 onward would repeatedly defend their pledge-mandate and their larger construction of moral authority that justified it. As the *St. Petersburg Times* editorial had predicted in 1999, this commitment to a culturally conservative mandated pledge placed school districts on a collision course with the courts due to its constraining of students' First Amendment rights. And based on incidents in Florida public schools, the continuous wartime atmosphere post-9/11 would make some citizens less tolerant of students' decisions to decline.

The 'Big Desk-Little Desk' Incident: Cameron Frazier Remains Seated

The warning by the *St. Petersburg Times* that Florida's rigid and prescriptive pledge mandate would invite lawsuits came to fruition in the person of Cameron Frazier, who in December of 2005 was a seventeen-year-old junior at Boynton Beach Community High School in Palm Beach County School District. According to court records (*Frazier v. Alexandre* 2006), Cameron Frazier had opted out of the daily pledge for six years, choosing instead to sit quietly at his desk while his

classmates pledged. However, on December 8, 2005, Frazier was in the fourth-period math class of teacher Cynthia Alexandre when the pledge recitation occurred. As was his longstanding behavior in prior years and in his first-period class where the pledge normally occurred, Frazier remained seated.

Alexandre ordered Frazier to stand, and when he declined Alexandre again ordered him to stand. Frazier again declined and explained his longstanding practice to decline pledge participation. Alexandre grew angry and said to Frazier, "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." Alexandre continued to pressure Frazier and presented him with the district handbook, pointing out that state law required him to obtain prior parental permission to opt out and that he must stand regardless of whether he had parental permission not to speak the pledge⁴⁹ (*Frazier v. Alexandre* 2006).

Frazier explained that he had heard that before but that he had been advised he did not need a note from his parents and he would not be standing for the pledge. Invoking the post-9/11 America-at-war rationale, Alexandre at that point reportedly said, "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." Frazier responded that it was soldiers fighting and not the flag and that "the flag is an inanimate piece of cloth that doesn't move and surely can't hold a gun."

Alexandre responded, "You are so ridiculous. I can't believe you are so disrespectful!"

⁴⁹ The court-reported dialogue from the classroom incident between Frazier and Alexandre presumably derived from depositions of involved individuals and witnesses. The court ruling from which these details are taken specifically notes that the events are not in dispute by any party.

Frazier tried to respond, but Alexandre interrupted by telling him he was kicked out of class and that “I am so sick of you.” Four school authorities including Principal Richard Poorman, an assistant principal, another administrator, and a school police officer arrived to collect Frazier, who had remained seated during the exchange with Alexandre. Frazier was made to wait in the principal’s office and was not allowed to return to the classroom for the remainder of the day. The principal told Frazier he would need his mother’s signature to decline and that regardless of any permission, he would have to stand for the pledge (*Frazier v. Alexandre* 2006).

News of the incident went public later that month when Frazier filed suit in federal district court. Frazier’s suit, undertaken by lawyers for the Florida ACLU, named as defendants Cynthia Alexandre, Principal Richard Poorman, and the local school board for both damages and an injunction against future enforcement of the pledge requirements that he believed violated his rights under the First and Fourteenth Amendments. Frazier also sought “declaratory and injunctive relief” against the state of Florida in the form of the Commissioner of Education, again claiming that his First and Fourteenth Amendment rights were violated.

ACLU attorney James K. Green praised Frazier’s courage in taking an unpopular position, particularly after 9/11, and described remaining seated during the pledge as a symbolic gesture that is “a primitive but effective way of speech.... Standing up is a forced kind of unity. If you’re being forced to stand while the Pledge of Allegiance is being spoken, the school board is in effect forcing a certain orthodoxy that the First Amendment doesn’t allow” (Keller 2005). Green’s interpretation echoed the protections detailed in *Barnette*, which in addition to forbidding

compelled flag salutes or the recitation of the Pledge of Allegiance also noted that public schools may not require “other gestures of acceptance or respect: ... a bowed or bared head, a bended knee” or other similar acts such as standing at respectful attention (*Barnette* 1943, 319 U.S. at 642).

As predicted years earlier, the unconstitutional provision in state law that students must stand and the questionably constitutional opt-out provision would continue to put school districts who enforced the law in an untenable position. This was the case with Palm Beach County School District, which had included the pledging language of the state law in its official policy guide but had not stressed enforcement given that Frazier had for six years declined to stand. Alexandre’s confronting of Frazier based partly on the policy guide, however, had exposed the district’s untenable position constitutionally, and the district retreated almost immediately from its district-wide policy mandating the pledge and mandating standing for the pledge. Within thirty days of the lawsuit being filed, the school board voted unanimously to settle the lawsuit contingent upon Frazier winning his case against the state of Florida, and it announced publically that it would no longer require prior parental permission for students to opt out of daily pledging and students would not be required to stand for the pledge. Like the Santa Rosa County School District in the Christa Polley case from 1992, the Palm Beach County School District recognized its tenuous position and opted for a contingency settlement—but it still faced the reality of the state’s and the public’s embrace of the unconstitutional pledge law and the questionable opt-out requiring prior parental permission.

School-board attorney Gerald Williams said the district believed it was obligated to adhere to federal constitutional law regarding the pledge rather than the more restrictive state law. The board announced that all employees would be notified of this decision and that this decision superseded the district policy appearing in the already-printed Student Handbook. The settlement of the case against the district, contingent upon a Frazier victory against the state, included a written reprimand of Alexandre and a payment of \$32,500 and attorney's fees to Frazier (Shah 2006a). Frazier, for his part, kept a low profile during the period after the incident and the four years of legal proceedings in his case against the state. While he did not speak publically about the case at the time, Frazier did issue a statement through his lawyers that patriotism was important to him but that the pledge was not a representation of patriotism that suited him and that he had held these personal political beliefs about the pledge since sixth grade. Frazier added, "I believe that the real meaning of the flag—freedom, liberty, equality—has been tarnished by the recent politics of our government. Patriotism is more than going along with everybody else and just saluting the flag. It's about things like supporting our troops during the holidays and helping hurricane victims" (Shah 2006b). Frazier's explicit public embrace of the flag and its symbolizing of core American ideals—but in a form different from the pledge—would not mitigate the negative public reaction to his rejection of the virtually sacrosanct pledge, however.

Public Reaction Swells; Frazier urged to go to Iraq

Public reaction to Frazier's classroom actions and his filing of the lawsuit was swift and predominantly negative. The *Palm Beach Post* printed a flurry of letters in

January and February. A few writers such as Ed Hothan identified themselves as veterans and reminded readers that as veterans they had fought for American values and that like all Americans Frazier possessed a constitutional right to freedom of speech. Hothan, who described himself as a Korean War vet who spent 28 months overseas, said that he believed Frazier when Frazier described himself as patriotic but that ultimately Frazier did “not have to explain his decision not to stand for the Pledge of Allegiance. It’s his right as an American” (Hothan 2006).

Many other writers, however, would illustrate again the ideological inconsistencies necessary to maintain a cultural construction of exceptionalism that celebrated the Constitution and First Amendment while simultaneously excoriating anyone who exercised those rights inconsonant with traditional Americanism. For example, many letter writers described Frazier and his parents as an embarrassment and a disgrace. Invariably they based their denigration of the 17-year-old on their moralistic belief that Frazier should be so grateful to live in a country with the Constitution and freedom of speech that he should not protest being forced to pledge.⁵⁰ Joan D. Jellinek embodied this type of claim in her letter of January 9, 2006: “I hope that the court will dismiss such a disgraceful, ludicrous and downright stupid suit. To teach him the meaning of and respect for the United States of America, I would draft him, send him to Iraq in an infantry unit and assign him as point man on a roadside mine-clearing operation. Respect then would be heartily embraced—if he survived” (Jellinek 2006). And self-described thirty-year teacher

⁵⁰ These letters to the editor appeared in various newspapers in late December 2005 and January and February of 2006. For a sampling, see the *Palm Beach Post* on December 29, 2005 (p. 13a), January 3, 2006 (p. 11a), January 26, 2006 (19a), January 28, 2006 (p. 15a), February 19, 2006 (p. 4e), and February 21, 2006 (p. 15a).

and administrator Caroline Taurus dismissed Frazier as “young, immature, and misguided,” and she asserted that soldiers have lost their legs so that “young Frazier might have the right to opt out of such an offensive gesture for the freedoms he enjoys? I think not” (Taurus 2006).

Taurus and Jellinek were two of many who exalted the exceptional qualities of America and its freedoms while harshly condemning Frazier for exercising one of those freedoms in a low-key manner based on his personal conscience.⁵¹ Taurus, a career teacher and administrator, especially illustrated the embrace of an ideological intricacy inherent in her opinion in that she would have been required to possess a foundational knowledge of education law. Her letter, however, reflects either an absence of knowledge regarding students’ civil liberties or more likely a moralistic embrace of the pledge—an embrace that overrode a culturally incompatible legalism. Regardless, Taurus and Jellinek’s positional inconsistencies aligned well with Florida’s written law on the matter.

Letter writers also unleashed their anger on the Palm Beach County School District—not because it had violated Frazier’s rights but because it acknowledged them. The district announced almost immediately that it would adhere to the U.S. Constitution rather than state law in pledge matters going forward and that it would settle the Frazier case (contingent upon a Frazier victory against the state) rather than participating in Frazier’s trial against the state defendants. Another flurry of angry letters met that announcement. Letter writer Michele H. Danison (2006)

⁵¹ Frazier’s decision to remain quietly seated at his desk contrasts with other expressions involving the flag such as publically burning it in protest or desecrating it as part of an art installation, both of which were incendiary topics in the 1980s and 1990s.

described herself as “furious” that her tax dollars were being “used in such an appalling manner” and asserted that the settlement “sets a bad example for other students.” And like so many other letter writers with a selective embrace of the First Amendment and constitutional law, Danison reasoned that “although Americans may not like or agree with all laws, we must respect them. The school board rewarded Mr. Frazier with \$32,500 for disrespecting our flag. When did teaching respect become politically incorrect?”

Pledge Politicking, Hot-button Hyperbole, and Threats of New Legislation

Vitriolic letters—even regarding the constitutionally protected actions of a quiet 17-year-old—are a predictable part of public discourse, but what continued to stand out in the Florida events was the unwavering commitment to an unconstitutional state law. Florida legislators would stand firm on a state law that placed school districts in the position either of violating state law or violating the U.S. Constitution, and conservative legislators would attempt to enshrine that law in the state’s constitution. Moreover, this aggressive defense of mandated pledging and the requirement to stand for the pledge proved to be a powerful political tool in terms of fundraising and politicking boosted by culture-war rhetoric that did not necessarily need to be matched by political action, as evidenced by popular Republican senator Ken Pruitt.

Pruitt, a pragmatic pro-business Republican (Kennedy 2002) who was elected Senate president from 2006 to 2008, capitalized on the public reaction to Frazier’s pledge lawsuit in order to rally Floridians to donate to the campaign coffers of Senate Republicans. In a rhetorically fiery fundraising letter, Pruitt beseeched

constituents to help fund Republicans who were committed to creating and passing the “Boy Scouts and Pledge of Allegiance Protection Act.”⁵² Pruitt invoked numerous discrete elements of popular culture-war rhetoric when he simultaneously defended the pledge and the right of the Boy Scouts to an anti-gay stance and when he asserted that this potential legislation would help save the state from the “very liberal Supreme Court” (qtd in Date 2006) and fight “the radical ACLU and the anti-God left” (qtd in Caputo 2006). Pruitt in his fundraising letter further accused liberals of “never-ending attacks on faith in God and the traditional American institutions” like the pledge (qtd in Marra 2006).

Pruitt’s rhetorical marriage of the pledge conflict to other culture-war themes in order to rally donors may have suited conservative supporters, but Pruitt riled Democrats and legislative ethicists when he published the pledge-protection fundraising letter on letterhead using his “Chairman, Florida Senate Rules Committee” title. In addition to the letterhead imprimatur, Pruitt re-emphasized his position in the Senate by explicitly noting his upcoming leadership position and power over agendas. Wrote Pruitt in the fundraising letter: “I am chairman of the Rules Committee in the Florida Senate and Senate president designate. So I have a lot of influence over what bills are voted on.” He also promised “to impeach any judge in Florida who votes to overturn this [potential] law” and “to force liberals in

⁵² The inclusion of the protection of the Boy Scouts is a hot-button reference to the public controversy and publicity surrounding the Boy Scouts organization’s policy to prohibit participation and leadership by people who were openly gay. At no point did Sen. Mike Fasano’s resolution (Senate Joint Resolution 534 and House Joint Resolution 307) calling for a constitutional amendment to mandate the pledge in public schools include any reference to protecting Boy Scouts. Pruitt, however, made repeated joint mention of protecting Boy Scouts and the mandated pledge.

the Florida Senate to take a stand one way or the other” (qtd in Caputo 2006). Pruitt then included an urgent plea for cash donations of \$20 to \$1,000 or more for Senate Republican campaigns in order to protect the Pledge of Allegiance and Boy Scouts (Date 2006; Caputo 2006).

Pruitt’s fundraising letter illustrates the ways in which the pledge in public schools not only represents an actual conflict in the culture-war struggles related to unity, identity, and diversity, but it also illustrates the ways in which politicians and others may use the pledge-in-public-schools issue purely for political advantage irrespective of the consequences for students like Cameron Frazier or school districts like Palm Beach County.

Proof that Pruitt’s claims in the letter were solely fundraising rhetoric to capitalize on donors’ constructions of moral authority was evident in his legislative actions and also in a letter to the editor regarding Cameron Frazier and the school board choosing to settle the lawsuit. The new and stronger pledge mandate imagined by Pruitt in his fundraising letter took form in a joint resolution⁵³ to put to a public vote an amendment to the state constitution to mandate pledge recitation exactly as it was currently mandated in state law.⁵⁴ Senate sponsor Mike Fasano (R)

⁵³ Senate Joint Resolution 534 was sponsored by Republican Mike Fasano; the House companion was House Joint Resolution 307.

⁵⁴ It’s worth noting that even if a pledge mandate were amended to the Florida Constitution, if it were to be deemed facially unconstitutional according to the U.S. Constitution it would not be considered legal simply by its inclusion in the Florida Constitution. In fact, Senate sponsor Mike Fasano acknowledged that his effort amounted to symbolic support for the pledge rather than a substantive change (Marra, 2006). Moreover, the standard for a state or federal law to be found facially unconstitutional is very high, specifically that the law must be unconstitutional in every instance. In short, laws as applied to an individual or group are found to be unconstitutional in terms of individual application at a much higher rate than a law

made no mention of Pruitt's Boy Scouts theme in his proposed constitutional amendment but focused exclusively on writing a mandated pledge into the Florida Constitution. Fasano (R) acknowledged that adding Florida's pledge mandate to the state constitution would not in fact protect it from being found unconstitutional but that such an amendment to the Florida constitution would "send a signal to any judges or court if the issue ever comes before them" (Marra 2006). Ken Pruitt's passionate rhetoric about his support for stronger protection of the pledge in Florida did not result in actual legislative effort, however. While Fasano successfully pushed the measure through both the Senate Education and Judiciary Committees, the measure to amend the state's constitution stalled in Pruitt's own Rules and Calendar Committee, of which he was the chairman (Bousquet 2006b). Reporters would ask Pruitt why he stalled the constitutional amendment given his fundraising-letter rhetoric, but he would only reiterate that the legislation was important to him: "I never put a time period on any legislation that I've filed. It's an issue whose time will come. Eventually, it's going to get heard, and it's going to get done," Pruitt said (Bousquet 2006b).

Pruitt's political use of the pledge to gain greater legislative power by energizing support among culture-war conservatives was similar to that of Colorado Republicans in 2002 and 2003 (Ellis 2005). Because the pledge is so easily framed as a cultural issue of traditional morality and respect for the identity and unity of

is found to be facially unconstitutional. Therefore, the push to embed a mandated pledge in the Florida constitution in a form identical to longstanding state law was puzzling unless viewed through the lens of political expediency.

the nation rather than an issue of students' civil liberties or civic education, politicians like Pruitt easily capitalize on the hot-button quality of the pledge.

Pruitt would demonstrate this again in a different venue when he submitted a long letter to the *Palm Beach Post* criticizing the school board's settlement provisions with Cameron Frazier and offering his support to Algebra teacher Cynthia Alexandre. In this letter published prior to the constitutional-amendment effort dying in Pruitt's Senate committee, Pruitt (2006) asserted that "by all accounts, teacher Cynthia Alexandre did all she could to warn her student before involving higher school authorities." As described earlier in this chapter, however, Alexandre's warnings consisted of her "big desk-little desk" belittlement; her assertion that Frazier did not know his place in the classroom; and that he was "disrespectful," "ungrateful," "ridiculous," and "un-American" (*Frazier v. Alexandre* 2006). Pruitt in his letter to the editor noted with disgust that the school district's settlement figure of \$32,500 plus lawyer's fees—as revolting as it was—was better than a long legal battle driven by "the ACLU's usual theatrics," rhetoric that in itself was a nod to the cultural conflicts involving the ACLU's various and longstanding defenses of diverse individuals' unpopular viewpoints.

And in another example of ideologically selective defense of the First Amendment common to the pledge debates, Pruitt directed his greatest indignation at the "disaster" of the district's reprimand of Alexandre and the requirement that Alexandre not publically discuss the settlement or the incident. Alexandre as a plaintiff presumably agreed to this settlement provision, but Pruitt embraced the rhetorical and political opportunity to lambast the district for reprimanding the

pledge-defending Alexandre and for stripping her of her First Amendment right “to speak a word [to reporters] in her own defense. That’s un-American,” Pruitt (2006) wrote. Pruitt asserted further that Florida’s current pledge law was believed by some to contradict “a West Virginia case in 1943,” which was why he needed to add the mandated pledge to the state constitution. Pruitt wrote: “Some have questioned why I am so keen to urge a constitutional amendment to protect the Pledge of Allegiance and the rights of the Boy Scouts of America. Mr. Frazier's case is why. Ms. Alexandre's plight is why.”

Pruitt’s heated rhetoric about perceived threats to pledging allegiance contrasts vividly with his decision as committee chairman not to act on the resolution to amend the state constitution. This pragmatic rhetorical use of the pledge issue illustrates definitively the power of the pledge as a political and symbolic tool, especially for conservatives who have public opinion on their side in the framing of the issue as one of patriotic tradition, civic religion, and respect.⁵⁵ And it is a framing made even more powerful by the inaccurate but advantageous equating of opposition to a *mandated* pledge or to the “under God” portion of the pledge as opposition to the pledge itself. And as Pruitt and others in Florida demonstrated, spirited defense of the Pledge of Allegiance mandate provided a natural bridge to politically advantageous demonizing not only of the liberal-leaning and minority-

⁵⁵ For example, a Gallup poll in 2004 sought to gain the opinion of Americans on the “under God” phrase given that the Michael Newdow case in California had gone to the U.S. Supreme Court. According to the Gallup results, 91 percent of Americans wanted the pledge to remain unchanged, and 78 percent of respondents noted that they would be upset if the “under God” phrase were removed. To see more about these poll results, see <http://www.gallup.com/poll/11551/americans-indivisible-pledge-allegiance.aspx>

viewpoint-defending ACLU but also of the ‘liberal’ judges who sought to remove God from the pledge and from public life.⁵⁶

Even before the *Frazier* case went to trial, politicians like Pruitt had capitalized on the complex ideological construction of moral authority popular among many Florida conservatives and traditionalists. The selective embrace of free speech by letter writers like Taurus and Jellinek manifested even more vividly in the politicking of the pragmatist Pruitt, especially in his letter to the editor of the *Palm Beach Post*. Pruitt no doubt appealed to the likes of Taurus and Jellinek when he lambasted the school district for agreeing to a settlement that denied teacher Cynthia Alexandre her First Amendment right to defend herself and speak her mind. Like selective protections of religious freedoms found in the state’s education code, conservatives in Florida appeared unencumbered by concerns regarding the inconsistency in defending Alexandre’s right to expression while condemning Frazier’s.

‘Liberal’ and ‘Activist’ Court Rules Resoundingly for Frazier

Florida’s pledge-mandate controversy would reignite at the end of May 2006 when the U.S. District Court for the Southern District of Florida filed its verdict in *Frazier v. Alexandre* (2006)⁵⁷—a resounding victory for Frazier against the “state

⁵⁶ These references to ‘liberal’ judges and removing God no doubt refer in part to the Michael Newdow cases and the initial 9th Circuit ruling in June of 2002 that the “under God” phrase violated the Establishment Clause of the U.S. Constitution.

⁵⁷ As described earlier in this chapter, the “school defendants,” which included the Palm Beach County School District, Cynthia Alexandre, and Richard Poorman, had reached a settlement with Frazier contingent upon him receiving a favorable ruling in his case against the “state defendants,” who included the commissioner of the Florida Department of Education and members of the State Board of Education

defendants.” The victory for Frazier against the state (a contingency of his school district settlement) meant that he and his fellow students had for the moment secured their First Amendment right not to pledge and not to stand for the pledge. U.S. District Judge Kenneth Ryskamp, who was appointed to the federal judiciary by Republican president Ronald Reagan, almost entirely rejected the arguments of the state defendants, who attempted various motions to dismiss on technical grounds, one of which was that Frazier had never brought a note from his mother and so he could not contest that part of the state statute.

In a tone reminiscent of the courts’ incredulous reactions to the arguments offered by the state of Pennsylvania regarding its parental-notification provision, Ryskamp dismissed that motion. And he similarly dismissed the weak argument by the state of Florida that the reference in the law to “civilians” standing at attention had always exempted students and therefore non-pledging students had never at any point been expected to stand at attention. Ryskamp noted in his ruling that if this claim were true, it would “bring about an absurd result” where every adult but no student in any school would be commanded by the state of Florida to stand at attention for the pledge recitation (*Frazier v. Alexandre* 2006).

Regarding the constitutionality of the opt-out provision that required prior parental permission, the state defended itself by arguing that a child should not possess the power to countermand the wishes of parents regarding the education of their child. The state then extended that argument to assert therefore that a child

in their capacity as government supervisors of public education in Florida. Because of this pre-arranged settlement contingent on the outcome of Frazier’s case against the state defendants, the school defendants’ role in this case was only the formalizing of settlement by way of a consent order from the court.

may not decide on his own not to pledge allegiance. Ryskamp rejected this argument, and in his opinion he quoted liberally from *Barnette* (1943) and from various opinions that upheld the rights of students to remain seated in the classroom (*Banks v. Board* 1970; *Holloman v. Harland* 2004). He also made extensive reference to the then-recent 3rd Circuit decision in *Circle v. Pappert* (2004) that struck down as unconstitutional Pennsylvania's attempt at parental notification as a consequence of opting out. And while Ryskamp acknowledged that parents certainly possessed significant rights in the education of their children, "this right does not translate into a requirement that a parent must give prior approval of a child's exercise of First Amendment rights in a school setting. Were such the case, all the previously cited pledge cases would have so held."

In a resounding rejection of the legally unprecedented parental-rights argument from the state of Florida, Ryskamp noted that "'pledge autonomy' has been the state of the law for over 60 years [i.e. making reference to *Barnette* in 1943]; it is the State Defendants who attempt to create a new rule of constitutional law by requiring prior parental approval of the exercise of the First Amendment rights in a school setting" (*Frazier v. Alexandre* 2006). With this ruling, both the 3rd Circuit (*Circle v. Pappert* 2004) and the U.S. District Court had resoundingly rejected the attempts by Pennsylvania and Florida to bypass *Barnette* (1943) by using parental involvement as determinative of whether or not a student would pledge allegiance. For school districts, this decision clarified for them their vulnerability in enforcing a state law now formally adjudicated as unconstitutional. But the nature of the popular and

politicized pledge meant that this issue was far from resolved in the state of Florida, either legislatively, legally, or among the general public.

For its part, the Palm Beach County School District had already settled with Frazier—contingent upon this expected victory for Frazier against the state defendants—and so it took the ruling in stride. District spokesman Nat Harrington said the district had already begun educating its staff on the right of students to decline and had put in place measures to protect and respect students who did so (Travis 2006).

Conservative legislators, however, pressed their popular advantage on the pledge issue and employed the rhetoric of the culture wars to declare the U.S. District Court judgment against the state as further evidence of “liberal” and “activist” judges who had no regard for the will of the majority of Floridians (Gupta 2006a). Sen. Mike Fasano, the Republican who had spearheaded the failed attempt to embed a pledge mandate in the Florida constitution, described the ruling as “ludicrous” and asserted hyperbolically that “what a federal judge has done is taken away patriotism from our schools” (Gupta 2006a).

The ruling, to be clear, did not prohibit in any way the reciting of the Pledge of Allegiance. Rather, it declared as unconstitutional the requirement that non-pledgers stand and the requirement that prior parental permission be a condition of opting out of the recitation. Ken Pruitt joined Fasano in the culture-war rhetoric when he criticized the ruling and declared that it was “typical of the ACLU and activist judges combining to create another hit at our traditional values of our country” (Gupta 2006a). Carole Jean Jordan, state chair of the Republican Party, also

lambasted the ACLU and declared that the \$32,500 settlement for Cameron Frazier would be better spent aiding the families of U.S. soldiers (Gupta 2006b).

While Cameron Frazier's victory provided an easy target for conservative politicking decrying the dissolution of traditional cultural values and the deleterious rise of liberal judicial activism, the longstanding intransigence of the state legislature rather than a liberal judge had virtually pre-ordained the Frazier victory. Contrary to the heated rhetoric, Judge Ryskamp's judicial backstory shows that he was a Reagan appointee to the U.S. District Court and was later nominated by George H.W. Bush to a coveted seat on the 11th Circuit Court of Appeals, a nomination that went down in flames in 1991 due to Ryskamp's cultural missteps attributed to his conservatism.

In fact, the Ryskamp backstory shows he was still presiding in the U.S. District Court during the Frazier case in 2006 only because his nomination to the 11th Circuit was rejected in 1991 during a drama-filled party-line vote for what his liberal detractors described as a questionable record on personal and judicial sensitivity to civil rights, particularly when they involved minorities.⁵⁸ Republicans in 1991

⁵⁸ Ryskamp, during his Senate confirmation hearings, acknowledged that he had overtime made many culturally charged comments about Latinos and African-Americans, and he was a 23-year member of an exclusive English-language-only country club. He also had had a number of civil rights cases overturned by the 11th Circuit Court of Appeals, and he was known to have made comments from the bench that were perceived to be culturally insensitive. For more on the Ryskamp confirmation hearings in 1991, see David G. Savage's stories in the L.A. Times (http://articles.latimes.com/1991-04-12/news/mn-269_1_civil-rights-issues or http://articles.latimes.com/1991-03-23/news/mn-442_1_appeals-court or http://articles.latimes.com/1991-03-20/news/mn-662_1_civil-rights) or Neil A. Lewis's story in the New York Times (<http://www.nytimes.com/1991/04/12/us/committee-rejects-bush-nominee-to-key-appellate-court-in-south.html>).

angrily decried the Ryskamp rejection and attributed it to liberal “interest groups.” *New Yorks Times* reporter Neil A. Lewis (1991) likened the intense partisan battle in the Ryskamp hearings to that of the “full-scale political clash over a judgeship not seen since the unsuccessful effort in 1987 to place Robert H. Bork on the Supreme Court.” Given that substantial backstory establishing Ryskamp’s conservative credentials, the accusations that *Frazier* represented yet another liberal-activist-judiciary assault on the pledge and hallowed tradition ring hollow. Those accusations may more accurately be interpreted as political and ideological rhetoric in service to the exigency to protect conservative’s cultural construction of a moral authority in which a reasonable judge respectful of tradition would never rule against the pledge in public schools.

Appeal to 11th Circuit Yields Confusing Concession

After Ryskamp’s U.S. District Court ruling for *Frazier* and the First Amendment in 2006, conservatives in the legislature urged the state defendants to appeal the ruling, and in early 2008 Attorney General Bill McCollum proceeded with the appeal, a decision that drew scathing op-ed articles in the *Palm Beach Post*. Columnist Frank Cerabino (2008) labeled McCollum a “culture warrior” fond of “grandstanding” and “wasting everybody’s time and money again” while a *Post* editorial described McCollum as an opportunist who was seeking to manipulate the pledge mandate as a hot-button issue prior to a run for governor.⁵⁹ The *Post* editorial also questioned McCollum and others’ insistence that “forcing kids to recite a pledge they don’t

⁵⁹ McCollum started his campaign for the 2010 governor’s seat in spring of 2009, but he lost the Republican nomination to Rick Scott.

believe in somehow upholds American values,” noting as a conclusion “thank goodness the judges at the 11th U.S. Circuit Court of Appeals are more than free to bounce this silly argument out of court” (*Palm Beach Post* 2008).

“This silly argument,” however, proved at least slightly convincing to a three-judge panel of the 11th Circuit Court of Appeals, which added a sort of qualification to one part of the District Court ruling regarding the longstanding precedential preeminence of *Barnette* (1943). Specifically, the 11th Circuit opinion (*Frazier v. Winn* 2008) was a total victory for Frazier as an individual but only a partial victory for the rights of all students to decline to pledge allegiance. This hedging by the 11th Circuit shocked many First Amendment scholars⁶⁰ and once again left schools wondering whether and when to adhere to state law versus constitutional law (*St. Petersburg Times* 2008). Here is why, point by point:

The 11th Circuit left untouched the District Court ruling in favor of Frazier, which found as follows: Cameron Frazier could not be made to stand or bring a note from his parents; he alone would decide whether or not to pledge or to stand during the pledge. This entirely followed the *Barnette* precedent and was a clear victory for Frazier as an individual. Under no circumstances could his school district require him to recite the pledge or stand during recitation by others.

⁶⁰ Examples include the following: Scot Byers et al., “Mama Knows Best: Frazier v. Winn Says Do as You’re Told!” 63 U. Miami L. Rev. 905, 911 (2009); Clay Calvert, “Tinker’s Midlife Crisis: Tattered and Transgressed but Still Standing,” 58 Am. U. L. Rev. 1167 (2009); Laura Prieston, “Parents, Students, and the Pledge of Allegiance: Why Courts Must Protect the Marketplace of Student Ideas,” 52 B.C.L. Rev. 375 (2011); and Tess Slattery, “Note, Freedom from Compulsion,” 85 Chi.-Kent L. Rev. 819, 841–44 (2010).

Regarding the requirement of all non-pledgers to stand at attention, the 11th Circuit agreed with the lower-court ruling that this was unconstitutional in every instance. This portion of the ruling also followed precedent protecting students' rights to freedom of expression, and it was now irrefutably clear to Florida schools that requiring a non-pledging student to stand was a violation of the U.S. Constitution.

Regarding the parental opt-out, the 11th Circuit determined—and this is the confusing part of the ruling that veered sharply from precedent—that *Barnette* was exclusively a conflict between “authority and the rights of the individual.” Therefore, it did not entirely take precedent because this challenge to the Florida law as applied to all students (for example, very young students as opposed to mature high school students) represented a conflict between the rights of students and the rights of their parents, and therefore “the refusal of students to participate in the pledge—unless their parents consent to the refusal—hinders parents’ fundamental right to control their children’s upbringing... The State, in restricting the student’s freedom of speech, advances the protection of the constitutional rights of parents....” (*Frazier v. Winn 2008*). This murky qualification to the *Barnette* precedent implied that schools need to determine which immature students needed to bring prior parental permission to opt out and which students—Cameron Frazier, for example—would likely be considered by the courts to be “mature” enough to make their own decisions.

That the 11th Circuit would bypass the landmark *Barnette* (1943) precedent on a pledge case in favor of the previously non-existent parents’ rights argument

relative to pledging defied expectation and illustrated the tenuous nature of rights to freedom of expression in the face of sustained majoritarian pressure to erode those rights. Judge Ryskamp himself had explicitly and sharply dismissed the state defendants' attempts to dispose of over 60 years of "pledge autonomy" to "create a new rule of constitutional law by requiring prior parental permission" (*Frazier v. Alexandre* 2006). This break from precedent by the three-judge panel motivated Cameron Frazier to petition for an 11th Circuit rehearing *en banc*,⁶¹ a petition that was denied on January 26, 2009 (*Frazier Ex Rel. Frazier v. Winn* 2009).

Judge Rosemary Barkett, the lone judge among the twelve judges to vote for a rehearing *en banc*, would write a sharp rebuke of her colleagues after their denial of Frazier's request. Illustrating again the contentiousness of determining and defending unpopular civil liberties related to the popular pledge, Barkett's scathing dissent declared that an *en banc* hearing was clearly warranted because the three-judge panel's holding regarding parental permission "directly contravenes precedent that has been firmly entrenched for over 65 years" (*Frazier Ex Rel. Frazier v. Winn* 2009). Barkett asserted further that not only did the panel ignore *Barnette* but that it failed "to apply strict scrutiny required when this most fundamental of rights is being violated by the State. Such a 'permission' requirement [i.e. prior parental permission to opt out] is patently unconstitutional and this opinion puts us

⁶¹ The initial 11th Circuit case was heard by a three-judge panel. A petition for an *en banc* rehearing is a request that the entire bench of the 11th Circuit rehear the case. *En banc* rehearsals in the circuit court tend to be reserved for matters of great importance or matters that indicate a circuit split or substantial break from precedence. To read the 11th Circuit's document on its standard procedures, see <http://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/RulesAPR14.pdf>

at odds not only with direct Supreme Court precedent, but with the decisions of other circuits addressing similar statutes.”

Barkett next implied there were personal or political rather than legal standards in play when she asserted that “to avoid the dictates of *Barnette*, the panel mischaracterizes the issue as one involving the resolution of conflicting constitutional rights between parents and children. This recharacterization is wholly unpersuasive, as it is undisputed that no such conflict exists in this case.”⁶² Barkett described as “extremely unlikely” the convoluted prospect that parents would sue a school in order to force the school to force their child to pledge. She argued that this imagined scenario would create the absurd condition of these hypothetical parents “demanding that the State force their child to violate his conscience.”

Barkett also took her 11th Circuit colleagues to task for their failure to consider and weigh minors’ well-established constitutional rights, and she noted that the holding by the three-judge panel “overlooks the fact that the State cannot do indirectly what it cannot do directly. Because the state cannot compel speech, it lacks the capacity to delegate to parents the power to compel this speech.” In fact, she rejected the parental-rights argument entirely and noted bitinglly that “it is not

⁶² In all the pledge cases to date, the parent or guardian has been the ‘next friend’ representative of their minor children or children. No conflict between the wishes of the parent and the child regarding the pledge have made their way to the courts. The assertion by the court that there exists an important and far-reaching conflict between students and their parents regarding the pledge is wholly unsubstantiated in fact and is a wholly hypothetical scenario, at least so far as actual incidents have presented themselves. The parental involvement provisions in pledge laws have come exclusively from legislators seeking to restrict opting out rather than from parents seeking the assistance of legislators in controlling the children’s decisions of conscience.

surprising that no court has ever required parents to consent to a minor's exercise of his or her constitutional rights of conscience. Students possess basic rights of belief and expression under the First Amendment independent of their parents, and the panel has, without any supportable legal reason, wrongfully deprived students of those rights" (*Frazier Ex Rel. Frazier v. Winn* 2009).⁶³

When the legal dust had settled, the result of the state's appeal of the Ryskamp ruling was that Florida schools may not make students stand, nor should they make 'mature' students bring a note from their parents—the implication being that schools may choose to enforce the parental-permission provision of state law but they would very likely lose each individual student's court challenge, should other challenges like Frazier's occur. As evidenced in her dissent, Judge Barkett was unswervingly sharp and detailed in her criticism of the court's murky qualification of Florida's bypass of *Barnette*. And it was a qualification especially stark given that Frazier won entirely his individual challenge and that no incidents whatsoever had arisen where a parent sought to force the school to force the child to violate the child's own conscience by mandated pledging. As Barkett noted at the end of her dissent, she could see no legal reason for the qualified endorsement of the bypass of *Barnette*. What remains indisputable, however, was that the sustained efforts by Florida legislators to amend and defend their state's mandatory pledging law in service to conservative and traditional conceptions of patriotism and unity eventually resulted in a legal erosion of students' longstanding rights to freedom of

⁶³ Barkett in her dissent delves deeply into each of those points and cites precedent for each of her points. For more detail, read her full dissent in *Frazier Ex Rel. Frazier v. Winn* (2009).

expression and freedom of religion regarding their personal decision of whether or not to pledge allegiance—at least in states subject to the rulings of the 11th Circuit Court of Appeals.

The *St. Petersburg Times* (2008) in an editorial immediately following the 11th Circuit's ruling criticized the judgment at length, but the paper also used the ruling to point out its belief that the singular focus on the pledge obscured something far more urgent:

...All this fuss over a morning ritual that most students probably recite in a rote manner loses sight of what is truly important. Florida schools have done an abysmal job teaching civics, which is the only way students will be imbued with an understanding of why America is a nation worthy of fealty. Any teacher or school administrator who cares whether their students are patriotic should worry far more about the fact that more than 40 percent of Florida citizens cannot identify the three branches of government than about who stands for the pledge.

The *Times* went on to advocate saving the legal fees spent on pledge-mandate cases and instead “putting that money toward training middle school teachers to inspire students in civics. Then, maybe, not only will fewer students want to opt out of the exercise, but many more will understand what they are pledging allegiance to and why.” That logic no doubt appealed to many civics educators, some other teachers, and liberal-inclined parents and citizens, but as the various legislative debates and public reactions in the case states illustrated, the pledge-mandate debates in and of themselves were politically advantageous for some and personally

urgent cultural stands for others who feared that accommodations for diversity, multiculturalism, and young people's individuality threatened the essential unity of a great nation struggling to retain its best identity.

Denial of Certiorari Petition Leaves 'Stain' in Tact

Cameron Frazier's attorneys submitted a petition for a *writ of certiorari*⁶⁴ to the Supreme Court of the United States, but the Supreme Court denied the writ without comment on October 5, 2009, a result that ended Cameron Frazier's effort to have the Florida pledge statute ruled facially unconstitutional (Liptak 2009). Ted Mermin, constitutional-law scholar and co-founder and executive director of the Berkeley-based Public Good Law Center, co-authored an *amicus* brief (Mermin and Bennigson 2009) in support of Frazier's petition. Like Judge Barkett from the 11th Circuit, Mermin and Bennigson argued that "the Court of Appeals' opinion departs from bedrock First Amendment principles concerning students' rights to abstain from reciting the Pledge of Allegiance," and they also emphasized the 11th Circuit's direct split in *Frazier* from the 3rd Circuit decision in *Circle v. Pappert* (2004).

Mermin (2015) in a recent interview recalls being "astounded" by the 11th Circuit's decision given the landmark status of *Barnette* (1943) and the degree to which students' right not to pledge had been a settled issue. He recalled Justice Robert Jackson's line in the *Barnette* opinion about "fixed stars in our constitutional

⁶⁴ A petition for *writ of certiorari* in this context is a written request to the Supreme Court in which one presents the arguments why the court should hear the case. It is not an argument of the merits of the case but rather an argument why the Supreme Court should hear the case. According to the Supreme Court's official website (<http://www.supremecourt.gov/faq.aspx#faqgi9>), the Court receives approximately 10,000 petitions per year, and it selects and hears oral arguments in 75-80 of those cases.

constellation” and described it as “such a well-known phrase that you could use it in a case having nothing to do with the pledge, and people—constitutional lawyers—would know what you’re talking about... [The 11th Circuit decision in *Frazier*] is an insult to the memory of *Barnette*, to really some of the finest words ever penned by an American jurist, which is Justice Jackson’s opinion, and to [the protection of] diversity of opinion in *Barnette*. It’s a stain,” Mermin said (2015).

Mermin reflects, too, however, that while he considers the *Frazier v. Winn* (2008) decision “a stain” in terms of its pure legal merits, the ruling also is reflective of the politics and culture clashes of the 21st century, realities that he describes as powerful factors that affect many court decisions, including the Supreme Court, which only accepts only about one percent of the cases submitted. “Certainly this is war time,” Mermin said, “and that is as much a factor as any other.” He believes the *Gobitis* decision of 1940, which preceded *Barnette* and which affirmed the right of schools and states to force the pledge, “is much more indicative of what courts do” than was the landmark *Barnette* decision three years later.

Mermin’s assessment of the political climate and hot-button pressure in the public sphere is well supported by the legislative politicking and rhetoric regarding patriotism and the pledge in public schools, an issue post-9/11 that provided additional advantage to culture-war conservatives. Mermin explains that wartime politics and the current culture clashes can put courts in precarious positions. He uses the example of the widespread public furor that erupted at the 9th Circuit’s

decision⁶⁵ regarding the phrase “under God” briefly rendering the pledge in schools unconstitutional and the Supreme Court’s expedient “fudge” in defending “under God” and “In God We Trust” as our “civic religion,” in the words of Sandra Day O’Connor. Even the Supreme Court was not prepared to enrage the masses by adhering to a constitutionally aligned interpretation of that issue, Mermin said.

In terms of cultural imperatives, *Frazier* included not only the pledge issue and “under God,” but also the reality that affirming the civil liberties of students would require dismissing the parents-rights argument, which has gained popular traction for conservatives and others across various issues. The parents-rights angle has especially benefitted from fears about technology-driven toxic social influences pressing upon children who lack the life experience to discern their own best interests. For example, recent cases debating the access of children to violent video games are growing challenges for judges grappling with business interests, freedom of expression, and the rights of young people and parents in the context of violent speech.⁶⁶

The 11th Circuit opinion appears to reflect the sense that older and more mature children should have more latitude in developing their civic natures and opinions on matters of conscience as evidenced by the unqualified District Court victory for

⁶⁵ This was Michael Newdow’s famous challenge to the pledge in *Elk Grove Unified School District v. Newdow* (2002), i.e. Newdow I decided on June 26, 2002.

⁶⁶ A prime example lies in the series of cases that culminated in *Brown v. Entertainment Merchants Ass’n* (131 S. Ct. 2729 (2011)). In this controversial case, the Supreme Court struck down a popular California law that restricted the sale of violent video games to minors because of the infringement on protected speech. The decision was criticized in part due to the Court’s rationale that video games should be treated like other media such as newspapers and radio broadcasts. Critics, however, argued that the interactivity and advanced technology in violent video games separates them from being grouped with more traditional media forms.

Cameron Frazier as an individual and the 11th Circuit ruling's references to "mature" students having more rights. But even the court's choice of the word 'mature' rather than indicating an age of maturity illustrates the challenges of arbitrarily defining when any particular child possesses 'adequate' maturity for self-determination regarding matters of conscience, particularly in a culture as socially conservative as Florida's. Frazier himself for five and half years had been implicitly deemed by his teachers to possess that maturity, and it was not until he exercised his right in Cynthia Alexandre's classroom that school personnel decided otherwise. That arbitrariness and involvement of personal and political opinion in the choice of whether and when to mandate the pledge represents one of the most obvious problems of practice for schools attempting to balance competing conceptions not only among the public but among their own staff members. But that type of problem was never among the concerns of legislators in the case states, who adhered instead to politically advantageous framings of their debates about the mandating of the Pledge of Allegiance. And as the Frazier saga and the school-based conflicts that followed would show, culture-war politicking in the legislature regarding the pledge would have real-life consequences for students in public schools.

Cameron Frazier's legal saga ended with the denial of the petition for *writ of certiorari* by the Supreme Court, and Florida has stood by its unconstitutional pledge statute. Still, Frazier's challenge had a larger impact on the rights of all students than the unrevised statute would suggest. The court rulings clearly put schools on notice that older and more mature students—descriptors that the court made no effort to define more specifically—could bring successful 'as applied'

challenges to the parental opt-out requirement and that no student could constitutionally be required to stand. Nowhere is this impact more explicitly evident than in the Palm Beach County Public School's revision of its pledge policy, which provides a forward-thinking example of explicit protection of students' rights. Attorney Bruce A. Harris (2010), writing in the in-house chief-counsel newsletter *Legally Speaking* in 2010, reviewed the final disposition of the *Frazier* case and announced that the 2010-2011 student handbook, staff bulletins, and posted notices in all schools would declare the following pledge policy:

The State of Florida (Florida Statutes § 1003.44(1)) requires that the Pledge of Allegiance be recited at the beginning of the day in every Florida public elementary, middle, and high school.

Schools must post in a conspicuous place a notice stating the students' right not to stand or recite the Pledge to the Flag and advising of the written opt-out option. Florida Statute §1003.44(1).

A student under the age of 18, who is not emancipated, must stand and recite the Pledge, unless excused in writing by the parent.

An 18-year-old or older student, or emancipated high school student, has personal authority and cannot be required to stand and recite the Pledge.

A student excused from reciting the pledge is also excused from standing.

In the event of a non-participating student without an opt-out, the school personnel:

- Cannot single out the student in front of the class;
- Must counsel with the student (who is not 18 years of age or older, or an emancipated high school student) privately and notify the parent for parental resolution, and any conflict between the parent and child should be resolved by the parent;
- Cannot discipline a student for failing to stand and/or pledge;
- May issue disciplinary action if a student materially disrupts the pledge.

The policy is distinctive in that even though it leads with the controversial State Statute § 1003.44(1)), it provides explicit broader opt-out provisions for older students, and it provides explicit and respect-focused limits on school personnel's actions toward other students who opt out even without parental permission.⁶⁷ It also removes the school from involving itself in potential arguments of conscience that could arise between students and parents. Some other school districts in Florida have taken similarly non-confrontational routes. Escambia County Public Schools, of which Pensacola is a part, notes that students have the right to “abstain” on “grounds of conscience” and that that right “shall be exercised and honored in a courteous manner”;⁶⁸ and St. John’s County Public Schools provides notice that the pledge will be recited in each school at the beginning of each day but that “a student may elect not to participate in the Pledge of Allegiance.”⁶⁹ In essence, many schools in Florida have either implicitly or explicitly distanced themselves from the state law in order to honor the provisions of the U.S. Constitution regarding students’ rights to freedom of expression. Legislators, for their part, appear content with retaining the law in its rigid format but not pressuring schools or students to obey it.

⁶⁷ The 2014-2015 Student Handbook for the Palm Beach County School District includes this pledge policy in nearly identical language. There are a few semantic edits, but the approach and protections for students are identical. To read this policy for 2014-15, see page 89 of the student handbook at http://www.palmbeachschools.org/Students/documents/HandbookCode/2014-2015_StudentHandbook-English.pdf

⁶⁸ See the “Student Rights and Responsibilities Handbook” for 2014-2015 at <http://ecsd-fl.schoolloop.com/file/1313209628754/1344704555009/3504732768578850337.pdf>

⁶⁹ For the St. John’s policy, see http://www.stjohns.k12.fl.us/rules/policy/3_10.pdf.

Pledge-related Conflicts Continue to Occur Well after *Frazier*

Even with the heightened awareness of students' rights and the desire by districts to avoid the constitutional conflicts inherent in state law, incidents have occurred and have further exposed nation-at-war connections and conflicting values related to multiculturalism. Hernando County Public Schools, for example, has had at least three significant pledge-related issues arise.⁷⁰ In 2007, students at J.D. Floyd Elementary in Spring Hills, Florida, said the pledge first in English and then in Spanish as part of Hispanic Heritage Month, but parents immediately complained that a Spanish recitation was disrespectful, offensive, and an insult to English speakers (Brown 2007). Elyse DeMartino, a parent, threatened to move her children to another school and asserted that she knew a veteran and "he fought for America, where the primary language is English. Things like the pledge shouldn't be messed with, out of respect—especially in these times."

Other parents expressed anger that they had not been notified prior to the single Spanish recitation. Superintendent Wayne Alexander defended the idea as a good way to welcome English-language learners, and he diffused the conflict by saying it would be a one-time event (Brown 2007). Outrage that the pledge might be recited in a language other than English occurred in Minnesota, as well, and one legislator in 2006 even proposed a state law requiring that the pledge be said only in English. The contention that the pledge "shouldn't be messed with, out of

⁷⁰ Hernando County Public Schools in the Student Code of Conduct publication notes that students have the right to "choose whether or not to participate in patriotic or religious activities." Pdf files of district documents may be accessed at http://www.hernandoschools.org/index.php?option=com_content&view=article&id=578&Itemid=595

respect—especially in these times” alluded to the post-9/11 nation-at-war environment and the perceived affront that even something as emblematic of traditional American patriotic heritage as the pledge could be co-opted by multicultural interests.

These frequent controversies over pledging in other languages—an occasional activity traditionally included as part of Foreign Language Week or other multicultural celebrations—also reflect those complex constructions of conservative ideology related to culture. On one hand, celebrating the pledge in other languages could be expected to invite greater participation in and embrace of the pledge and its unifying qualities, all of which are frequently stated priorities of mandate proponents. But many culture-war conservatives simultaneously advocate for English-only education in public schools and the enshrinement of English as the official language of the nation and their states. Many also decry overly generous accommodations for multicultural interests and argue that the pledge must not be sullied by those accommodations. The result is that even though one might predict that occasionally celebrating the reciting the pledge in other languages would add to its *e pluribus unum* credentials, in fact most conservatives vehemently reject the recitation of the pledge in other languages in public schools.⁷¹

While that Spanish-recitation conflict evaporated quickly once the principal vowed never to do it again, Hernando’s Springstead High School experienced an ugly

⁷¹ A school district in New York made national news in March of 2015 when during its Foreign Language Week included a single recitation of the pledge in Arabic. Wide-ranging criticism motivated the school district to apologize. To read more, see <http://www.washingtonpost.com/news/post-nation/wp/2015/03/19/pledge-of-allegiance-reading-in-arabic-sparks-controversy-at-new-york-school/>

pledge-related incident two years later when one student berated another for allegedly not standing for the pledge (Marrerro 2009a). In the original report, Heather Lawrence, a 16-year-old junior and JROTC member with plans to enlist in the army the following year, was in the hallway and reported observing a Muslim student in a classroom not standing for the pledge. Lawrence later sought out and confronted the girl, who was wearing a hijab, and berated her for not standing for the pledge; the girl did not engage but rather walked away. Lawrence, by her own account, told the girl, "Take that thing off your head and act like you're proud to be an American" (Marrerro 2009a). A teacher witnessed Lawrence's berating of the student and initiated disciplinary consequences for bullying and harassment. Lawrence said she regretted the hijab comment but defended her actions and her defense of the pledge: "It wasn't meant to be a racial comment, and I wasn't trying to bash her religion," Lawrence said. "I didn't expect her to say (the pledge). I just expect her to stand up for it." Lawrence asserted that not standing at attention during the pledge "is one of the most disrespectful things you can do. Even the kids who are anarchists, who hate our government, still have the respect to stand" (Marrerro 2009a).

The school disciplined Lawrence with a five-day out-of-school suspension,⁷² causing her parents to announce they were considering legal action because of the

⁷² Assistant Principal Stephen Crognale signed the discipline referral, which asserted that Lawrence was ranting to a staff member after the fact that "she was enlisting and was going to Iraq and that basically because the girl looks Middle Eastern, that makes her an enemy because all Iraqis are Middle Eastern." Lawrence and her father denied that she had made those comments. The school, in justifying her initial suspension, said that these comments in combination with the original

punishment. Lawrence's father defended his daughter's actions and asserted that her freedom of expression had been violated. Said Mark Lawrence, "You have someone in the States who is able to enjoy our educational and health-care systems, yet it's okay for them to be disrespectful, and it's not okay for my daughter to speak her mind. That's [my daughter's] First Amendment right. That's her freedom of speech" (Marrero 2009a). Mark Lawrence's expansion of the standing-for-the-pledge issue to one that included an implication that this same 'disrespectful' immigrant was simultaneously taking advantage of the nation's health-care and educational largesse was code for his anger at immigration and multiculturalism, an anger and 'Americanism' injustice that in his mind justified his daughter's seeking out and confronting a student with whom she had never had any personal interaction or affront.

This story took a darker turn soon after when school officials determined that Lawrence had fabricated the inciting element of the Muslim girl not standing for the pledge. The girl in question, her parents, and her homeroom teacher all attested to the fact that she was standing and pledging that day and every day, and Heather Lawrence's homeroom teacher said Lawrence never left homeroom period on the day in question and so could not have been in the hallway observing other students as Lawrence maintained (Marrero 2009b). Principal Susan Duval concluded that Lawrence fabricated the pledge component of her story in order to justify

incident warranted the five-day suspension, which was later reduced to three days. For more, see Tony Marrero's reporting on August 29 and August 31 of 2009.

confronting this student because she was Muslim and wearing a hijab. Lawrence and her father stand by her original story.

Reporter Tony Marrero (2009b) described the first report with Lawrence's explanation of her defense of the pledge as going "viral, prompting conservative bloggers to praise Lawrence for speaking her mind and bashing school officials for quelling her free speech rights."⁷³ Principal Duval's experience supported Marrero's account of the public reaction spurred by frustrations with multiculturalism, and Duval noted that she and her staff had been fielding verbally abusive phone calls defending Lawrence and criticizing the suspension. This phenomenon promoted within the far-right blogosphere fed on the righteousness of Lawrence's initial claims irrespective of the revelation that Lawrence had fabricated her justification for confronting the Muslim student. Principal Duval said Lawrence would not face further punishment for lying because "I'm trying to get this resolved and move on" (Marrero 2009b). Ahmed Bedier, a family friend of the Muslim teen accosted by Lawrence, said the family did not want to speak on the record due to the public reaction and that the girl was deeply distressed by the public condemnation even though she had ignored the comment and did not report it to the school authorities. Bedier said these kinds of incidents have a compounding effective:

⁷³ As of January 2015, several of these blog articles remain available via internet searching. Examples include the following: WorldNetDaily at <http://www.wnd.com/2009/08/108388/>; Lake Minnetonka Liberty Alternative as <https://lmliberty.wordpress.com/2009/09/01/show-some-respect-you-ingrate/>; Bare Naked Islam at <http://www.barenakedislam.com/2009/08/30/outrageous-florida-junior-rotc-teen-suspended-for-telling-muslim-student-to-stand-for-pledge-of-allegiance/>; and Jihad Watch at <http://www.jihadwatch.org/2009/08/florida-muslim-girl-sits-for-pledge-of-allegiance-non-muslim-girl-asks-her-why-she-doesnt-act-proud>.

"There are some very known anti-Muslim blogs and websites and they're taking up this cause of Heather Lawrence. This girl got caught bullying someone else, and to deflect it she's making it about patriotism and the flag," Bedier said (Marrero 2009b).

The Hernando Public Schools would make the news again regarding a pledge controversy—this time involving a teacher. Anne Daigle-McDonald, a fourth-grade teacher at Explorer Elementary in Spring Hill, could not abide that on a 9/11 anniversary a fourth-grade Jehovah's Witness student was unwilling to say the pledge. As a result, on two consecutive days—September 11, 2013 and September 12—Daigle-McDonald attempted to physically force the boy to place his hand over his heart (Valentine 2013). The boy had never participated in the recitation but was standing quietly while his peers pledged. The boy physically resisted Daigle-McDonald tugging upward on his wrist and reminded the teacher that he was a Jehovah's Witness, to which he said she replied, "You are an American, and you are supposed to salute the flag."

According to the school's report based on the recollections of several students in the class, Daigle-McDonald tried again the next day to physically force the boy to comply, at which point she addressed her censure to the whole class: "In my classroom, everyone will do the pledge; no religion says that you can't do the pledge. If you can't put your hand on your heart, then you need to move out of the country."

McDaigle-Donald, who at the time of the incident had taught at the school for nine years, was suspended five days without pay for violating rules of professional conduct and students' rights to freedom of speech and religion. She acknowledged

that she knew the boy was a Jehovah's Witness but understood that to mean he did not celebrate birthdays or holidays and that since 9/11 was not a holiday "I didn't see why the whole class couldn't say the pledge." She said the boy seemed confused and that some other kids also were not reciting the pledge, which was not acceptable on that the 12th anniversary of the 9/11 attacks. In what appears to be a distinction without a difference, Daigle-McDonald disputed that she told non-pledging students to move out of the country but rather that she said her comment "was directed at citizenship. I was talking about pledging allegiance to our country, and if you don't want to pledge to our country, you should go to your home country" (Valentine, 2013).

These uncomfortable events in the Hernando Public Schools clearly have close ties to the emotions and fears attributable to the wartime atmosphere that followed events of 9/11, but it is clear, too, that there are larger and older cultural forces at play here. Gordon Wood (2008, 196-97) postulated long before 9/11 that the ascending voices of diverse interests and the harsh light of social history and civics had begun to emphasize perceptions and realities of America that were deeply incongruent with the traditional and exalted vision of American exceptionalism. To illustrate forces that corroded the traditional conception of American exceptionalism, he cites as examples the conflict in Vietnam, racial discrimination and other Civil Rights issues, women's issues, and treatment of assorted minorities. Finally examining these events through non-exceptional lenses weakened the power of history as a discipline to inspire traditional and unquestioning love of nation. Wrote Wood, "For the most part, history is no longer designed to inculcate

patriotism, build a national identity, and turn immigrants into citizens. Instead, many historians have begun emphasizing racial, ethnic, and gender diversity, which has tended to dilute a unified sense of American identity.” So if it is no longer history that creates a sense of Wood’s “essential unity” among all Americans, then what is it? For some in Florida, it was clearly the Pledge of Allegiance—at least in belief if not in fact.

Conclusion

This sampling of post-*Frazier* pledge-related incidents in Florida illustrates the ways in which emotional and cultural investments in the Pledge of Allegiance—by parents, by teachers, by students—can manifest in ugly confrontations related to cultural and religious diversity and to the rights of individuals to express their individual beliefs as promised by the First Amendment to the Constitution. That the emotions, fears, and patriotism inspired by the crisis events of 9/11 contributed to these incidents is clear from the explicit nation-at-war justifications of those involved. What is less clear—but worth considering—is the effect of multiculturalism and diversity and also the impact of state leaders’ longstanding staunch defense of not just the pledge but of a *mandated* pledge imposed upon all children in Florida public schools. As evidenced by the inflammatory fundraising letter of Senate president Ken Pruitt and by the legislature’s sustained commitment to an unconstitutional law regardless of the consequences for public schools, the defense of the pledge and especially a mandated pledge is rarely just about the pledge. As evidenced in this Florida case, the rhetoric and belief that often accompany the imposition of a mandate tend to rely on emotional appeals, personal

passions, and complex constructions of ideological moral authority that tacitly accommodate inconsistency. These factors manifested not only in the *Frazier* events but also in the school-based incidents in Florida's public schools—all of which speak to much larger issues of the cultural disconnect perceived by so many Americans confronted with the nation's ever-growing cultural diversity.

Conclusion

Using the methods of historical research, these case studies illustrate not only the persistence of the pledge as a patriotic and symbolic ritual but also how the crisis events of 9/11 and the wartime atmosphere that followed helped spur resurgent support for a mandated pledge in public schools. This research also illustrates how the issue of mandated pledging was rooted in a larger and older cultural struggle by cultural conservatives seeking to reassert a more traditional unity and identity in a nation that for some had become confoundingly diverse. Moreover, the tremendous symbolic power of pledge-mandate legislation would provide for proponents a politically advantageous culture-war rallying point and patriotic litmus test that could be used strategically to achieve greater power and success with respect to their broader partisan agendas.

For students, the school community, and the larger society, however, there exist costs and consequences for this sustained emphasis on a mandated pledge and the profitable politicking it affords. First, such political advantage-taking and personally motivated pledge advocacy has precluded substantial and cohesive debate about the best practices in civic education, the qualities most prized in young citizens, and the civil liberties of students in public schools. In Minnesota in 2001, for example, the legislative pledge debate focused almost exclusively on the needs and wishes of veterans, and it mentioned students almost not at all. And when Steve Kelley in Minnesota in 2002 offered a concrete plan to involve students in democratic deliberation and civic action about whether to pledge allegiance, he was virtually ignored by members of both parties. Second, and relatedly, the focus and tenor of

these debates demonstrate to students, teachers, and school and district leaders how education continues to be valued more as a weapon in the culture wars and in the drive to reinforce American exceptionalism than as a means for promoting student learning. For educators and others invested in improving public education, these pledge-mandate debates provide insight into the ways in which politics and largely symbolic culture-war competitions can dominate policy decisions and debates in ways that have very little connection to children or effective education.

The case details that result in that conclusion may prove useful to civic educators and advocates of more participatory and constructivist forms of civic education that not only include study of civic and history core content but that extend that study into active inquiry, democratic deliberation, and civic action. For though cultural conservatives have tended to struggle to gain broad public advantage in discourse related to culture and education, their prominent and sustained advocacy of mandated pledging—particularly after the events of 9/11—has provided a widely popular avenue through which to press culturally conservative positions regarding the culture wars, morality, patriotism, and traditional conceptions of American exceptionalism. This popular advantage provided by pledge advocacy has complicated the work of civic educators and advocates who find themselves having to comply with unconstitutional or questionably constitutional mandates that also implicate traditional preferences for patriotic and civic education. These educators and school leaders must simultaneously discern how to teach civic principles—including the First

Amendment and basic tenets of constitutional law—in communities and states where dissent and difference are perceived as un-American.

In Minnesota, for example, pledge legislation both before and after 9/11 illustrated not only the patriotism-based politicking for veterans' support and general advantage but also some proponents' yearning for a more unified and traditional American identity by way of mandated pledge recitation. This multi-layered commitment to a mandated pledge manifested in three consecutive years of vitriolic partisan battles in which both implicit and explicit threats of being outed as unpatriotic were commonplace. And this was a state that from the start had provided in its legislation an unqualified opt-out for both students and teachers. For many in Minnesota, however, even with the opt-out, the concept of a state-sanctioned loyalty oath was anathema to constitutional principles of freedom of expression and innate development of loyalty to American democratic ideals. Mandate supporters, however, argued that the interests of the state and the nation were better served by mandating that schools engage students in the pledge in order that it not be overlooked. There also were evident in Minnesota clear concerns among proponents that rising numbers of new immigrant students, racial and ethnic minority students, and low-income students especially warranted a mandated pledge in order to impose a unifying act of allegiance on diverse student populations. The impact of the mandated pledge on schools was felt by individual students like Ebony Jaja, a student at St. Paul Central High who even in that liberal community found herself pressured to pledge despite her legal right not to do so. School leaders like Larry Larson and Greg Clausen in District 196 also experienced

the pressure to satisfy public expectations for a mandated pledge and traditional patriotism amidst their larger commitment to support student-initiated civic action and similarly substantive pedagogies.

The Colorado case detailing events in 2003 also provides an example of contentious legislative debate, but it was a debate following the 2002 pledge politicking that had helped create Republican majorities in both houses in 2003. The events in Colorado in 2003 featured proponents arguing for the pledge as an essential and traditional unifier and show of respect and loyalty, while opponents attempted in vain to convince their colleagues that the rigid opt-out provisions denied constitutional rights to both teachers and students. Colorado's opt-out provision, which had enlisted parents as the only opt-out authority and had included teachers in their heavily restricted opt-out, drew an immediate injunction from the Court and an eventual re-write of the state law. Student plaintiffs Zachary Lane and Keaty Gross recall their participation in *Lane v. Owens (2004)*, and they recall with regret that their state focused so much on a mandated pledge rather than larger issues of effective civic education.

Like Colorado, Pennsylvania attempted to enlist parents to control the behaviors of children relative to pledging allegiance. Unlike Colorado, however, Pennsylvania would stand by its attempt to bypass *Barnette* protections and would commit state resources not only to the initial trial but also to an appeal to the U.S. Court of Appeals for the 3rd Circuit. The politicking and news coverage in Pennsylvania together with the protracted legal battles provide distinctive insight into not only the pledge-related culture-war divide but also the wide gap evident in

personal and political justifications contrasted with authoritative legal argumentation related to a mandated pledge with restricted opportunities to decline. Irrespective of the law, however, school-related conflicts in Pennsylvania further illustrated that in matters as personally and emotionally engaging as recitation of the pledge, the letter of the law was significantly less powerful in the moment than the power of personal or community preference.

Like Pennsylvania, Florida employed a bypass strategy that included parental involvement in enforcing its mandated-pledge initiatives, but Florida's effort has a longer history and a more intransigent commitment that reflects the complexities in ideological constructions of culture. The *Frazier* cases in Florida would illustrate the popular support for the pledge mandate and the widespread condemnation of those who opposed it. To this day, this commitment to a rigidly mandated pledge remains written into state law even though it clearly violates the U.S. Constitution, and it continues to retain popular appeal among large numbers of citizens and among some members of the school community. Florida schools and students have regularly experienced conflicts related to these commitments, and schools continue to attempt to mitigate a state law that clearly violates the U.S. Constitution regarding students' rights to freedom of expression.

For many Americans, the shared experience of pledging allegiance holds sentimental value and deep patriotic cachet. Moreover, for many, the pledge during wartime—a state that has characterized the U.S. virtually nonstop since 9/11—takes on special significance as a national honorific to service members and veterans. In those senses, majoritarian support for the pledge and for traditional

shows of patriotism is not surprising. What makes the cases profiled in this research extraordinary, however, are the tenacious *legislative* efforts to impose upon schools a *state-mandated* Pledge of Allegiance primarily in service to political gain, conservative cultural mores, and a traditional sense of national unity in a profoundly diverse population. In essence, this phenomenon involves some states willfully and assertively seeking to withhold First Amendment protections of students' and even teachers' civil liberties and in the process justifying this constitutional violation with the paradoxical claim that this pledge mandate is essential in order to preserve the nation's unity and founding principles embodied in the Constitution and Bill of Rights.

While it is tempting on a surface level to characterize these legislative initiatives and public conflicts as little more than post-9/11 patriotic fervor by majoritarian interests, the cases taken together illustrate a more complex entanglement. This entanglement includes politically advantageous patriotic and culture-war politicking, expressions of fear and yearning related to American exceptionalism and American unity, and discordant beliefs and commitments regarding culture, diversity, and multiculturalism relative to a unified American identity. Scholars (Wood 2008; Diggins 2003; Appleby, Hunt and Jacob 1994) note the rise of Postmodernism and liberal social causes in the latter third of the 20th century as helping precipitate the culture wars. Triggers included the postmodern emphasis on relative rather than absolute truths and the assertive deconstructing of America's traditional conceptions of exceptionalism and the 'grand narrative.' Echoes of the analysis of these scholars—and of Bon Tempo (2011) and Westheimer (2007)—

occurred time and time again not only in the legislative debates and public incidents but also in the power of the strategic fear-based politicking and rhetoric around the pledge and patriotism in order to advance larger agendas.

Wood's description of an un-reconciled division between perceptions of America's unity and its diversity appeared repeatedly in the legislative debates and public reactions to the pledge mandates. Wood has noted too the growing fear among cultural conservatives of the history and civics taught in contemporary public schools—a fear that a traditional source of Americanism inspiration would no longer “strengthen an attachment to one's country” (138-39). While mandate proponents did not explicitly express these fears, they frequently implied them, and the natural imperative among legislators to politick rather than deliberate meant that neither mandate supporters nor critics would engage substantively in discussions about preferred forms of civic education and the pedagogies that would support them.

Regarding Westheimer's (2007) model of democratic and authoritarian patriotism, those who opposed a mandate tended to be supportive of American unity but in a manner more aligned with democratic patriotism in which dissent may be patriotic and citizens should be “questioning, critical, and deliberative.” In contrast, mandate supporters illustrated some of the traits Westheimer ascribes to authoritarian patriots, especially in terms of their wariness of dissent among students, their commitment to a traditional conception of American unity and loyalty, and their support for traditional American exceptional identity.

Considered together, these elements of the analytical framework for the competing conceptions of patriotism and behavior evident in the pledge-mandate debates illustrate a fundamental divide between more liberal and more conservative positions on this issue of mandated pledging and patriotism in public schools. But while that divide is wide and the clashes around it are frequently embittered and antagonistic, what these frameworks applied to these cases also illustrate is that there exists substantial common ground—namely, a patriotic love for the ideals of American democracy and a unified America. The divide occurs relative to the perceptions of what poses the biggest threats to those ideals and the nation that aspires to them. That common ground, however, was very frequently obscured by heated rhetoric that provided political advantage and no doubt some personal satisfaction but that made compromise or deliberation either disadvantageous or simply personally undesirable.

Finally, it is clear from these case studies that educationally effective leadership in this challenging issue of patriotic and civic education in diverse public schools will not come from state legislatures, the nature of which are too politically enmeshed to accommodate policy and practice deliberations that focus on best practices and cohesive argumentation with the goal of supporting effective education of students on behalf of the nation. Given this natural deliberative limitation of state legislatures when dealing with hot-button issues like compelled patriotism in a multicultural society, it is deeply disquieting that they possess a power over public schools that in this conflict at least appeared disproportionate to their structural capacity to focus on pedagogical best interests and civil liberties.

Appendices

Appendix A—Summaries of Related Lower-court Cases

In regard to students' rights to First Amendment freedoms, *West Virginia v. Barnette* (1943) and *Tinker v. Des Moines* (1969) are the cornerstone Supreme Court precedents, and they are described in the text of the dissertation. Several key cases in state and federal courts further refined or affirmed students' rights regarding the pledge, and those will be described here.

Holden v. Board of Education of Elizabeth, NJ (46 N.J. 281 (1966)): The Supreme Court of New Jersey ruled that Muslim students who had been suspended for declining to say the pledge must be allowed to return to school. While the issues in this case were very similar to *Barnette*, a primary difference was that these students were Muslim and were African American.

In *Frain v. Baron* (307 F.Supp. 27, 33-34 (E.D.N.Y. 1969)), the court determined that not only must students be allowed to decline participation in the pledge but that they may not be removed from the classroom or their desk during the recitation so long as they maintain non-disruptive behaviors during the pledge. The plaintiffs in this case cited reasons of conscience—specifically what they believed was the absence of “liberty and justice for all”—for non-participation and further asserted that students should be allowed to make silent protest against the pledge by remaining silent and seated during recitation. The court agreed: “The student is free to select his form of expression, so long as he does not materially infringe the rights of other students or disrupt school activities.”⁷⁴

This precedent was further supported by *Banks v. Board of Public Instruction of Dade County*(314 F. Supp. 285, 294- 96 (S.D. Fla. 1970)), in which another federal district court forced the Dade County School District to rescind its suspension of a student who refused to stand during the pledge. School policy required all students to stand and pledge; students who wished to refrain from speaking the pledge might do so but only for personal or religious reasons, and they were required to stand in respectful silence. The *Banks* plaintiffs refused to pledge as a part of their political protest against the repression of African Americans, and they refused to stand during the pledge. The federal district court sided with the plaintiffs and overturned the school policy as unconstitutional.

Additional Case Examples:

Russo v. Cent. Sch. Dist. No. 1, 469 F.2d 623 (2d Cir. 1972): This case ruled that a teacher could not be dismissed for declining to participate in flag salutes.

Goetz v. Ansell, 477 F.2d 636, 637-38 (2d Cir. 1973): This case holds that that a student has the right to remain quietly seated during the Pledge and cannot be compelled to leave the room if he chooses not to stand.

Lipp v. Morris, 579 F.2d 834, 836 (3d Cir. 1978): The court affirmed that students may not be required to stand during the recitation of the pledge.

Rabideau v. Beekmantown Cent. Sch. Dist., 89 F. Supp. 2d 263, 267 (N.D.N.Y 2000): The court again affirmed that students do not have to stand for the Pledge of Allegiance.

Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1274, 1278- 79 (11th Cir. 2004): This case further affirms that the right to remain seated and silent during the Pledge is “clearly established.”

Frazier v. Winn, 535 F.3d 1279, 1282 (11th Cir. 2008) (per curiam), *cert. denied*, 558 U.S. 818 (2009): This case, which is detailed in Chapter 5, holds that all public school students have the First Amendment right not to stand during the Pledge.

These cases and others have provided further clarification of the reach of *Barnette*; according to the courts, students could opt out of pledge rituals for religious, personal, or political reasons. *Tinker* further clarified the issue by determining that students did indeed possess the right to freedom of expression, and subsequent courts later determined that relative to the pledge that expression could take the form of standing silence, seated silence, and even silently raising one’s fist during the pledge. Moreover, teachers and schools could not remove a student to the hallway during the pledge recitation as that could be construed as silencing students’ expression or coercing preferred behaviors through the perceived punishment of removal to the hallway.

Appendix B—Minnesota Pledge Legislation for 2001 & 2002

Minnesota 2001 (Chapter 1)

HF 915 1st Engrossment – House of Representatives

Chief Author: George Cassell (R)

82nd Legislature (Posted on February 15, 2001)

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 A bill for an act
- 1.2 relating to education; requiring recitation of the
- 1.3 pledge of allegiance in all public schools; amending
- 1.4 Minnesota Statutes 2000, section 121A.11, by adding a
- 1.5 subdivision.
- 1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.7 Section 1. Minnesota Statutes 2000, section 121A.11, is
- 1.8 amended by adding a subdivision to read:
- 1.9 Subd. 3. [PLEDGE OF ALLEGIANCE.] (a) Unless this
- 1.10 requirement is waived annually by a majority vote of the school
- 1.11 board, the pledge of allegiance to the flag of the United States
- 1.12 of America shall be recited in all public schools once or more
- 1.13 each school week. The recitation shall be conducted:
- 1.14 (1) by each individual classroom teacher or the teacher's
- 1.15 surrogate; or
- 1.16 (2) over a school intercom system by a person designated by
- 1.17 the principal.
- 1.18 (b) Any student or teacher who objects to participating in
- 1.19 the pledge recitation must be excused from participation without
- 1.20 penalty.

HF 915 2nd Engrossment – House of Representatives

Chief Author: George Cassell (R)

82nd Legislature (Posted on April 19, 2001)

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 A bill for an act
- 1.2 relating to education; requiring recitation of the
- 1.3 pledge of allegiance in all public schools; providing
- 1.4 for instruction in the proper etiquette, display, and
- 1.5 respect of the United States flag; amending Minnesota
- 1.6 Statutes 2000, section 121A.11, by adding subdivisions.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2000, section 121A.11, is
- 1.9 amended by adding a subdivision to read:
- 1.10 Subd. 3. [PLEDGE OF ALLEGIANCE.] (a) All public and

- 1.11 charter school students shall recite the pledge of allegiance to
 1.12 the flag of the United States of America one or more times each
 1.13 week. The recitation shall be conducted:
 1.14 (1) by each individual classroom teacher or the teacher's
 1.15 surrogate; or
 1.16 (2) over a school intercom system by a person designated by
 1.17 the school principal or other person having administrative
 1.18 control over the school.
 1.19 A local school board or a charter school board of directors
 1.20 annually, by majority vote, may waive this requirement.
 1.21 (b) Any student or teacher who objects to reciting the
 1.22 pledge must be excused from participating without penalty.
 1.23 (c) A local school board or a charter school board of
 1.24 directors that waives the requirement to recite the pledge of
 1.25 allegiance under paragraph (a) may adopt a district or school
 1.26 policy regarding the reciting of the pledge of allegiance.
 2.1 **[EFFECTIVE DATE.]** This section is effective the day
 2.2 following final enactment.
 2.3 Sec. 2. Minnesota Statutes 2000, section 121A.11, is
 2.4 amended by adding a subdivision to read:
 2.5 Subd. 4. [INSTRUCTION.] Unless this requirement is waived
 2.6 annually by a majority vote of the school board, a school
 2.7 district must instruct students in the proper etiquette toward,
 2.8 correct display of, and respect for the flag, and in patriotic
 2.9 exercises. The instruction must be part of the district's fifth
 2.10 grade social studies curriculum.
 2.11 **[EFFECTIVE DATE.]** This section is effective the day
 2.12 following final enactment. Each school district must begin the
 2.13 instruction required under this section no later than the
 2.14 2002-2003 school year.
 end: page-specific content section begin: footer section

SF 303—As Introduced - Senate

Chief Author: Bob Kierlin (R)

82nd Legislature (January 24, 2001)

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 A bill for an act
 1.2 relating to education; requiring recitation of the
 1.3 pledge of allegiance in all public schools; amending
 1.4 Minnesota Statutes 2000, section 121A.11, by adding a
 1.5 subdivision.
 1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
 1.7 Section 1. Minnesota Statutes 2000, section 121A.11, is
 1.8 amended by adding a subdivision to read:
 1.9 Subd. 3. [PLEDGE OF ALLEGIANCE.] (a) Unless this
 1.10 requirement is waived annually by a majority vote of the school

- 1.11 board, the pledge of allegiance to the flag of the United States
 1.12 of America shall be recited in all public schools once or more
 1.13 each school week. The recitation shall be conducted:
 1.14 (1) by each individual classroom teacher or the teacher's
 1.15 surrogate; or
 1.16 (2) over a school intercom system by a person designated by
 1.17 the principal.
 1.18 (b) Any student or teacher who objects to participating in
 1.19 the pledge recitation must be excused from participation without
 1.20 penalty.

Minnesota 2002 (Chapter 2)

HF 2598—As Introduced—House of Representatives

Chief Author: George Cassell (R)

82nd Legislature (Spring of 2002)

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 A bill for an act
 1.2 relating to education; requiring recitation of the
 1.3 pledge of allegiance in all public schools; providing
 1.4 for instruction in the proper etiquette, display, and
 1.5 respect of the United States flag; amending Minnesota
 1.6 Statutes 2000, section 121A.11, by adding subdivisions.
 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
 1.8 Section 1. Minnesota Statutes 2000, section 121A.11, is
 1.9 amended by adding a subdivision to read:
 1.10 Subd. 3. [PLEDGE OF ALLEGIANCE.] (a) All public and
 1.11 charter school students shall recite the pledge of allegiance to
 1.12 the flag of the United States of America one or more times each
 1.13 week. The recitation shall be conducted:
 1.14 (1) by each individual classroom teacher or the teacher's
 1.15 surrogate; or
 1.16 (2) over a school intercom system by a person designated by
 1.17 the school principal or other person having administrative
 1.18 control over the school.
 1.19 A local school board or a charter school board of directors
 1.20 annually, by majority vote, may waive this requirement.
 1.21 (b) Any student or teacher who objects to reciting the
 1.22 pledge must be excused from participating without penalty.
 1.23 (c) A local school board or a charter school board of
 1.24 directors that waives the requirement to recite the pledge of
 1.25 allegiance under paragraph (a) may adopt a district or school
 1.26 policy regarding the reciting of the pledge of allegiance.
 2.1 **[EFFECTIVE DATE.]** This section is effective the day

- 2.2 following final enactment.
 2.3 Sec. 2. Minnesota Statutes 2000, section 121A.11, is
 2.4 amended by adding a subdivision to read:
 2.5 Subd. 4. [INSTRUCTION.] Unless this requirement is waived
 2.6 annually by a majority vote of the school board, a school
 2.7 district must instruct students in the proper etiquette toward,
 2.8 correct display of, and respect for the flag, and in patriotic
 2.9 exercises. The instruction must be part of the district's fifth
 2.10 grade social studies curriculum.
 2.11 **[EFFECTIVE DATE.]** This section is effective the day
 2.12 following final enactment. Each school district must begin the
 2.13 instruction required under this section no later than the
 2.14 2003-2004 school year.

HF 2598—2nd Engrossment—House of Representatives

Chief Author: George Cassell (R)

82nd Legislature (Spring of 2002)

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 A bill for an act
 1.2 relating to education; requiring recitation of the
 1.3 pledge of allegiance in all public schools; providing
 1.4 for instruction in the proper etiquette, display, and
 1.5 respect of the United States flag; amending Minnesota
 1.6 Statutes 2000, section 121A.11, by adding
 1.7 subdivisions; Minnesota Statutes 2001 Supplement,
 1.8 section 124D.10, subdivision 8.
 1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
 1.10 Section 1. Minnesota Statutes 2000, section 121A.11, is
 1.11 amended by adding a subdivision to read:
 1.12 Subd. 3. [PLEDGE OF ALLEGIANCE.] (a) All public and
 1.13 charter school students shall recite the pledge of allegiance to
 1.14 the flag of the United States of America one or more times each
 1.15 week. The recitation shall be conducted:
 1.16 (1) by each individual classroom teacher or the teacher's
 1.17 surrogate; or
 1.18 (2) over a school intercom system by a person designated by
 1.19 the school principal or other person having administrative
 1.20 control over the school.
 1.21 All public and charter schools must set aside time each year for
 1.22 civics education that includes the history and reasons for
 1.23 reciting the pledge. A school district or charter school that
 1.24 has a student handbook or school policy guide must include a
 1.25 statement about student rights and responsibilities under this
 1.26 subdivision in that document. A local school board or a charter
 1.27 school board of directors annually, by majority vote, may waive

- 2.1 these requirements.
- 2.2 (b) Any student or teacher who objects to reciting the
- 2.3 pledge must be excused from participating without penalty.
- 2.4 (c) A local school board or a charter school board of
- 2.5 directors that waives the requirement to recite the pledge of
- 2.6 allegiance under paragraph (a) may adopt a district or school
- 2.7 policy regarding the reciting of the pledge of allegiance.
- 2.8 **[EFFECTIVE DATE.]** This section is effective for the
- 2.9 2002-2003 school year and thereafter.
- 2.10 Sec. 2. Minnesota Statutes 2000, section 121A.11, is
- 2.11 amended by adding a subdivision to read:
- 2.12 Subd. 4. [INSTRUCTION.] Unless this requirement is waived
- 2.13 annually by a majority vote of the school board, a school
- 2.14 district must instruct students in the proper etiquette toward,
- 2.15 correct display of, and respect for the flag, and in patriotic
- 2.16 exercises.

SF 2411—As Introduced—Senate

Chief Author: Mady Reiter (R)

82nd Legislature (January 24, 2002)

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 A bill for an act
- 1.2 relating to education; requiring recitation of the
- 1.3 pledge of allegiance in all public and charter
- 1.4 schools; providing for instruction in the proper
- 1.5 etiquette, display, and respect of the United States
- 1.6 flag; amending Minnesota Statutes 2000, section
- 1.7 121A.11, by adding subdivisions; Minnesota Statutes
- 1.8 2001 Supplement, section 124D.10, subdivision 8.
- 1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.10 Section 1. Minnesota Statutes 2000, section 121A.11, is
- 1.11 amended by adding a subdivision to read:
- 1.12 Subd. 3. [PLEDGE OF ALLEGIANCE.] (a) All public and
- 1.13 charter school students shall recite the pledge of allegiance to
- 1.14 the flag of the United States of America one or more times each
- 1.15 week. The recitation shall be conducted:
- 1.16 (1) by each individual classroom teacher or the teacher's
- 1.17 surrogate; or
- 1.18 (2) over a school intercom system by a person designated by
- 1.19 the school principal or other person having administrative
- 1.20 control over the school.
- 1.21 A local school board or a charter school board of directors may
- 1.22 waive this requirement.
- 1.23 (b) Any student or teacher may decline to participate in
- 1.24 recitation of the pledge.

- 1.25 (c) A local school board or a charter school board of
 1.26 directors that waives the requirement to recite the pledge of
 1.27 allegiance under paragraph (a) may adopt a district or school
 2.1 policy regarding the reciting of the pledge of allegiance.
 2.2 **[EFFECTIVE DATE.]** This section is effective the day
 2.3 following final enactment.
 2.4 Sec. 2. Minnesota Statutes 2000, section 121A.11, is
 2.5 amended by adding a subdivision to read:
 2.6 Subd. 4. [INSTRUCTION.] Unless this requirement is waived
 2.7 by the school board, a school district must instruct students in
 2.8 the proper etiquette toward, correct display of, and respect for
 2.9 the flag, and in patriotic exercises.
 2.10 **[EFFECTIVE DATE.]** This section is effective the day
 2.11 following final enactment. Each school district must begin the
 2.12 instruction required under this section no later than the
 2.13 2003-2004 school year.

SF 2411—1st Engrossment—Senate⁷⁵

Chief Author: Mady Reiter (R)

82nd Legislature (Posted on March 8, 2002)

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 A bill for an act
 1.2 relating to education; requiring recitation of the
 1.3 pledge of allegiance in all public and charter
 1.4 schools; providing for instruction in the proper
 1.5 etiquette, display, and respect of the United States
 1.6 flag; amending Minnesota Statutes 2000, section
 1.7 121A.11, by adding subdivisions; Minnesota Statutes
 1.8 2001 Supplement, section 124D.10, subdivision 8.
 1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
 1.10 Section 1. Minnesota Statutes 2000, section 121A.11, is
 1.11 amended by adding a subdivision to read:
 1.12 Subd. 3. [PLEDGE OF ALLEGIANCE.] (a) All public and
 1.13 charter school students shall recite the pledge of allegiance to
 1.14 the flag of the United States of America one or more times each
 1.15 week. The recitation shall be conducted:
 1.16 (1) by each individual classroom teacher or the teacher's
 1.17 surrogate; or

⁷⁵ In a procedural move toward reconciling the House and Senate versions of the bills, the House File 2598 (2nd Engrossment Version) was substituted by the Senate for their own bill (SF2411) on March 11, 2002. From that day forward, both bodies would be working independently on the same bill. After each body passed its preferred version of this bill, they would create a conference committee to reconcile their separate changes made to this bill.

- 1.18 (2) over a school intercom system by a person designated by
 1.19 the school principal or other person having administrative
 1.20 control over the school.
 1.21 A local school board or a charter school board of directors may
 1.22 waive this requirement.
 1.23 (b) Any student or teacher may decline to participate in
 1.24 recitation of the pledge.
 1.25 (c) A local school board or a charter school board of
 1.26 directors that waives the requirement to recite the pledge of
 1.27 allegiance under paragraph (a) may adopt a district or school
 2.1 policy regarding the reciting of the pledge of allegiance.
 2.2 **[EFFECTIVE DATE.]** This section is effective the day
 2.3 following final enactment.
 2.4 Sec. 2. Minnesota Statutes 2000, section 121A.11, is
 2.5 amended by adding a subdivision to read:
 2.6 Subd. 4. [INSTRUCTION.] Unless this requirement is waived
 2.7 by the school board, a school district must instruct students in
 2.8 the proper etiquette toward, correct display of, and respect for
 2.9 the flag, and in patriotic exercises.
 2.10 **[EFFECTIVE DATE.]** This section is effective the day
 2.11 following final enactment. Each school district must begin the
 2.12 instruction required under this section no later than the
 2.13 2003-2004 school year.

**HF 2598--Conference Committee Report of Effort to Reconcile the Bill
 82nd Legislature (May 16, 2002)**

KEY: stricken = removed, old language. underscored = added, new language.

- 1.1 CONFERENCE COMMITTEE REPORT ON H.F. NO. 2598
 1.2 A bill for an act
 1.3 relating to education; requiring recitation of the
 1.4 pledge of allegiance in all public schools; providing
 1.5 for instruction in the proper etiquette, display, and
 1.6 respect of the United States flag; amending Minnesota
 1.7 Statutes 2000, section 121A.11, by adding
 1.8 subdivisions; Minnesota Statutes 2001 Supplement,
 1.9 section 124D.10, subdivision 8.
 1.10 May 16, 2002
 1.11 The Honorable Steve Sviggum
 1.12 Speaker of the House of Representatives
 1.14 The Honorable Don Samuelson
 1.15 President of the Senate
 1.17 We, the undersigned conferees for H.F. No. 2598, report
 1.18 that we have agreed upon the items in dispute and recommend as
 1.19 follows:

- 1.20
- 1.21 That the Senate recede from its amendments and that H.F. No.
- 1.22 2598 be further amended as follows:
- 1.23 Page 1, line 21, before "A" insert "All public and charter
- 1.24 schools must set aside time each year for civics education that
- 1.25 includes the history and reasons for reciting the pledge. A
- 1.26 school district or charter school that has a student handbook or
- 1.27 school policy guide must include a statement about student
- 1.28 rights and responsibilities under this subdivision in that
- 1.29 document."
- 1.30 Page 1, line 22, delete "this requirement" and insert
- 2.1 "these requirements"
- 2.2 Page 2, line 2, delete "the day"
- 2.3 Page 2, line 3, delete everything before the period and
- 2.4 insert "for the 2002-2003 school year and thereafter"
- 2.5 Page 2, line 10, delete everything after the period
- 2.6 Page 2, delete line 11
- 3.1 We request adoption of this report and repassage of the
- 3.2 bill.
- 3.5 House Conferees:
- 3.8
- 3.9 George Cassell Jeff Johnson
- 3.12
- 3.13 Paul Marquart
- 3.18 Senate Conferees:
- 3.21
- 3.22 Mady Reiter Steve Murphy
- 3.25
- 3.26 Mee Moua

Appendix C—Current Pledge Law in Minnesota (Passed in May of 2003)

MINNESOTA STATUTES 2014: 121A.11
121A.11 UNITED STATES FLAG.

Subdivision 1. Displayed by schools. Every public school in Minnesota must display an appropriate United States flag when in session. The flag shall be displayed upon the school grounds or outside the school building, on a proper staff, on every legal holiday occurring during the school term and at such other times as the board of the district may direct. The flag must be displayed within the principal rooms of the school building at all other times while school is in session.

Subd. 2. School boards to provide flags and staffs. The board must provide the flag for each of the school buildings in their districts, together with a suitable staff to display the flag outside of the school building and proper arrangement to display the flag in the building, and a suitable receptacle for the safekeeping of the flag when not in use.

Subd. 3. Pledge of Allegiance. (a) All public and charter school students shall recite the Pledge of Allegiance to the flag of the United States of America one or more times each week. The recitation shall be conducted:

- (1) by each individual classroom teacher or the teacher's surrogate; or
 - (2) over a school intercom system by a person designated by the school principal or other person having administrative control over the school.
- A local school board or a charter school board of directors may annually, by majority vote, waive this requirement.
- (b) Any student or teacher may decline to participate in recitation of the pledge.
 - (c) A school district or charter school that has a student handbook or school policy guide must include a statement that anyone who does not wish to participate in reciting the Pledge of Allegiance for any personal reasons may elect not to do so and that students must respect another person's right to make that choice.
 - (d) A local school board or a charter school board of directors that waives the requirement to recite the Pledge of Allegiance under paragraph (a) may adopt a district or school policy regarding the reciting of the Pledge of Allegiance.

Subd. 4. Instruction. Unless the requirement in subdivision 3 is waived by a majority vote of the school board, a school district must instruct students in the proper etiquette toward, correct display of, and respect for the flag, and in patriotic exercises.

History: Ex1959 c 71 art 7 s 14; 1998 c 397 art 9 s 4,26; 2003 c 120 s 1,2

Copyright © 2014 by the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Appendix D—Information on the Pledge to the Earth

Rep. Mark Olson appears to be quoting text from a website “for pledges and flags,” as he said. I was not able to locate that website, and I was not able to locate this exact ‘Pledge to the Earth,’ though there are various earth pledges by various groups. The pledge that Olson is quoting does not appear in web searches precisely as he says it, however a close match appears (in a total of four hits) as follows: “I pledge allegiance to the health of the united world of the universe and to the earth on which we stand, one planet born of love, indivisible, with rights and responsibilities for all.”

This pledge appears in an August 1999 post on the Mudcat Café website, a post in which the author calling him/herself MauiMuse attributes the pledge to Ginni Clemmens and describes it as an addition to be said “after the traditional pledge.” To view this post, see < <http://mudcat.org/thread.cfm?threadid=12811>>.

On another website, the Alliance for Human Rights in Santa Cruz County, this pledge is included on their “Wise Words for Human Rights Activists” page and is attributed to Ronnie Gilbert, a singer and songwriter who gained fame as a member of the folk group The Weavers. To see this page, visit < <http://humanrightsscc.org/wise-words-for-organizers/>>.

Vitriolic reference to this pledge is also made in May of 2001 by a member calling himself Hatebreed on the website AR15.com (AR15 being a reference to the military-assault-style weapon the AR15) <http://www.ar15.com/archive/topic.html?b=1&f=5&t=22627>.

Searches for Ginni Clemmens return more hits, however, and she can be seen reciting this pledge in a YouTube video at < https://www.youtube.com/watch?v=bP_qH_oL5_w>.

Appendix E—Signed Version of Colorado Bill HB03-1368

Session Laws of Colorado 2003
 First Regular Session, 64th General Assembly
 CHAPTER 356

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 03-1368 [Digest]

BY REPRESENTATIVE(S) Crane, Harvey, May M., Schultheis, Hefley, Wiens, Briggs, Brophy, Cadman, Clapp, Cloer, Decker, Fairbank, Fritz, Hall, Hoppe, Johnson R., King, Lee, Lundberg, McCluskey, Mitchell, Rhodes, Rippy, Rose, Sinclair, Smith, Spence, Spradley, Stafford, Stengel, White, Williams T., and Jahn;
 also SENATOR(S) Lamborn, Andrews, Arnold, Cairns, Dyer, Evans, Hillman, Johnson S., Jones, Kester, May R., McElhany, and Nichol.

AN ACT

Concerning the requirement of a daily recitation of the pledge of allegiance in each public school in the state.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 22-1-106, Colorado Revised Statutes, is amended to read:

22-1-106. Information as to honor and use of flag. (1) The commissioner of education shall provide the necessary instruction and information so that all teachers in the grade and high schools in the state of Colorado may teach the pupils therein the proper respect of the flag of the United States, to honor and properly salute the flag when passing in parade, and to properly use the flag in decorating and displaying.

(2) (a) The teacher and students in each classroom in each public elementary, middle, and junior high school in the state of Colorado shall begin each school day by reciting aloud the pledge of allegiance to the flag of the United States of America. The teacher and students in each classroom in each public high school in the state of Colorado shall recite aloud the pledge of allegiance to the flag of the United States of America when the school conducts its daily announcements. If a public high school does not conduct daily announcements, then the teacher and students in each

classroom in the public high school shall, on a daily basis, recite aloud the pledge of allegiance to the flag of the United States of America.

(b) Nothing in this subsection (2) shall be construed to require a teacher or a student to recite the pledge of allegiance described in paragraph (a) of this subsection (2) if the teacher or student objects to the recitation of the pledge on religious grounds. A student shall be exempt from reciting the pledge of allegiance if a parent or guardian of the student objects in writing to the recitation of the pledge on any grounds and files the objection with the principal of the school.

(c) Nothing in this subsection (2) shall be construed to require students and teachers who are not United States citizens and are attending or teaching school in the state of Colorado to recite the pledge of allegiance described in paragraph (a) of this subsection (2).

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 3, 2003

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

Appendix F—Revisions to Colorado Pledge Mandate

(Revisions to 2003 Law--Passed into Law in 2004)

C.R.S. 22-1-106

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 22. EDUCATION GENERAL AND ADMINISTRATIVE ARTICLE 1.GENERAL PROVISIONS

C.R.S. 22-1-106 (2013)

22-1-106. Information as to honor and use of flag

(1) The commissioner of education shall provide the necessary instruction and information so that all teachers in the grade and high schools in the state of Colorado may teach the pupils therein the proper respect of the flag of the United States, to honor and properly salute the flag when passing in parade, and to properly use the flag in decorating and displaying.

(2) (Deleted by amendment, L. 2004, p. 166, § 1, effective March 17, 2004.)

(3) Each school district shall provide an opportunity each school day for willing students to recite the **pledge of allegiance** in public elementary and secondary educational institutions. Any person not wishing to participate in the recitation of the **pledge of allegiance** shall be exempt from reciting the **pledge of allegiance** and need not participate.

HISTORY: Source: L. 23: p. 550, § 1.CSA: C. 146, § 294.CRS 53: § 123-21-6. C.R.S. 1963: § 123- 21-6.L. 2003: Entire section amended, p. 2367, § 1, effective August 6.L. 2004: Entire section amended, p. 166, § 1, effective March 17.

Appendix G—Florida Pledge Law as of 2015

Fla. Stat. § 1003.44 (2014)

1003.44. Patriotic programs; rules

(1) Each district school board may adopt rules to require, in all of the schools of the district, programs of a patriotic nature to encourage greater respect for the government of the United States and its national anthem and flag, subject always to other existing pertinent laws of the United States or of the state. When the national anthem is played, students and all civilians shall stand at attention, men removing the headdress, except when such headdress is worn for religious purposes. The pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all," shall be rendered by students standing with the right hand over the heart. The pledge of allegiance to the flag shall be recited at the beginning of the day in each public elementary, middle, and high school in the state. Each student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting the pledge. Upon written request by his or her parent, the student must be excused from reciting the pledge. When the pledge is given, civilians must show full respect to the flag by standing at attention, men removing the headdress, except when such headdress is worn for religious purposes, as provided by Pub. L. ch. 77-435, s. 7, approved June 22, 1942, 56 Stat. 377, as amended by Pub. L. ch. 77-806, 56 Stat. 1074, approved December 22, 1942.

(2) Each district school board may allow any teacher or administrator to read, or to post in a public school building or classroom or at any school-related event, any excerpt or portion of the following historic material: the national motto; the national anthem; the pledge of allegiance; the Constitution of the State of Florida, including the Preamble; the Constitution of the United States, including the Preamble; the Bill of Rights; the Declaration of Independence; the Mayflower Compact; the Emancipation Proclamation; the writings, speeches, documents, and proclamations of the presidents of the United States, the signers of the Constitution of the United States and the Declaration of Independence, and civil rights leaders; and decisions of the United States Supreme Court. However, any material that is read, posted, or taught pursuant to this provision may be presented only from a historical perspective and in a nonproselytizing manner. When less than an entire document is used, the excerpt or portion must include as much material as is reasonably necessary to reflect the sentiment of the entire document and avoid expressing statements out of the context in which they were originally made. If the material refers to laws or judicial decisions that have been superseded, the material must be accompanied by a statement indicating that such law or decision is no longer the law of the land. No material shall be selected to advance a particular religious, political, or sectarian purpose. The department shall distribute a copy of this section to each district school board, whereupon each district school superintendent shall distribute a copy to all teachers and administrators.

HISTORY: S. 137, ch. 2002-387

Reference List

- Abrams, Douglas E. 2011. Justice Jackson and the second flag-salute case: Reason and passion in opinion writing. *Journal of Supreme Court History*. 36 *Journal of Supreme Court History* 30. University of Missouri School of Law Legal Studies Research Paper No. 2015-01. Available at SSRN: <http://ssrn.com/abstract=2547781>
- ACLU of Minnesota. 2003. *A primer on the Pledge of Allegiance in the public schools*. St. Paul, MN: ACLU-MN.
- Advertising Age Data Center. 2000. Newspapers by circulation for 6 months ended 9/30/2000. Accessed on August 2, 2014. http://adage.com/datacenter/datapopup.php?article_id=106309
- Altemeyer, Bob. 1988. *Enemies of freedom: Understanding right-wing authoritarianism*. San Francisco: Jossey-Bass.
- . 2004. Highly dominating, highly authoritarian personalities. *Journal of Social Psychology*. 144:421–47.
- American Legion Apple Valley Post 1776. 2014. Apple Valley, Minnesota. Homepage and links: <http://www.post1776.com> (accessed on September 17, 2014).
- Americanism position paper: A summary of selected American Legion Americanism resolutions. 2014. The National Americanism Commission of the American Legion. Fall 2014. Accessed on Nov. 14, 2014 at http://www.legion.org/documents/legion/pdf/americanism_resolutions.pdf
- Apple, Michael W. 2002. Patriotism, pedagogy, and freedom: On the education meanings of September 11th. *Teachers College Record*. 104 No. 8: 1760-1772.
- Appleby, Joyce, Lynn Hunt, and Margaret Jacob. 1994. *Telling the truth about history*. New York: W.W. Norton.
- Associated Press. 2001a. Legion halts donations until Minnesota school district mandates Pledge of Allegiance. Fox News.com. October 11.
- . 2001b. In shift, schools can use pledge to flag." *New York Times*. October 17.
- . 2003. Federal judge: Pennsylvania patriotism law violates students' rights. First Amendment Center. July 16. <http://www.firstamendmentcenter.org/federal-judge-pennsylvania-patriotism-law-violates-students-rights> (accessed on June 3, 2013).

- Balch, George T. 1890. *Methods of teaching patriotism in the public schools*. New York: D. Van Nostrand Company.
- Barnette v. West Virginia State Board of Education*, 47 F. Supp. 251 (Southern District of West Virginia, 1942).
- Barrett, John Q., Gregory L. Peterson, E. Barrett Prettyman, Shawn Francis Peters, Gathie Barnett Edmonds, Marie Barnett Snodgrass, and Bennet Boskey. 2007. Recollections of *West Virginia State Board of Education v. Barnette*. *St. John's Law Review* 81: 755-796. St. John's Legal Studies Research Paper No. 07-0089. Available at SSRN: <http://ssrn.com/abstract=1029995>
- Bender, Michael C. 2003. Pledge problems: Students protest Colorado pledge law with Nazi salute. *The Daily Sentinel*. October 17.
- Bennett, Laurie J. 2004. Classroom recitation of the Pledge of Allegiance and its educational value: Analysis, review, and proposal. *Journal of Curriculum and Supervision* 20, No. 1 (Fall): 56-75.
- Bergal, Jenni. 1992. High school student shouldn't need parental permission slip to skip pledge. *Sun-Sentinel* (covering Broward and Palm Beach Counties, Florida). September 28. http://articles.sun-sentinel.com/1992-09-28/news/9201240270_1_consent-pledge-school-board (accessed on January 16, 2015).
- Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
- Blasi, Vincent, and Seana V. Shiffrin. 2004. The story of *West Virginia State Board of Education v. Barnette*: The Pledge of Allegiance and the freedom of thought. In *Constitutional law stories*, ed. Michael C. Dorf. New York: Foundation Press.
- Bloom, Allan. 1987. *The closing of the American mind*. New York: Simon and Schuster.
- Boca Raton News*. 1993. School board flags rule to say pledge. May 6. <http://news.google.com/newspapers?nid=1290&dat=19930506&id=fdUxAAAAIBAJ&sjid=u40DAAAAIBAJ&pg=4274,3747934> (accessed June 22, 2013).
- Bon Tempo, Carl J. 2011. American Exceptionalism and immigration debates in the modern United States. In *American Exceptionalisms: From Winthrop to Winfrey*, eds. Sylvia Söderlind and James Taylor Carson, 147-166. Albany: State University of New York Press.
- Bousquet, Steve. 2006a. Pruitt's fiery letter raises hackles. *St. Petersburg Times*. January 27.
- . 2006b. GOP blows its chance to 'protect' the pledge. *St. Petersburg Times*.

- May 6.
- Brown, Linnea. 2007. Anger over Pledge of Allegiance in Spanish. *Hernando Today*. October 28.
- Buchanan, Patrick J. 2006. *State of emergency: The third world invasion and the conquest of America*. New York: St. Martin's Press.
- Byers, Scot, Freddy Funes, and Allison V. Perez. 2009. Mama Knows Best: *Frazier v. Winn* Says Do as You're Told! *University of Miami Law Review*. 63 U. Miami L. Rev. 905, 911.
- Calvert, Clay. 2009. Tinker's midlife crisis: Tattered and transgressed but still standing. *American University Law Review*. 58 Am. U. L. Rev. 1167.
- Camarillo, Albert. 2014. "Neoconservatism and culture wars of the 1980s and 1990s." C-SPAN Lectures in History Hosted by Stanford University. February 25. <http://www.c-span.org/video/?317879-1/neoconservatism-culture-wars-1980s-1990s> (accessed online March 15, 2014).
- Canovan, Margaret. 2000. Patriotism is not enough. *British Journal of Political Science* 30: 413–32.
- Caputo, Marc. 2006. Senator pledges allegiance to the oath and boy scouts. *Miami Herald*. January 26.
- Carroll, Anne. 2014. Interview with the author. October 7.
- Cerabino, Frank. 2008. Allegiance better earned than forced. *Palm Beach Post*. January 20.
- Chen, Alan K. 2004. Forced patriot acts. *Denver University Law Review*. 81 Denv. U.L. Rev. 703.
- Cheney, Lynne V. 1995. The end of history. *Historian* 57, no. 2: 454. *Academic Search Premier*, EBSCOhost (accessed February 18, 2015).
- Circle Sch. v. Pappert*, 381 F.3d 172, 178 (3d Cir. 2004).
- Circle Sch. v. Phillips*, 270 F. Supp. 2d 616, 621–27 (E.D. Pa. 2003).
- Citrin, Jack, Beth Reingold, and Donald Green. 1990. American identity and the politics of ethnic change. *The Journal of Politics* 52:1124-54.
- Clark, Pat. 2002. Letter to the editor. *Rochester Post-Bulletin*. Hot Topic Section. July.
- Clausen, Greg. 2014. Interview with the author. October 21.

Cohrs, J. Christopher. 2004. A new vision of constructive patriotism. *Psicologia Politica* 29(Nov): 51-58.

Cooke, Peyton. 2011. Pledge of Allegiance statutes, state by state. First Amendment Center. <http://www.firstamendmentcenter.com/analysis.aspx?id=17035&printer--friendly=y> (accessed August 26, 2011).

Colorado General Assembly Archives. 2002. State of Colorado: Prior Session Information. *2002 House and Senate Bills*. <http://www.leg.state.co.us/clics/clics2014A/cslFrontPages.nsf/PrevSessionInfo?OpenForm> (accessed March 26, 2014).

Colorado Legislative Council Staff. 2004. *Issue Brief*. Number 04-06. June 30.

Colorado Revised Statute 22-1-106. 2003. *An act concerning the requirement of daily recitation of the Pledge of Allegiance in each public school in the state*. Session Laws of Colorado 2003: First Regular Session, 64th General Assembly. Approved June 3, 2003.

Commonwealth of Pennsylvania Public School Code of 1949-Amend United States Flag Display and Ceremonies. Act of December 9, 2002, P.L. 1334, No. 157, Cl. 24. Session of 2002. No. 2002-157.

Daily recitation of the Pledge of Allegiance: Hearings on HB1368. 2003a. *Before the House State Affairs Committee*, 64th General Assembly of Colorado. April 29.

———. 2003b. *Day 1, Before the House as a Whole*, 64th General Assembly of Colorado. April 30.

———. 2003c. *Day 2, Before the House as a Whole*, 64th General Assembly of Colorado. May 1.

———. 2003d. *Before the Senate State Affairs Committee*, 64th General Assembly of Colorado. May 1.

———. 2003e. *Day 1, Before the Senate as a Whole*, 64th General Assembly of Colorado. May 6.

———. 2003f. *Day 2, Before the Senate as a Whole*, 64th General Assembly of Colorado. May 7.

Date, S.V. 2006. Pruitt letter seeks money to help pass 'pledge' law. *Palm Beach Post*. January 26.

- Daytona Beach News-Journal*. 1993. Schools may alter pledge requirement. January 19.
- Dicker, John. 2003. One nation, under laws: ACLU challenges pledge requirement. *Colorado Springs Independent*. August 14.
- Diggins, John Patrick. 1996. The National History Standards. *American Scholar* 65, no. 4: 495. *Academic Search Premier*, EBSCOhost (accessed January 18, 2015).
- DeNinno, Nadine. 2014. Florida school to stop hitting students, Santa Rosa District to end corporal punishment to protect teachers. *International Business Times*. March 20. <http://www.ibtimes.com/florida-school-stop-hitting-students-santa-rosa-district-end-corporal-punishment-protect-teachers> (accessed online March 29, 2015).
- Diggins, John Patrick. 2003. What begins in religion ends in politics. *Society* 41, no. 1: 29-36. *Academic Search Premier*, EBSCOhost (accessed February 18, 2015).
- Dodds, Graham G. 2012. Crusade or charade? The Religious Right and the Culture Wars. *Canadian Review of American Studies*. 42, no. 3: 274-300.
- Draper, Norman. 2001. Standing up for the pledge: A legislator vowed to continue his bid to require the Pledge of Allegiance at school. *Minneapolis Star Tribune*. July 4.
- Duluth News Tribune*. 2002. Editorial: Forced Pledge of Allegiance denies core American values. May 22.
- Education Liberty Watch. 2015. Homepage: <http://edlibertywatch.org>. Mission: <http://edlibertywatch.org/our-mission/> (accessed January 15, 2015).
- EdWatch. 2004. The Minnesota Senate hearings: Social studies. January 28. <http://www.edwatch.org/updates/012804.htm> (accessed March 15, 2015).
- Egolf, C. Allan. 2004. Oral History Project. Pennsylvania House of Representatives Bipartisan Management Committee. Interview conducted by Simon J. Bronner. November 30.
- Eichner, Maxine. 2009. School surveys and children's education: The argument for shared authority between parents and the state, *Journal of Law and Education*. 38 J.L. & Educ. 459, 459-61.
- Election Directory 2001: Minnesota Legislature*. 2001. Minnesota House of Representatives Public Information Office and Minnesota Senate Publications Office. St. Paul, MN. January 4. Third printing.

- <http://www.house.leg.state.mn.us/hinfo/leginfo/eledir01.pdf> (accessed July 15, 2014).
- Ellis, Richard J. 2005. *To the flag: The unlikely history of the Pledge of Allegiance*. Lawrence, KS: The University Press of Kansas.
- Evans, Ronald W. 2004. *The social studies wars*. New York: Teachers College Press.
- Fenske, Bob. 2001. Patriotism is flourishing. *Mankato Free Press*. November 1.
- Finn Jr., Chester E. 2001. Teachers, terrorists, and tolerance. *Commentary* 112, no. 5: 54. *Academic Search Premier*, EBSCOhost (accessed February 18, 2015).
- Finn Jr., Chester E. 2002. Introduction. In *September 11: What our children need to know*. Washington, D.C.: Thomas B. Fordham Institute.
- First Amendment Center. 2003. Third Circuit throws out Pennsylvania's pledge law. July. <http://www.firstamendmentcenter.org/3rd-circuit-throws-out-pennsylvanias-pledge-law> (accessed on May 1, 2015).
- Fischer, Louis, David Schimmel, and Leslie R. Stelman. 2007. *Teachers and the Law*. 7th ed. Boston: Pearson.
- Fitzpatrick, Cara. 2010. Pledge of Allegiance dispute near end. *Palm Beach Post*. March 24.
- Fla. Stat. Ann. Section 1003.44(1); Title XLVIII—K-20 Education Code: Patriotic Programs. 2014.
- Florida Legislature. 1987. 1987 summary of general legislation: Special Session 'A' February 4, 1987 and Regular Session April 7-June 6, 1987. Division of Legislative Library Services and Joint Legislative Management Committee. Pp. 167-183. <http://www.law.fsu.edu/library/collection/FlSumGenLeg/FlSumGenLeg1987.pdf> (accessed June 12, 2014).
- Floyd, Jocelyn. 2010. The power of the parental trump card: How and why *Frazier v. Winn* got it right. *Chicago-Kent Law Review*. 85 Chi.-Kent L. Rev. 791, 804–10.
- Foster, Stuart J. 2000. *Red alert! Educators confront the Red Scare in American public schools, 1947-1954*. New York: Peter Lang Publishing.
- Frazier v. Alexandre*, 434 F. Supp. 2d 1350. (S.D. Fla. 2006)
- Frazier v. Winn*, 535 F.3d 1279 (11th Cir. 2008).
- Frazier Ex Rel. Frazier v. Winn*, 555 F.3d 1292 (2009).

- Free Republic* Message Board. Messages in response to 'Pledge puts student on the spot' story in *Pioneer Press*.
<http://www.freerepublic.com/focus/news/985101/posts?q=1&page=1>
 (accessed December 1, 2014).
- Garage Logic. About the show. *ESPN Radio*.
<http://www.1500espn.com/shows/garagelogic> (accessed September 15, 2014).
- Garcia, Jesus. 2015. Interview with the author. March 6.
- Garvey, John. 1979. Children and the First Amendment, *Texas Law Review*. 57 Tex. L. Rev. 321, 323.
- Gehring, John. 2002. States weigh bills to stoke students' patriotism. *Education Week* 21, no. 28 (March 27): 19, 22.
- General Assembly of Pennsylvania. 2001. House Bill No. 592. Printer's No. 649. Session of 2001. February 8.
- Glazer, Nathan. 1997. *We are all multiculturalists now*. Cambridge, MA: Harvard University Press.
- Goetz v. Ansell*. 477 F.2d636. 1973.
- Goss, Crystal. 2012. "Pledge of Allegiance in schools: Not required in these 5 states." August 13, 2012. <http://www.takepart.com/photos/these-five-states-do-not-require-pledge-allegiance-schools/next-gallery> (accessed Jan. 4, 2015).
- Gottfried, Mara H. 2002. Complaint alleges campaign mailing broke law: DFL says false material may have led to McGinn's win over incumbent. *St. Paul Pioneer Press*. November 27.
- Graff, Gerald. 1992. *Beyond the Culture Wars*. New York: W.W. Norton and Co.
- Gross, Keaty. 2013. Interview with the author. November 15.
- Grow, Doug. 2001. Red, white, and boo to required pledge. *Minneapolis Star Tribune*. January 29.
- . 2002. A dividing line made of red, white and blue; Senate's Pledge of Allegiance debate said a lot in a disquieting undertone. *Minneapolis Star Tribune*. March 18.
- Gupta, Rani. 2006a. Students can't be required to stand for pledge, U.S. Judge rules. *Palm Beach Post*. June 2.

- . 2006b. State not likely to fight ruling over the pledge. *Palm Beach Post*. June 3.
- Gustafson, Craig. 2001. School district to have pledge; Legion to release money. Associated Press State and Local Wire for Minnesota. October 17.
- Hall, Kermit L. and John J. Patrick. 2006. The flag salute cases. In *The pursuit of justice: Supreme Court decisions that shaped America*. eds. Kermit L. Hall and John J. Patrick. New York: Oxford University Press.
- Hardy, Dan. 2003. Indivisible in Pa.? Not exactly. Pledge law brings out opinions of all stripes. *Philadelphia Inquirer*. February 7.
- Harr, Jennifer. 2012. Order: Brownsville Area students may sit during Pledge of Allegiance. *Herald-Standard*. May 3.
http://www.heraldstandard.com/news/local_news/order-brownsville-area-students-may-sit-during-pledge-of-allegiance/article_39b3602c-e722-5985-9a21-68a660783c46.html (accessed online Feb. 21, 2014).
- Harris, Bruce A. 2010. Student's pledge protest draws to a close. *Legally Speaking*. Office of the Chief Counsel of Palm Beach County School District. 5, no. 6: 1, 3.
- Hauserman, Julie. 1999. Senator pushes patriotic actions in schools. *St. Petersburg Times*. February 4.
- Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).
- Helms, Marisa. 2001. Public speaks out on mandatory Pledge of Allegiance effort. *Minnesota Public Radio*. October 24.
- HF2598--A bill for an act relating to education; requiring recitation of the Pledge of Allegiance. 2002a. Hearings on HF2598 before the House as a Whole, 2nd Reading and 3rd Reading. 82nd Legislature of the State of Minnesota. February 27. Video available online at*
http://www.house.leg.state.mn.us/htv/programa.asp?ls_year=82&session_year=2001&session_number=0&event_id=2315 (accessed May 15, 2014).
- . 2002b. *Hearings on HF2598 Before the Senate as a Whole, Conference Committee Report and Final Passage. 82nd Legislature of the State of Minnesota. May 17. Video available online at*
http://www.media.leg.mn:8080/ramgen/svideo/2002/sfloor_051702.rm?useh_ostname (accessed May 22, 2014).
- HF2598/SF2411--A bill for an act relating to education; requiring recitation of the Pledge of Allegiance. 2002a. Hearings on HF2598/SF2411 before the Senate as a Whole, 82nd Legislature of the State of Minnesota. February 18. Video available online at*

- http://www.media.leg.mn:8080/ramgen/svideo/2002/sfloor_021802.rm?usehostname (accessed June 22, 2014).
- . *2002b. Hearings on HF2598/SF2411 before the Senate Education Committee, 82nd Legislature of the State of Minnesota.* February 27. Audio cassettes available for purchase from Senate Audio Services
http://www.senate.mn/media/request_audio_recordings_instructions.php or onsite at the Legislative Library at the Minnesota State Capitol in St. Paul, MN.
- . *2002c. Hearings on HF2598/SF2411 before the Senate as a Committee of the Whole, 82nd Legislature of the State of Minnesota.* March 12. Video available online at
http://www.media.leg.mn:8080/ramgen/svideo/2002/sfloor_031202.rm?usehostname (accessed June 16, 2014).
- . *2002d. Hearings on HF2598/SF2411 Before the Senate as a Whole, 3rd Reading, 82nd Legislature of the State of Minnesota.* April 25. Video available online at
http://www.media.leg.mn:8080/ramgen/svideo/2002/sfloor_042502.rm?usehostname (accessed June 16, 2014).
- HF915--A bill for an act relating to education; requiring recitation of the Pledge of Allegiance. 2001a. Hearings on HF915 Before the House Committee on Education Policy.* 82nd Legislature of the State of Minnesota. March 6. Video available online at <http://www.house.leg.state.mn.us/htv/ls82/edupolA030601.asx> (accessed June 17, 2014).
- . *2001b. Hearings on HF915 Before the House as a Whole, 2nd Reading and 3rd Reading.* 82nd Legislature of the State of Minnesota. April 18. Video available online at
http://www.house.leg.state.mn.us/htv/programa.asp?ls_year=82&session_year=2001&session_number=0&event_id=2582 (accessed June 17, 2014).
- Higham, John. 2011. *Strangers in the Land: Patterns of Nativism, 1860-1925.* London: Rutgers University Press. (Orig. pub. 1955).
- Hildebrandt, Leif. 2003. Letter to the editor: Freedom to be a brat. *Minneapolis Star-Tribune.* September 21.
- Hirsch, E.D. 1996. *The schools we need and why we don't have them.* New York: Anchor Books.
- Holden v. Board of Education of Elizabeth, NJ,* 46 N.J. 279, 216 A2d 387 (1966).
- Holloman v. Harland,* 370 F.3d 1252,1268-69 (11th Cir. 2004)

- Holloman v. Walker County Board of Education*, U.S. Court of Appeals 11th Circuit, No. 01-- 12864, May 28, 2004.
- Hothan, Ed. 2006. Letter to the editor: Veterans fought for students' freedoms, too. *Palm Beach Post*. February 13.
- House Television Archives 2001-2002*. 82nd Legislature. Minnesota House of Representatives Public Information Services.
http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=82 (accessed on October 1, 2014).
- Howell, Martha and Walter Prevenier. 2001. *From Reliable Sources: An Introduction to Historical Methods*. Ithaca, NY: Cornell University Press.
- Hudson, David. 2009. Religious liberty in public schools: The Pledge of Allegiance. First Amendment Center.
http://www.firstamendmentcenter.org/rel_liberty/publicschools (accessed May 2, 2010).
- Hunter, James Davison. 1991. *Culture Wars: The struggle to define America*. New York: Basic Books.
- Huntington, Samuel P. 1996. *Clash of civilizations and the remaking of world order*. NY: Simon and Schuster.
- . 2004. *Who are we? America's great debate*. New York: Free Press.
- Ignatieff, Michael. 2014. Michael Ignatieff on political theory and political practice. *Philosophy Bites* podcast. April 12.
<http://philosophybites.com/2014/04/michael-ignatieff-on-political-theory-and-political-practice.html> (accessed March 14, 2015).
- Ishio, Yoshito. 2010. Social bases of American patriotism: Examining effects of dominant social statuses and socialization. *Current Sociology* 58:67–93.
- Jellinek, Joan D. 2006. Letter to the editor. *Palm Beach Post*. January 9.
- Johnston, Steven. 2002. The patriotism which is not one. *Polity* 34:285-312.
- Jones, Jeffrey Owen and Peter Meyer. 2010. *The Pledge: A History of the Pledge of Allegiance*. New York: Thomas Dunne Books.
- Journal of the Florida HOR. 1943. House of Representatives. June 3: 1127, 1132.

- . 2002. House of Representatives. April 5: 384-459.
- Journal of the House*. 2002. Minnesota House of Representatives. 82nd Legislative Session. 114th Day. May 17: 8651-8652.
- Journal of the HOR. Commonwealth of PA Legislature. 2001. Session of 2001—185th of the General Assembly. Oct. 16. No. 55: 1836-1838.
- . 2002. Session of 2002—186th of the General Assembly. Nov. 26. No. 79: 2305-2307.
- Kahne, Joseph and Ellen Middaugh. 2007. Is patriotism good for democracy? In *Pledging Allegiance: The Politics of Patriotism in America's Schools*. ed. Joel Westheimer. New York: Teachers College Press.
- . 2008. High quality civic education: What is it and who gets it? *Social Education* 72, no. 1 (January/February).
- Kahne, Joseph and Joel Westheimer. 2003. Teaching democracy: What schools need to do. *Phi Delta Kappan* 85, no. 1: 34-66.
- Kaste, Martin. 1999. The politics of the profile. *Back to School '99 Series on Minnesota Public Radio*. September 7. http://news.minnesota.publicradio.org/features/199909/07_kastem_profile/ (accessed on Sept. 15, 2014).
- Kavett, Hyman. 1976. How do we stand with the Pledge of Allegiance today? *Social Education* 40 (March).
- Keeping the pledge fresh and meaningful. 2005. *Curriculum Review* 45, no. 3 (November): 10. *Academic Search Premier*, EBSCOhost (accessed March 27, 2015).
- Keller, Larry. 2005. Pledge dispute spurs student to sue district. *Palm Beach Post*. December 23.
- Kennedy, John. 2002. Sen. Pruitt struggles to put out GOP fires: He is trying to make peace between the Senate and House leaders on taxes and redistricting. *Orlando Sentinel*. March 17 http://articles.orlandosentinel.com/2002-03-17/news/0203170140_1_pruitt-mckay-senate (accessed June 7, 2014).
- KHOU Television. 2014. Community sounds off after school punishes boy for refusing to stand for the pledge. May 8 <http://www.khou.com/story/news/2014/07/25/12488406/> (accessed October 14, 2014).
- Kiefer, Heather Mason. 2004. Do teens feel pressured to recite the pledge? *Gallup Organization*. October 5 <http://www.gallup.com/poll/13267/Teens-Feel->

- Pressured-Recite-Pledge.aspx?utm_source=position2&utm_medium=related&utm_campaign=tiles (accessed online March 21, 2015).
- Kumar, Kavita. 2001. St. Paul schools rethinking pledge. *Minneapolis Star Tribune*. October 24.
- Lane v. Owens*. 2003. U.S. District Court for the District of Colorado, Civil Action No. 03-B-1544. August 15.
- Lane, David. 2013. Interview with the author. October 18.
- Lane, Zachary. 2013. Interview with the author. November 16.
- Larson, Larry. 2014. Interview with the author. September 30.
- Lebo, Lauri. 2003. Pledge rules unclear; Some schools balk at parental notice mandate. *York (PA) Sunday News*. November 23.
- Lee, Carmen J. 2003. Pledge of Allegiance law vexes schools. *Pittsburgh Post-Gazette*. February 8.
- Letters: Cartoon on pledge prompts deep split. 2010. *San Diego Union Tribune*. September 18, 2010 <http://www.utsandiego.com/news/2010/sep/18/letters-cartoon-on-pledge-prompts-deep-split/2/?#article-copy> (accessed January 5, 2015).
- Levine, Lawrence W. 1996. *The opening of the American mind*. Boston: Beacon Press.
- Levine, Peter, Cynthia Gibson, et al. 2003. The civic mission of schools: A report from Carnegie Corporation of New York and CIRCLE: The Center for Information and Research on Civic Learning and Engagement <http://www.civicyouth.org/PopUps/CivicMissionofSchools.pdf> (accessed June 12, 2012).
- Lewis, Neil A. 1991. Committee rejects Bush nominee to key appellate court in South. *New York Times*. April 12.
- Lipp v. Morris*. 579 F.2d 834. 1978.
- Liptak, Adam. 2009. Justices decline to hear some 2,000 cases. *New York Times*. October 5.
- Locke, Deborah. 2001. Rosemount students provide lesson in how to respond to attacks. *St. Paul Pioneer Press*. October 25.

- . 2002. Mandate the pledge?" *St. Paul Pioneer Press*. December 12.
- Locke, Deborah and D.J. Tice. 2002. Should legislature encourage students to say Pledge of Allegiance? *St. Paul Pioneer Press*. May 12.
- Lonetree, Anthony. 2001. House oks weekly Pledge of Allegiance in schools. *Minneapolis Star Tribune*. April 19.
- Lonetree, Anthony and James Walsh. 2002. State Senate backs pledge bill. *Minneapolis Star Tribune*. April 26.
- Ludden, Jennifer. 2006. 1965 immigration law changed face of America. *National Public Radio*. May 9
<http://www.npr.org/templates/story/story.php?storyId=5391395> (accessed March 10, 2015).
- Maeda, David. 2001. A ceremonial start: House members re-elect Sviggum as speaker and conduct routine business on the first day of the 82nd session. *Session Weekly* 18, no. 1 (January 5): 3-4.
- Marra, Andrew. 2006. Push to require students to recite the pledge stirs debate. *Palm Beach Post*. April 19.
- Marrero, Tony. 2009a. Flag flap flares at school. *St. Petersburg Times*. August 29.
- . 2009b. Hernando student lied about seeing Muslim student sit during pledge, officials say. *Tampa Bay Times*. August 31.
- Marzano, Robert J. and Debra J. Pickering. 2010. *The highly engaged classroom*. Bloomington, IN: Marzano Research Laboratory.
- Mawdsley, Ralph D. 2003. The changing face of parents' rights." *BYU Education and Law Journal* 165: 179-183.
- . 2005. Commentary—The Third Circuit Court of Appeals strikes down Pennsylvania's Pledge of Allegiance statute: What are the implications for education? *Education Law Reporter*. 196 Educ. L. Rep. 1, 15.
- McDonald, Bill. 2002. Letter to the editor: Don't impose pledge mandate. *St. Paul Pioneer Press*. March 26.
- McKinney, Joseph R. and Charles J. Russo. 1993. Resolved: As a matter of basic principle, regardless of particular court interpretation, students should be free to refuse to pledge allegiance to the American flag. *Curriculum Review* 33 (September 5).

- Mermin, Seth E. ("Ted") and Thomas Bennigson. 2009. *Frazier v. Smith* on petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit: Brief of Public Good and the Center for Constitutional Rights as *amici curiae* in support of petitioner." *Public Good*. July 1.
- Mermin, Seth Edward ("Ted"). 2015. Personal interview with the author. January 8.
- Meyer, Anne and David H. Rose. 2013. *Universal Design for Learning: Theory and Practice*. Wakefield, MA: CAST Professional Publishing.
- Meyer v. Nebraska*, 262 U.S. 390, 399–403 (1923)
- Miller, Monica. 2015. Letter to John W. Friend, Superintendent of the Carlisle Area School District. From the American Humanist Law Center. April 8
http://americanhumanist.org/system/storage/2/e6/0/5550/PLEDGE_LETTER_Calisle_PA_4-8-15_-_Final.pdf (accessed April 16, 2015).
- Minersville School District Board of Education v. Gobitis*. 310 U.S. 586 (1940).
- Minneapolis Public Schools. 2014. Website. Homepage accessible at <http://www.mpls.k12.mn.us> (accessed November 28, 2014).
- Minneapolis Public Schools 2013-2014 Fact Sheet. 2013. Published by the MPS Office of Communications. Minneapolis Public Schools. August.
http://www.mpls.k12.mn.us/uploads/fact-sheet_2.pdf (accessed November 2, 2014).
- Minnesota Education Statistics Summary*. Minnesota Department of Education. 2000-2001 Enrollments-Non-public Schools Grade-000836 [K-12]. Report received via email from MDE Analytics mde.analytics@state.mn.us on August 31, 2014.
- Minnesota Legislative Reference Library. Legislators Past and Present. Data on Mee Moua <http://www.leg.state.mn.us/legdb/fulldetail.aspx?ID=10744> (accessed June 21, 2014).
- Moreau, Joseph. 2004. *Schoolbook nation*. Ann Arbor, MI: University of Michigan Press.
- Morse v. Frederick*, 551 U.S. 393, 409–10 (2007).
- Moua, Mee. 2014. Interview with the author. April 23.
- Mummendey, Amelie, Andreas Klink, and Rupert Brown. 2001. Nationalism and patriotism: National identification and out-group rejection. *British Journal Of Social Psychology* 40, no. 2 (June): 159.

- Müller, Jan-Werner. 2006. On the origins of constitutional patriotism. *Contemporary Political Theory*. 5, 278-296. Doi: 10.1057/palgrave.cpt.9300235. <https://www.princeton.edu/~jmueller/CPT-CP-Origins-JWMueller.pdf> (accessed December 3, 2014).
- Mullon, Tom. 2002. Letter to the Editor. *Minneapolis Star Tribune*. May 24. p. 20a.
- Murphy, Steve. 2014. Interview with the author. September 23.
- Murphy, Tim. 2011. The education of Michele Bachmann. *Mother Jones*. June 16. <http://www.motherjones.com/politics/2011/06/michele-bachmann-edwatch?page=1> (accessed online March 2, 2014).
- (*The*) *Nation*. 1906. Training in patriotism. August 2: 92.
- Nussbaum, Martha. 2002. *For love of country: Debating the limits of patriotism*. Cambridge, MA: Beacon.
- O'Leary, Cecilia. 1999. *To die for: The paradox of American patriotism*. Princeton, NJ: Princeton University Press.
- O'Leary, Cecilia and Tony Platt. 2002. Pledging Allegiance: The revival of prescriptive patriotism. *Beyond September 11: An anthology of dissent*, ed. Phil Scraton. London: Pluto Press.
- Orlando Sentinel*. 1992. Student challenges state pledge of allegiance law. June 24 http://articles.orlandosentinel.com/1992-06-24/news/9206240801_1_pledge-of-allegiance-recite-the-pledge-polley (accessed June 24, 2012).
- Ornstein, Allan C. 2003. *Teaching and schooling in America: Pre- and post-September 11*. New York: Pearson Education Group.
- Palm Beach Post*. 2008. Editorial: Appeal of pledge ruling wastes public's money. January 25.
- Papandrea, Mary-Rose. 2008. Student speech rights in the Digital Age. *Florida Law Review*. 60 Fla. L. Rev. 1027, 1038–40.
- Parker, Sean. 2015. Personal communication. January 15 and January 16.
- Patriotic Programs. 1943. Florida State Statutes. Acts of 1943, Chapter 22015. Amended in 1955 to add "under God."
- Pennsylvania State Statute: 24 Pa. Stat. Ann. § 7-771(c)(1).
- Perry Educ. Association v. Perry Local Educators Ass'n*. 460 U.S. 37, 62 (1983).

- Pickels, Mary. 2012a. Insurer steps out of Brownsville lawsuit over pledge. *TribLive*. May 18 <http://triblive.com/home/1823822-74/board-district-pledge-student-carrier-insurance-legal-brownsville-settle-students#axzz3XUtZpz1m> (accessed February 22, 2014).
- . 2012b. Brownsville settles pledge lawsuit. *Tribune-Review*. June 21.
- Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925)
- Plumb, J.H. 1969. *The death of the past*. New York: MacMillan Press.
- Pole, Katherine. 2014. Personal communication. November 2.
- Posner, Richard A. 1990. *The problems of jurisprudence*. Cambridge, MA: Harvard University Press.
- Potter, Allen. 2013. Interview with the author. December 5.
- Prieston, Laura. 2011. Parents, students, and the Pledge of Allegiance: Why courts must protect the marketplace of student ideas. *Boston College Law Review*. 52 B.C.L. Rev. 375.
- ProCon.org. 2008. Congressional pledge acts. *ProCon.org*. Last modified October 27, 2008. <http://undergod.procon.org/view.resource.php?resourceID=000075> (accessed April 2, 2013).
- ProCon.org. 2013. Details regarding patriotic exercises such as display and care of the flag and recitation of the Pledge of Allegiance," *ProCon.org*. Last modified February 7, 2013. <http://undergod.procon.org/view.background-resource.php?resourceID=000811> (accessed April 2, 2013).
- ProCon.org. 2008. House actions on the Pledge of Allegiance. *ProCon.org*. Last modified February 25, 2008. <http://undergod.procon.org/view.additional-resource.php?resourceID=000085> (accessed April 2, 2013).
- ProCon.org. 2008. State requirements on Pledge of Allegiance in Schools," *ProCon.org*. Last modified October 24, 2008. <http://undergod.procon.org/view.resource.php?resourceID=000074> (accessed April 2, 2013)
- Pruitt, Ken. 2006. Letter to the editor: School board's gag order in pledge settlement un-American. *Palm Beach Post*. Feb. 15.
- Pugmire, Tim. 2001. Debate over daily Pledge of Allegiance resolved. *Minnesota Public Radio*. October 17.

- http://news.minnesota.publicradio.org/features/200110/17_pugmiret_pledge/ (accessed April 27, 2013)
- Ragsdale, Jim. 2002. 2002 Legislature: Ventura, staff sharpen pencils. *St. Paul Pioneer Press*. May 21.
- Ramsey, Nate. 2011. Keeping America exceptional: Patriotism, the status quo, and the culture wars. Order No. 3475215, University of Cincinnati. In PROQUESTMS ProQuest Dissertations & Theses Global, <http://search.proquest.com.ezp-prod1.hul.harvard.edu/docview/900303949?accountid=11311> (accessed March 1, 2015).
- Rochester Daily News*. 2002. Editorial: Pledge should be voluntary. *Rochester Daily News*. May 29.
- Rogers, Brad. 2015. Controversy over Pledge of Allegiance at South Portland High School. *Bangor Daily News*. Feb. 25
<https://bangordailynews.com/2015/02/25/news/portland/controversy-simmers-over-pledge-of-allegiance-at-south-portland-high-school> (accessed March 1, 2015).
- Rogers, Jerry. 2002. Letter to the Editor. *Minneapolis Star Tribune*. May 24.
- Ross, Catherine. 2000. Anything goes: Examining the state's interest in protecting children from controversial speech. *Vanderbilt Law Review*. 53 Vand. L. Rev. 427, 473-83.
- Salisbury, Bill. 2002. 'We really belong here'; Moua's swearing-in a national first. *St. Paul Pioneer Press*. February 5.
- Santa Rosa County School District Code of Student Conduct. 2014. Santa Rosa County, Florida. Superintendent Timothy S. Wyrosdick
<https://www.santarosa.k12.fl.us/files/csc.pdf> (accessed April 15, 2015).
- Savage, David G. 1991. Panel rejects Bush choice for judgeship: Party-line vote against appellate bench nominee is based on issue of sensitivity to civil rights. *Los Angeles Times*. April 12.
- Schatz, Robert T., Ervin Staub, and Howard Lavine. 1999. On the variety of national attachment: Blind versus constructive patriotism. *Political Psychology*. 20(1): 151-174.
- Schweikart, Larry and Michael Allen. 2004. *A patriot's history of the United States*. New York: Sentinel.
- Senate Staff Analysis and Economic Impact Statement: SB330. 1999. Florida Senate.

- Subject: School Districts/Patriotic Programs. January 28. Available online at <http://archive.flsenate.gov/data/session/1999/Senate/bills/analysis/pdf/SB0330.ed.pdf> (accessed April 17, 2014).
- Session Weekly: A Nonpartisan Publication*. 2001. Minnesota House of Representatives Public Information Office 18, no. 1 (January 5).
- Shah, Nirvi. 2006a. School board settles pledge suit on youth's terms. *Palm Beach Post*. Feb. 2.
- . 2006b. School fracas over pledge unfurls debate on freedom. *Palm Beach Post*. Feb. 5.
- Shefchik, Rick. 2001. Taking the pledge to heart. *St. Paul Pioneer Press*. October 10.
- Shernoff, David J., et al. 2003. Student engagement in high school classrooms from the perspective of flow theory. *School Psychology Quarterly* 18, no. 2: 158-176.
- Slattery, Tess. 2010. Note, freedom from compulsion. *Chicago-Kent Law Review*. 85 Chi.-Kent L. Rev. 819, 841-44.
- Sloat, Warren. 2002. *A battle for the soul of New York: Tammany Hall, police corruption, vice, and Rev. Charles Parkhurst against them all*. New York: Cooper Square Press.
- Slobodzian, Joseph A. 2004. U.S. Appeals panel hears Pa. dispute over pledge law. *Philadelphia Inquirer*. March 10.
- Southeray, Joe. 2002. If optional, pledge isn't mandate. *St. Paul Pioneer Press*. April 28.
- Smith, Orin, M. 2002. Letter to editor: Don't impose pledge mandate. *St. Paul Pioneer-Press*. March 26.
- St. Paul Pioneer Press*. 2003. Letters to the editor: Refusal to stand up for the Pledge of Allegiance evokes anger. September 20.
- St. Petersburg Times*. 1999. Editorial: Mandatory pledge isn't patriotism. Feb. 6.
- . 2008. Editorial: Don't force the pledge. July 26.
- Stassen-Berger, Rachel and John Welsh. 2002. Senate bill mandates students to say pledge; Response to amendment painful episode for Moua. *St. Paul Pioneer Press*. April 26.
- State ex rel Fred Bleich et al. v. Board of Public Instruction for Hillsborough County* (1939), 190 So. 815. 139 Fla. 43; 1939 Fla. LEXIS 1618. LexisNexis Academic. Web. (accessed January 3, 2015).

- Statista. 2014. Daily newspapers: Number of readers of the St. Paul Pioneer Press (MN) in the United States from spring 2008 to spring 2013 (in millions). <http://www.statista.com/statistics/229783/readers-of-the-st-paul-pioneer-press-mn-daily-edition/> (accessed January 13, 2014).
- Staub, Ervin. 1997. Blind versus constructive patriotism: Moving from embeddedness in the group to critical loyalty and action. In *Patriotism in the Lives of Individuals and Nations*, ed. Daniel Bar-Tal and Ervin Staub. Chicago, IL: Nelson-Hall.
- Stenner, Karen. 2005. *The authoritarian dynamic*. New York: Cambridge University Press.
- Stone, Geoffrey R. 2004. *Perilous times: Free speech in wartime—From the Sedition Act of 1798 to the War on Terrorism*. New York: W.W. Norton and Co.
- . 2007. *War and Liberty: An American Dilemma 1790 to the Present*. New York: W.W. Norton and Company.
- Taurus, Caroline. 2006. Letter to the editor. *Palm Beach Post*. January 28.
- Texas v. Johnson*. 491 U.S. 397 (1989).
- Tinker v. Des Moines School District*, 393 U.S. 503, 89 S. Ct. 733 (1969).
- Tosto, Paul. 2002a. Board invites ideas on pledge. *St. Paul Pioneer Press*. February 4.
- . 2002b. Views on Pledge of Allegiance are aired. *St. Paul Pioneer Press*. February 7.
- . 2014. Personal communication. September 26.
- Travis, Scott. 2006. Law requiring students to recite pledge is declared unconstitutional. *South Florida Sun Sentinel*. June 1.
- Tyack, David. 1967. *Turning points in American educational history*. Waltham, MA: Blaisdell Publishing.
- . 2003. *Seeking common ground: Public schools in a diverse society*. Cambridge, MA: Harvard University Press.
- Tyack, David, Thomas James, and Aaron Benavot. 1987. *Law and the shaping of public education, 1785-1954*. Madison, WI: University of Wisconsin Press.
- Tupa, Ron. 2014. Personal communication with the author. February 16.

U.S. Flag Code. 1942. Public Law ch. 77-435, s. 7, approved June 22, 1942, 56 Stat. 377. As amended by Public Law ch. 77-806, 56 Stat. 1074, approved December 22, 1942.

Upattinas School. Mission, Vision, and Values.

<http://www.upattinas.org/values.shtml> (accessed April 3, 2015).

Valentine, Danny. 2013. Hernando teacher suspended after requiring fourth-grader to participate in pledge of allegiance. *Tampa Bay Times*. November 5.

Vandivinit, Gilles. 2014. From the virgin land to the transnational identities of the twenty-first century: Exceptionalist rhetoric in the field of American studies. *European Journal Of American Culture* 33, no. 3: 165-179.

Ventura, Jesse. 2002. Explanation of Veto of HF2598. Office of the Governor of the State of Minnesota. May 22. Available online at http://www.mainserver.state.mn.us/governor/may_22_veto_letter.html (accessed May 3, 2015).

Walsh, James. 2001a. Pledge in schools: Mandatory or not? Parents and other adults are pushing for the Pledge of Allegiance to regain its prominence. *Minneapolis Star Tribune*. October 13.

———. 2001b. A commitment to the pledge. *Minneapolis Star Tribune*. October 18.

———. 2003. Student is star of civics lesson. *Minneapolis Star Tribune*. September 19.

Walsh, James, and Anthony Lonetree. 2002. Pledge of Allegiance to remain voluntary. *Minneapolis Star Tribune* May 23.

Watson, J. Tom. 1944. "Biennial Report of the Attorney General State of Florida from January 1, 1943 to December 31, 1944." Tallahassee, Florida: 1944. Pp. 256-257. Archived at the Florida State Library and available online at <https://archive.org/stream/ReportoftheAttorneyGeneraloftheStateofFlorida1943-1944#page/n0/mode/2up> (accessed June 13, 2014).

Welbes, John. 2001. Schools debate the pledge. *St. Paul Pioneer Press*. September 29.

———. 2003. Pledge puts student on spot. *St. Paul Pioneer Press*. September 18.

Wenner, David. 2015. Student was berated for refusing to stand during Pledge of Allegiance, free-speech group says. *PennLive: The Patriot-News*. April 9. http://www.pennlive.com/midstate/index.ssf/2015/04/first_amendment_rights_pledge.html#incart_river (accessed April 15, 2015).

- West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
- Westheimer, Joel. 2007. Politics and patriotism in education. In *Pledging Allegiance: The Politics of Patriotism in America's Schools*. ed. Joel Westheimer. New York: Teachers College Press.
- Westheimer, Joel and Joseph Kahne. 2004. What kind of citizen?: The politics of educating for democracy. *American Educational Research Journal* 41, no. 2: 237-269. ERIC, EBSCOhost (accessed March 26, 2014).
- Whittaker, Keola R. 2009. Gay-Straight Alliances and free speech: Are parental consent laws constitutional? *Berkeley Journal of Gender Law and Justice*. 24 Berkeley J. Gender L. & Just. 48, 60.
- Wolfe, Alan. 1998. *One nation after all: What Americans really think about God, country, family, racism, welfare, immigration, homosexuality, work, The Right, The Left and each other*. New York: Penguin.
- Wood, Gordon S. 2008. *The purpose of the past*. New York: Penguin Books.
- Wright, Charles Alan. 1996. My favorite opinion—The second flag-salute case. *Texas Law Review*. 74 Tex. L. Rev. 1297.
- WPVI TV. 2010. Pledge controversy flaps over local school district. <http://abclocal.go.com/story?section=news/local&id=7344119> (accessed March 1, 2015).
- Zakaria, Fareed. 2008. *The Post-American World*. New York: W.W. Norton.
- Zimmerman, Jonathan. 2002. *Whose America? Culture Wars in the public schools*. Cambridge, MA: Harvard University Press.
- Zinn, Howard. 1980. *A people's history of the United States*. New York: Perennial.

Vita

Jennifer J. Montgomery

1984-1989 1992	University of North Dakota Grand Forks, North Dakota	B.A. May 1992
1993-1994	University of North Dakota Grand Forks, North Dakota	B.S. Ed. May 1994
1991-1994	Homeless Education Programs- Teacher & Coordinator Quad County Community Action Grand Forks, ND	
1992-1994	Coordinator of Refugee Resettlement Grand Forks, ND	
1994-2005	Teacher, English and Journalism Bismarck Public Schools Bismarck, North Dakota	
1999-2000	University of North Dakota Grand Forks, North Dakota	M.S. Ed. August 2000
2005-2008	Harvard University Graduate School of Education Cambridge, Massachusetts	M.A. May 2008
2008-2012	English Director, Grades 6-12 Watertown Public Schools Watertown, Massachusetts	
2006-2009	Teaching Fellow Graduate School of Education Harvard University	
2005-2012, 2015	Doctor of Education Candidate Graduate School of Education Harvard University	
2013-Present	Director of Communications and Training AML Partners, LLC Franklin, NH & Edgewater, NJ	