

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 03-B-1544 (PAC)

ZACHARY LANE, by his parent and next Friend, **DAVID LANE**;
ANNE ROSENBLATT, by her parent and next Friend, **RICHARD ROSENBLATT**;
KEATY GROSS, by her parent and next Friend, **BARBARA GROSS**;
SARAH BISHOP;
CHRISTIAN ERIKSEN;
SEAN GUARD;
JOLIE HENDRICKS;
ROD NOEL;
ALLEN POTTER;

Plaintiffs,

v.

BILL OWENS, in his official capacity as the Governor of the State of Colorado;
WILLIAM J. MOLONEY, in his official capacity as the
Commissioner of Education of the State of Colorado,
ADAMS-ARAPAHOE 28J (AURORA) PUBLIC SCHOOL DISTRICT;
CHERRY CREEK 5 PUBLIC SCHOOL DISTRICT;
DENVER COUNTY 1 PUBLIC SCHOOL DISTRICT;
JEFFERSON COUNTY PUBLIC SCHOOL DISTRICT R-1;

Defendants.

COMPLAINT

Plaintiffs **ZACHARY LANE**, **ANNE ROSENBLATT**, **KEATY GROSS**, **SARAH BISHOP**, **CHRIS ERIKSEN**, **SEAN GUARD**, **JOLIE HENDRICKS**, **ROD NOEL**, and **ALLEN POTTER**, by their attorneys, bring this action for declaratory and injunctive relief. The plaintiffs hereby complain of defendants and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action for declaratory and injunctive relief arising under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. Section 2201 et seq. due to defendants' current and imminent violations of plaintiffs' rights guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

2. Plaintiffs bring this action for the constitutional injuries they are sustaining, or imminently will sustain, upon the enforcement of Colorado Revised Statute § 22-1-106(2), which took effect on August 7, 2003 ("Colorado Mandatory Pledge Law"). The defendants, acting under color of law, are responsible for implementing and enforcing the provisions of the Colorado Mandatory Pledge Law, which mandates the daily recitation of the Pledge of Allegiance ("Pledge") by teachers and students in all public schools in the State of Colorado, thereby depriving plaintiffs of their rights to be free from state-compelled expression as guaranteed by the First Amendment to the Constitution of the United States, their rights to be free from viewpoint discrimination as guaranteed by the First Amendment to the Constitution of the United States, and their rights to equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Defendants are enforcing or stand ready to enforce the terms of the Colorado Mandatory Pledge Law at the outset of the 2003-04 academic year. Plaintiffs seek a declaration of unconstitutionality as to the statute's application to and enforcement against any teacher or student who has an objection to reciting the Pledge of Allegiance as a matter of personal conscience, and injunctive relief to forbid defendants to enforce the Colorado Mandatory Pledge Law in a manner that would be inconsistent with the plaintiffs' rights

of conscience, rights against viewpoint discrimination, and rights of equal protection of the laws.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391.

PLAINTIFFS

5. Minor Plaintiffs Zachary Lane, Anne Rosenblatt, and Keaty Gross, represented by their parents and next friends, are each citizens of the United States. Plaintiffs Sarah Bishop, Chris Eriksen, Sean Guard, Jolie Hendricks, Rod Noel, and Allen Potter are each citizens of the United States.

6. Plaintiff Zachary Lane is a student enrolled at Cherry Creek High School in defendant Cherry Creek 5 Public School District. He will be in twelfth grade during the 2003-04 school year and is in good academic standing. He brings this action through his parent and next friend, David Lane.

7. Plaintiff Anne Rosenblatt is a student enrolled at Cherry Creek High School in defendant Cherry Creek 5 Public School District. She will be in ninth grade during the 2003-04 school year and is in good academic standing. In middle school, she was a member of the National Junior Honor Society. She is also involved in volunteer work at her synagogue. She brings this action through her parent and next friend, Richard Rosenblatt.

8. Plaintiff Keaty Gross is a student enrolled in the International Baccalaureate Program at George Washington High School in defendant Denver County

1 Public School District. She will be in twelfth grade during the 2003-04 school year and is in good academic standing. She is involved in numerous volunteer public service activities, including working at a wild bird refuge and teaching mathematics to students for whom English is a second language. She brings this action through her parent and next friend, Barbara Gross.

9. Plaintiff Sarah Bishop is a teacher at Rishel Middle School in defendant Denver County 1 Public School District. She is entering her seventh year of teaching and has consistently received excellent evaluations of her teaching.

10. Plaintiff Christian Eriksen is a mathematics teacher at Alameda Senior High School in defendant Jefferson County Public School District R-1. He has been a teacher for over 20 years and regularly meets or exceeds the District's standards for evaluating teaching performance. In the 2002-03 academic year, he was selected as Teacher of the Year. He is an honorably discharged veteran of the United States Army.

11. Plaintiff Sean Guard is a sixth grade English teacher at Aurora Hills Middle School in defendant Adams-Arapahoe 28J (Aurora) Public School District. He is about to commence his second year of teaching, and has received satisfactory evaluations of his teaching performance.

12. Plaintiff Jolie Hendricks is a teacher at Sunrise Elementary School in defendant Cherry Creek 5 Public School District. She has taught for eight years and has been certified as a classroom teacher for five years. She has always received satisfactory performance evaluations of her overall teaching.

13. Plaintiff Rod Noel is a teacher at Hamilton Middle School in defendant Denver County 1 Public School District. He considers himself to be a patriotic person

and, several years ago, he received a commendation from the Colorado state government for his patriotism.

14. Plaintiff Allen Potter is a teacher at Rishel Middle School in defendant Denver County 1 Public School District. He has been a teacher for eight years and regularly receives excellent evaluations of his teaching performance.

DEFENDANTS

15. At all times relevant to the allegations of this Complaint, Defendant Bill Owens was the Governor of the State of Colorado. Under the Colorado Constitution, “[t]he supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed.” Colo. Const. art. II, § 2. Defendant Owens is sued only in his official capacity.

16. Defendant William J. Moloney was at all times relevant to the allegations of this Complaint the Commissioner of Education of the State of Colorado. Pursuant to Colorado law, the Commissioner of Education is “the chief state school officer and executive officer of the department of education.” § 22-2-110(1), C.R.S. The Commissioner of Education has the power “[t]o perform all duties which may be required by law” and to “issue instructions to school district officers and employees concerning the government of the public schools under their control.” § 22-2-113, C.R.S. Defendant Moloney is sued only in his official capacity.

17. Defendant Adams-Arapahoe 28J (Aurora) Public School District is a duly and regularly organized public school district within the State of Colorado pursuant to C.R.S. § 22-32-101, and, as such, is a body corporate and political subdivision of the State of Colorado with authority to sue and be sued. The District is governed by the

Board of Education of the Joint School District No. 28J of the Counties of Adams and Arapahoe pursuant to C.R.S. § 22-32-103.

18. Defendant Cherry Creek 5 Public School District is a duly and regularly organized public school district within the State of Colorado pursuant to C.R.S. § 22-32-101, and, as such, is a body corporate and political subdivision of the State of Colorado with authority to sue and be sued. The District is governed by the Cherry Creek Schools Board of Education pursuant to C.R.S. § 22-32-103.

19. Defendant Denver County 1 Public School District is a duly and regularly organized public school district within the State of Colorado pursuant to C.R.S. § 22-32-101, and, as such, is a body corporate and political subdivision of the State of Colorado with authority to sue and be sued. The District is governed by the Denver Board of Education pursuant to C.R.S. § 22-32-103.

20. Defendant Jefferson County Public School District R-1 is a duly and regularly organized public school district within the State of Colorado pursuant to C.R.S. § 22-32-101, and, as such, is a body corporate and political subdivision of the State of Colorado with authority to sue and be sued. The District is governed by the Board of Education of Jefferson County School District R-1 pursuant to C.R.S. § 22-32-103.

21. Under state law, all public school districts have the authority to discipline students and teachers for violations of the law pertaining to public education. Specifically, public school districts may suspend or expel a child from public school for continued willful disobedience or open and persistent defiance of proper authority.

Public school districts may dismiss teachers for neglect of duty, insubordination, or other good or just cause.

22. All defendants acted under color of state law at all times relevant to this Complaint.

FACTUAL ALLEGATIONS

23. In the Spring of 2003, the Colorado legislature enacted House Bill 03-1386, which has since been codified as § 22-1-106(2) C.R.S. (Attachment A). Among other things, the Colorado Mandatory Pledge Law requires the following:

(a) The law compels all public school students and all public school teachers to “recite aloud” the Pledge of Allegiance at the beginning of each school day.

(b) The law specifically mandates when and how often students and teachers shall recite the Pledge: Teachers 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.”

(c) In public high schools, students must recite the Pledge of Allegiance during daily announcements, or if a school does not have daily announcements, in every classroom in every school.

(d) Under the law, students and teachers must declare their loyalty by following the official language of the Pledge of Allegiance, which requires them to “pledge” their allegiance to the United States flag, as well as to the “Republic for which it stands.” 4 U.S.C. § 4.

(e) Students and teachers who do not wish to be forced to say the Pledge of Allegiance may refrain only if they assert religious grounds or establish that they are non-citizens.

(f) Neither teachers nor students may refrain from reciting the Pledge based on any other objection of conscience, including their own personal political or other non-religious scruples or beliefs.

(g) Parents may exempt their children from being forced to recite the Pledge, but parents must first disclose “in writing” that they object and “file[] the objection with the principal of the school.”

24. The Colorado Mandatory Pledge Law establishes no educational requirements regarding history, civics, or any other curricular subject.

25. On its face, the Colorado Mandatory Pledge Law discriminates among persons based on their viewpoints in the following manner:

(a) The law distinguishes overtly between those who desire to recite the Pledge and those who object to being compelled to recite the Pledge.

(b) While the law permits religious objections to the mandatory recitation of the Pledge for students, the law does not grant students the power to object on the basis of other rights of conscience.

(c) While the law permits religious objections to the mandatory recitation of the Pledge for teachers, the law does not permit teachers to object on the basis of other rights of conscience.

PLAINTIFF ZACHARY LANE

26. As a matter of personal conscience, Plaintiff Zachary Lane does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

27. Plaintiff Lane is a United States citizen and does not feel that he can object to the recitation of the Pledge under the law's "religious objection" provision.

28. Plaintiff Lane does not wish to ask one of his parents to sign a note on his behalf because he believes that the decision whether to recite the Pledge rests with him and does not belong to his parents.

29. Plaintiff Lane does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and sacrificing his constitutional rights of conscience. Lane will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

PLAINTIFF ANNE ROSENBLATT

30. As a matter of personal conscience, Plaintiff Anne Rosenblatt does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

31. Plaintiff Rosenblatt is a United States citizen and does not feel that she can object to the recitation of the Pledge under the law's "religious objection" provision.

32. Plaintiff Rosenblatt does not wish to ask one of her parents to sign a note on her behalf because she believes that the decision whether to recite the Pledge rests with her and does not belong to her parents.

33. Plaintiff Rosenblatt does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and sacrificing his constitutional rights of conscience. Rosenblatt will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

PLAINTIFF KEATY GROSS

34. As a matter of personal conscience, Plaintiff Keaty Gross does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

35. Plaintiff Gross is a United States citizen and does not feel that she can object to the recitation of the Pledge under the law's "religious objection" provision.

36. Plaintiff Gross does not wish to ask one of her parents to sign a note on her behalf because she believes that the decision whether to recite the Pledge rests with her and does not belong to her parents.

37. Plaintiff Gross does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and sacrificing her constitutional rights of conscience. Gross will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

PLAINTIFF SARAH BISHOP

38. As a matter of personal conscience, Plaintiff Sarah Bishop does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

39. Plaintiff Bishop is a United States citizen and does not feel that she can object to the recitation of the Pledge under the law’s “religious objection” provision.

40. Plaintiff Bishop does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and sacrificing her constitutional rights of conscience. Bishop will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

41. Plaintiff Bishop, a certified classroom teacher, can see no educational or pedagogic value to the rote recitation of the Pledge at the beginning of each school day.

PLAINTIFF CHRISTIAN ERIKSEN

42. As a matter of personal conscience, Plaintiff Christian Eriksen does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

43. Plaintiff Eriksen is a United States citizen and does not feel that he can object to the recitation of the Pledge under the law’s “religious objection” provision.

44. Plaintiff Eriksen does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and sacrificing his constitutional rights of conscience. Eriksen will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

45. Plaintiff Eriksen, a certified classroom teacher, can see no educational or pedagogic value to the rote recitation of the Pledge at the beginning of each school day.

PLAINTIFF SEAN GUARD

46. As a matter of personal conscience, Plaintiff Sean Guard does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

47. Plaintiff Guard is a United States citizen and does not feel that he can object to the recitation of the Pledge under the law’s “religious objection” provision.

48. Plaintiff Guard does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and sacrificing his constitutional rights of conscience. Guard will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

49. Plaintiff Guard, a certified classroom teacher, can see no educational or pedagogic value to the rote recitation of the Pledge at the beginning of each school day.

PLAINTIFF JOLIE HENDRICKS

50. As a matter of personal conscience, Plaintiff Jolie Hendricks does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

51. Plaintiff Hendricks is a United States citizen and does not feel that she can object to the recitation of the Pledge under the law’s “religious objection” provision.

52. Plaintiff Hendricks teaches at a year-round school, where the Colorado Mandatory Pledge Law is already being enforced. Each school day, she is faced with the dilemma imposed by the Colorado Mandatory Pledge Law, the choice between

violating a state law and sacrificing her constitutional rights of conscience. Hendricks will continue to be faced with this dilemma every day if the law is not enjoined.

53. Plaintiff Hendricks, a certified classroom teacher, can see no educational or pedagogic value to the rote recitation of the Pledge at the beginning of each school day.

PLAINTIFF ROD NOEL

54. As a matter of personal conscience, Plaintiff Rod Noel does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

55. Plaintiff Noel is a United States citizen and does not feel that he can object to the recitation of the Pledge under the law's "religious objection" provision.

56. Plaintiff Noel does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and sacrificing his constitutional rights of conscience. Noel will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

57. Plaintiff Noel, a certified classroom teacher, can see no educational or pedagogic value to the rote recitation of the Pledge at the beginning of each school day.

PLAINTIFF ALLEN POTTER

58. As a matter of personal conscience, Plaintiff Allen Potter does not wish to recite the Pledge of Allegiance as mandated under the Colorado Mandatory Pledge Law.

59. Plaintiff Potter is a United States citizen and does not feel that he can object to the recitation of the Pledge under the law's "religious objection" provision.

60. Plaintiff Potter does not wish to be faced with the dilemma imposed by the Colorado Mandatory Pledge Law, which is the choice between violating a state law and

sacrificing his constitutional rights of conscience. Potter will be faced with this dilemma on the first day of the academic year, and every day thereafter if the law is not enjoined.

61. Plaintiff Potter, a certified classroom teacher, can see no educational or pedagogic value to the rote recitation of the Pledge at the beginning of each school day.

62. Each of the plaintiffs objects to being compelled to recite the Pledge of Allegiance. Each of them objects on a basis that is derived not from religious principles, but from other objections of conscience.

63. Plaintiffs desire to live in a society in which speech is voluntary and flows from individual conscience or belief. They do not desire to live in a society in which they are compelled to speak in a manner that is prescribed by government edict.

64. An actual and immediate controversy exists between the Plaintiffs and the Defendants.

65. By their actions, defendants Owen and Moloney have represented their position that § 22-1-106(2) C.R.S. is constitutional as written.

66. Defendant Owens, by signing the bill into law, has indicated his understanding and belief that the law's provisions are constitutional.

67. On July 22, 2003, defendant Moloney distributed a memorandum in his official capacity to all Colorado school superintendents informing them that the Colorado legislature had enacted § 22-1-106(2) C.R.S. (Attachment B). Defendant Moloney expressly endorsed the principles underlying § 22-1-106(2) C.R.S., indicating that "the practices called for in these laws are already in place in a very large

proportion of our schools.” Id. In addition, he directed that where such practices are not in place, “the needed adaptations must be made now.” Id.

68. In requesting declaratory relief, Plaintiffs request an interpretation of the rights, legal status, and relationships of the parties under the law and facts set forth in this Complaint.

69. By their actions, defendants Adams-Arapahoe 28J (Aurora) Public School District, Cherry Creek 5 Public School District, Denver County 1 Public School District, and Jefferson County Public School District R-1, have indicated their intent to enforce some or all of the provisions of § 22-1-106(2) C.R.S. as written.

70. On July 25, 2003, counsel for the plaintiffs sent a letter to defendants Cherry Creek 5 Public School District, Denver County 1 Public School District, and Jefferson County Public School District R-1, requesting that these defendants advise plaintiffs’ counsel regarding these defendants’ enforcement of the Colorado Mandatory Pledge Law.

71. As of the date of this Complaint, Defendants Cherry Creek 5 Public School District and Denver County 1 Public School District have not responded to the July 25th letter. Defendant Jefferson County Public School District R-1, through counsel, has responded to the July 25th letter but has not specifically disavowed an intent to implement the law.

72. On August 11, 2003, plaintiffs’ counsel attempted to contact counsel for defendant Adams-Arapahoe 28J (Aurora) Public School District to inquire about that defendant’s plans regarding how to implement the Colorado Mandatory Pledge Law. Plaintiffs’ counsel had not contacted this defendant earlier because Plaintiff Guard did

not secure counsels' representation until after the July 25th letter had already been sent. As of the date of this Complaint, defendant Adams-Arapahoe 28J (Aurora) Public School District has not disavowed an intent to implement the law.

73. In requesting declaratory relief, Plaintiffs request an interpretation of the rights, legal status and relationships of the parties under the above law and facts.

74. There exists a genuine and credible threat that the Colorado Mandatory Pledge Law will be enforced against the Plaintiffs.

75. Defendants have no compelling or important governmental interest in requiring teachers and students who have objections of conscience to recite the Pledge of Allegiance on a daily basis against their will.

76. The plaintiffs have no adequate remedy at law. They are suffering and will continue to suffer irreparable harm unless this Court enjoins the enforcement of § 22-1-106(2) C.R.S. In the absence of an injunction, each of the Plaintiffs will be faced with the choice between flouting state law and foregoing constitutionally protected activity.

77. As a proximate and direct result of the operation of the challenged statute, the plaintiffs have been or will imminently be deprived of their constitutional rights.

FIRST CLAIM FOR RELIEF
(Forced Speech)

78. The enforcement and operation of § 22-1-106(2) C.R.S. will deny the plaintiffs their rights to not speak as guaranteed by the First Amendment to the Constitution of the United States.

SECOND CLAIM FOR RELIEF
(Viewpoint Discrimination)

79. The enforcement and operation of § 22-1-106(2) C.R.S. will deny the plaintiffs their rights to be free from state action that discriminates on the basis of their viewpoint, as guaranteed by the First Amendment to the Constitution of the United States.

THIRD CLAIM FOR RELIEF
(Equal Protection of the Laws)

80. The enforcement and operation of § 22-1-106(2) C.R.S., will deny plaintiffs the equal protection of the laws because of their political beliefs in violation of the Fourteenth Amendment of the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE plaintiffs pray that this Court:

A. Issue a declaratory judgment that the enforcement and operation of § 22-1-106(2) C.R.S. will deprive plaintiffs of their rights to be free from compelled speech in violation of the Constitution of the United States.

B. Issue a declaratory judgment that the enforcement and operation of § 22-1-106(2) C.R.S. will deprive plaintiffs of their rights to be free from viewpoint discrimination in violation of the Constitution of the United States.

C. Issue a declaratory judgment that the enforcement and operation of § 22-1-106(2) C.R.S. will deprive plaintiffs of their rights to the equal protection of the laws in violation of the Constitution of the United States.

D. Issue an injunction against all defendants, forbidding them:

(1) To in any way enforce the terms of § 22-1-106(2) C.R.S. in a manner that compels any teacher or student who has any objection of conscience to recite the Pledge of Allegiance.

(2) To in any way take action against, or treat differently, any teacher or student who chooses not to recite the Pledge of Allegiance, including, but not limited to: asking or requiring any students or teachers to disclose their reasons for declining to recite the Pledge; taking any actions designed to determine whether teachers or students who refrain from reciting the Pledge are relying on religious or non-religious objections; taking any form of disciplinary action against such persons; and recording the identity of such persons.

E. Award plaintiffs their costs, expenses and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b);

F. Grant any such other relief as this Court deems proper and necessary.

Dated this 12th day of August, 2003.

Respectfully submitted,

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In cooperation with the
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