

# ***The Flag Salute Cases***

Federal Trials and Great Debates  
in United States History

## **Case Summary:**

- In two cases before and during World War II, Jehovah's Witnesses challenged laws requiring children to salute the flag and recite the pledge of allegiance in school.
- In the first case, the Witnesses won at trial but the Supreme Court ruled in favor of the school district.
- In the second case, the Supreme Court reversed its earlier decision, citing a fundamental liberty of conscience protected by the First and Fourteenth Amendments.

## **History of the Case:**

School flag rituals began in 1892 in celebration of the 400th anniversary of Christopher Columbus' expedition to the Americas, though relatively few states mandated salutes before World War I. Most of these rituals involved a raised-arm salute, usually with the palm upturned. The pledge of allegiance students recited was similar to that used today, though the phrase "under God" was added in 1954. In the aftermath of World War I, a number of influential groups pressed for more patriotism in schools and several more states adopted flag salute laws. Even in states where there was no such law, many schools and school districts required their students to participate.

Jehovah's Witnesses subscribed to a strict interpretation of the bible that included the belief that saluting and pledging allegiance to the flag violated God's command against worshipping graven images. In 1935, Lillian and William Gobitas, two young Witnesses in public schools in Minersville, PA, refused to salute the flag in class. Though this resistance was not initially prohibited by any school rules, the local school board adopted a regulation requiring the flag salute and the superintendent immediately expelled the children.

Walter Gobitas initially tried to educate his children privately, but when this became too expensive and inconvenient, he sued the local school board in federal court seeking an injunction (an order from the court commanding a party to stop doing something improper or unlawful). Judge Albert Maris, who was then a recent appointee to the federal bench, but became one of the longest-serving judges in U.S. history, presided over the trial without a jury (injunction suits are not decided by jury trial). He ruled in favor of the Gobitases on freedom of religion grounds. The court of appeals for the Third Circuit upheld Judge Maris' decision.

In *Minersville School District v. Gobitis*\* (1940), however, the Supreme Court of the United States reversed, holding that schools had the power to require students to salute the flag and recite the pledge in the interests of preserving unity and patriotism. Justice Felix Frankfurter's opinion in the case emphasized that unelected federal judges should generally defer to the decisions of democratic bodies like school boards. Justice Harlan Fiske Stone dissented, arguing that the courts had a duty to protect the fundamental rights of minority groups against potential abuses of the majority. It appears that three other justices (William Douglas, Hugo Black and Frank Murphy) had doubts about the Court's decision but ultimately decided not to dissent.

*Gobitis* took place amid rising fears about America's possible involvement in World War II. Rumors abounded that Germany had defeated France quickly because of a "fifth column" of traitors who had undermined France from within. Some "patriotic" organizations identified the Witnesses as a potential American fifth column and targeted them for violence and intimidation. Many critics of the *Gobitis* decision blamed the Supreme Court for the wave of violence. In a 1942 opinion, Douglas announced that he,

---

\* Clerical errors resulted in the misspelling of the plaintiffs' names in both cases.

Black, and Murphy believed that the case had been incorrectly decided. Though it is unclear whether the violence influenced this change, it certainly fit the critique that laws mandating unity and patriotism risked oppressing minorities.

In 1942, West Virginia's Board of Education adopted a flag salute regulation that quoted much of the *Gobitis* opinion verbatim. Hayden Covington, the lead lawyer for the Jehovah's Witnesses' Watchtower Bible and Tract Society saw this as an opportunity to directly challenge that decision. When Gaithie and Marie Barnett, two young Witnesses attending public school just outside of Charleston, WV, were sent home from school repeatedly for refusing the salute, Covington helped the family file suit in federal court under a law that required a three-judge panel to decide constitutional challenges to certain state laws. Under this statute, the Supreme Court had to hear an immediate appeal from the losing side without the need for intermediate appeals.

Lower federal courts typically have to follow Supreme Court rulings. In the Barnetts' case, however, Judge John J. Parker, a prominent circuit judge who had once been unsuccessfully nominated to the Supreme Court, predicted that the Supreme Court would overturn the *Gobitis* decision and wrote a unanimous opinion for the three-judge panel striking down the school board's regulation. The Board of Education then appealed to the Supreme Court.

When *West Virginia Board of Education v. Barnette* came to the Supreme Court in 1943, the Supreme Court had two new members and Stone had become Chief Justice. He assigned one of the new Justices, Robert Jackson, to write an opinion overturning *Gobitis*. Though Justice Jackson believed judges should defer to elected bodies, he felt that the flag salute requirement was unconstitutional because it compelled children to declare beliefs that they did not hold in violation of the First and Fourteenth Amendments. Justice Murphy wrote a concurring opinion that agreed with the result but emphasized the separate issue of religious liberty. Justice Frankfurter penned a strenuous dissenting opinion that claimed the court was being undemocratic by replacing the board's political values with the justices' own views. He also argued that it was dangerous for the Court to disregard recent precedents because of outside pressure.

## Legal Issues:

The many opinions in the flag salute cases emphasized different important principles:

- Justice Frankfurter's opinions emphasized democracy, judicial restraint, and consistency.
- Justice Stone's opinion emphasized the courts' role as guardians of minority rights.
- Judge Parker's opinion emphasized that the law must sometimes change or be flexible.
- Justice Murphy's and Judge Maris' opinions emphasized freedom of religion.
- Justice Jackson's opinion emphasized that the government cannot compel people to think or speak against their consciences.

## Questions for Discussion:

- How do judges decide between competing values like those above?
- Judges usually follow previous decisions even if they disagree with them. Why? Why did the courts not do this in the flag salute cases?
- The flag salute cases took place against the backdrop of World War II. How might civil liberties change during wartime?
- Several of the opinions in the flag salute cases referenced the war. How might the fight against fascism abroad have influenced the different opinions in the case?