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The 1940 case of Minersville School District v. Gobitis (310 U.S. 586) presents a church-state issue involving the constitutionality of a compulsory state regulation, the adherence to which would result in the violation of a personal, religious belief. The question presented before the U.S. Supreme Court in this case is whether or not a “state regulation requiring that pupils in the public schools, on pain of expulsion, participate in a daily ceremony of saluting the national flag” is in violation of personal and religious freedom guaranteed by the United States Constitution (310 U.S. 586).

“The Minersville School District, under claim of authority conferred by the Pennsylvania School Code, adopted a resolution which required teachers and pupils to salute the American flag as a daily patriotic demonstration” (“Constitutional Law—Compulsory Flag” 124-5). The Gobitis children, “aged twelve and thirteen, had been excluded from the public school because of repeated refusal to salute the national flag and recite the pledge of allegiance in accordance with an authorized order of the school board” (Andersen 149). The Gobitis children refused to salute the flag because they claimed that it violated their religious beliefs as Jehovah’s...
Witnesses. As a result of their expulsion, the father was found in violation of a Pennsylvania compulsory school attendance law (Howard 110). "The father of the children obtained an injunction in the Federal District Court against expulsion of the children by the school board on the grounds that exaction of the flag salute as a condition of attending a public school is an unconstitutional infringement of religious freedom" ("Constitutional Law—Compulsory Flag" 125). The Federal District Court granted the injunction and the Third Circuit Court of Appeals upheld the District Court's ruling. Arguments on behalf of the petitioners included the following:

- The resolution of the School Board requiring pupils to salute the flag was lawfully adopted, and the expulsion of the children was within its power and authority.
- The expulsion of the children did not violate any right under the Constitution of the United States.
- The refusal of the children to salute the national flag at school exercises because they believed that to do so would violate the written law of Almighty God as contained in the Bible was not founded on a religious belief.
- The act of saluting the flag has no bearing on what a pupil may think of his Creator.
- The act of saluting the flag does not prevent a pupil, no matter what his religious belief may be, from acknowledging the spiritual sovereignty of Almighty God by rendering to God the things which are God's. (310 U.S. 587-8)

Arguments for the respondents included the following:

- The rule compelling respondents to participate in the ceremony of saluting the flag and the act of its School Board in expelling them because they refrained, violate their rights guaranteed by Art. I, § 3, of the Constitution of Pennsylvania and the Fourteenth Amendment of the Constitution of the United States.
- The vital question is: Shall the creature man be free to exercise his conscientious belief in God and his obedience to the law of Almighty God, the Creator, or shall the creature man be compelled to obey the law or rule of the State, which law of the State, as the creature conscientiously believes, is in direct conflict with the law of Almighty God?
- Will any court attempt to say that
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Will any court attempt to say that
respondents mistakenly believe what is set forth in the twentieth chapter of Exodus in the Bible?

- The saluting of the flag of any earthly government by a person who has covenanted to do the will of God is a form of religion and constitutes idolatry.
- The rule certainly abridges the privileges of the respondents and deprives them of liberty and property without due process of law. (310 U.S. 589-90)

Justice Frankfurter delivered the Opinion of the Court. He asserted that the main preliminary question of the case was "whether school children, like the Gobitis children, must be excused from conduct required of all the other children in the promotion of national cohesion" (310 U.S. 595). Justice Frankfurter argued that national cohesion is "an interest inferior to none in the hierarchy of legal values. National unity is the basis of national security" (310 U.S. 595). He claimed that free society is ultimately founded on this national cohesion, the flag being the symbol of such. As a result, Justice Frankfurter held that the Gobitis children, despite their religious beliefs, should be subject to the ultimate cause of national cohesion and security.

Having answered the preliminary question, Justice Frankfurter stated that "the precise issue, then, for us to decide is whether legislatures of the various states and the authorities in a thousand countries and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious" (310 U.S. 597). Justice Frankfurter proceeded to address this issue by contending that "personal freedom is best maintained—so long as the remedial channels of the democratic process remain open and unobstructed—when it is ingrained in a people’s habits and not enforced against popular policy by the coercion of adjudicated law" (310 U.S. 599). Since he maintained that judicial review should not be "enforced against popular policy," Justice Frankfurter asserted that legislation should be excluded from adjudication and left to the political processes (as long as the political processes were free from interference) unless a constitutional violation is blatantly obvious. He concluded that "to fight out the wise use of legislative assemblies rather than to transfer such a contest to the judicial arena, serves to vindicate the self-confidence of a free people" (310 U.S. 600). As a result, the Court reversed the decisions of the lower federal courts.

As the lone dissenter, Justice Stone emphatically stated that "by this [compulsory flag salute] law the state seeks to coerce [the Gobitis] children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions" (310 U.S. 601). He conceded that individual liberties are not always absolutes, providing examples of the governmental right to survive by compelling citizens to give military service and to undergo military training. "But it is a long step," Justice Stone argued, "and one which I
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am unable to take, to the position that government may, as a supposed educational measure and as a means of disciplining the young, compel public affirmations which violate their religious conscience” (310 U.S. 602).

Justice Stone contends further against the compulsory flag salute regulation, arguing that there are ways to foster national cohesion and security other than compelling a student to comply with something the student does not believe and which violates the student's religious beliefs. He claims that civil liberty rights allow an individual to believe whatever the individual will and that such an individual right is guaranteed, despite any legislative rationale of a compulsory act to the contrary. Justice Stone deduced that the compulsory flag salute statute is “no less than the surrender of the constitutional protection of the liberty of the small minorities to the popular will” (310 U.S. 606). He concluded that such circumstances are within the limits of strict judicial scrutiny, and are indeed the Court’s responsibility, and should be held unconstitutional.

There is no doubt that the American Civil Liberties Union (ACLU) would agree with the dissenting opinion of Justice Stone. In fact, the ACLU filed a brief of amici curiae urging affirmation of the holdings of the lower federal courts granting the injunction. In its publication, “The Right to Religious Liberty,” the ACLU sets forth the rights it seeks to defend: “freedom of inquiry and expression; due process of law, equal protection under the law; and privacy” (Lynn, Stern, and Thomas vii). According to this ideology and the arguments contained in its brief of amici curiae, the ACLU would concur with Justice Stone’s dissent that flag saluting “compulsion is a prohibited infringement of personal liberty, freedom of speech and religion, guaranteed by the Bill of Rights” (310 U.S. 601).

Robert L. Cord, on the other hand, would be at odds with Justice Stone and the ACLU regarding the holding and reasoning in the case. In the preface to his book, Separation of Church and State, Cord states that “the constitutional doctrine of separation of Church and State meant that no national religion was to be instituted by the Federal Government, nor was any religion, religious sect, or religious tradition to be placed in a legally preferred position” (xiv). This fundamental, orthodox view of the separation of Church and State doctrine allows religion to affect government, and government to affect religion, so long as the religion is not “placed in a legally preferred position.” Cord argues further that “all governmental association with religion is not necessarily a violation of the First Amendment” (xiv). In the Minersville District v. Gobitis case, Cord observes that “as long as the state was pursuing a valid constitutional goal through its legislation, religious beliefs that the state had no aim or intent in violating would have to give way, despite the First and Fourteenth Amendment religious guarantees—neither of which is absolute” (150-1).

My view of this case relies on precedent, both in relation to footnote four of the Carolene Products case, and to Justice Holmes’ present danger test in Schenck v. United States. A close review of the facts of these two precedents leads to the conclusion that the injunction granted by the lower federal courts in Minersville District
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v. Gobitis must be upheld.

Footnote four in United States v. Carolene Products Co. states the following:

There may be a narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth.

[Prejudice] against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry. (304 U.S. 144, 164)

"Justice Stone's dissent was clearly cast along the lines" of this footnote (Danzig 687). It is reasonably clear that the compulsory flag salute rule is "on its face" a prohibition of the First Amendment right to freedom of speech and freedom of religion. Additionally, the minority status of the Jehovah's Witnesses likewise mandates a "narrower scope" and a "more searching judicial inquiry" into the Minersville District v. Gobitis case. If the Court had correctly applied strict scrutiny to this case, the holdings of the lower courts would have been affirmed. In fact, Justice Frankfurter conceded that reversal of the injunction would subject personal religiosity (a form of free speech) to the ultimate goal of national unity. Such subjection must be strictly scrutinized, generally resulting in the invalidation of the statute in question.

In addition to the precedent set by the Carolene Products footnote four, the present danger test of Justice Homes in Schenck likewise urges affirmation of the lower courts' holdings in Gobitis. "If freedom of religion from control or interference by the state, as supposedly protected by the due process clause of the Fourteenth Amendment, is to have any real meaning, it would seem that only in case of actual necessity as required by the clear and present danger test of Mr. Justice Holmes in the case of Schenck v. United States, would the state be allowed to invade this freedom" (Howard 107). Justice Frankfurter asserted that the government has the right to preserve itself and to enforce national security, "but to exercise such power there must be a 'clear and present danger' to the State, and 'the limitation upon individual liberty must have appropriate relation to the safety of the State'" (D.E.S. 446). It would be a far stretch indeed to argue that the refusal of two minority children to salute the American flag, on the basis of religious belief, constitutes a "clear and present danger" to the national security of the United States.

That the reasoning in the Opinion of the Court in Gobitis was flawed is evident in the opinion of Justices Black, Douglas and Murphy, who had joined in Justice Frankfurter's opinion, and in the overruling of the case by the Court three years later in West Virginia State Board of Education v. Barnette. Justices Black, Douglas and Murphy announced the following in a dissenting opinion...
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in *Jones v. Opelika*: “Since we joined in the opinion in the *Gobitis* case, we think this is an appropriate occasion to state that we now believe that it also was wrongly decided” (316 U.S. 584, 623-4).

The *Minersville District v. Gobitis* case did little to impact the interpretation of subsequent cases because its holding was overruled in *West Virginia State Board of Education v. Barnette*. One commentator has made the following observation, which I see to be a correct summary of what may be concluded from the *Gobitis* case:

In *Barnette* the majority opinion, written by Justice Jackson, held that the coerced flag ceremony contravened the freedom of speech guarantee of the first amendment. Justices Black, Douglas and Murphy added concurring statements that the compelled pledge and salute also violated the constitutionally protected religious freedom of the children. In stark contrast to Justice Frankfurter’s leadership of the court in *Gobitis*, no other Justice joined his dissenting opinion in *Barnette*. (Gard 420)

**Works Cited**


“Constitutional Law—Compulsory Flag Salute Sustained.”


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