

95-7237

IN THE
United States Court of Appeals
For the Second Circuit

DANIEL IMMEDIATO; DIANE IMMEDIATO; EUGENE IMMEDIATO,
Plaintiffs-Appellants,

- and -

MARIO GIRONDA, JR; MARIO GIRONDA; SANDRA GIRONDA,
Plaintiffs

v.

RYE NECK SCHOOL DISTRICT; KATHLEEN D. GULOTTA;
FRANK SPEDAFINO; BEATRICE CERASOLI; ALAN MANOCHERIAN;
JANICE K. ANDERSON; LIZ PERELSTEIN; PETER J. MUSTICH,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(CHARLES L. BRIEANT, Judge)

**BRIEF OF AMICUS CURIAE
THE ASSOCIATION FOR OBJECTIVE LAW**

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DANIEL IMMEDIATO, et al.,

Plaintiffs-Appellants,

v.

RYE NECK SCHOOL DISTRICT, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
For the Southern District of New York

(Charles L. Brieant, Judge)

BRIEF OF AMICUS CURIAE
THE ASSOCIATION FOR OBJECTIVE LAW

The Association for Objective Law,¹ Amicus Curiae, by Thomas A. Bowden and Robert S. Getman, its attorneys, files this Brief of Amicus Curiae in support of the Appellants' position for reversal.

Statement of Subject Matter and Appellate Jurisdiction

The Association for Objective Law adopts and incorporates by reference herein the Statement of Subject Matter and Appellate Jurisdiction contained in the Appellants' Brief.

1. Formed in 1988, The Association for Objective Law is a national organization of lawyers, law students and others whose purpose is to advance Objectivism, the philosophy of Ayn Rand, as the basis of a proper legal system.

Issue Presented

Whether public school officials who, in order to inculcate the moral doctrine of self-sacrifice, require students to render free services to the needy as a prerequisite for graduation, thereby violate the constitutional ban against prescribing what shall be orthodox in matters of opinion.

Statement of the Case

The Association for Objective Law adopts and incorporates by reference herein the Statement of the Case contained in the Appellants' Brief.

Statement of the Facts

Members of the Rye Neck School District Board of Education (the "Board"), a local public educational agency, voted to deny a public high school diploma to any student who refuses to serve the needy without pay. (A-54). Students must now spend at least 40 hours of their lives providing "basic human service" to "people in need--people who are poor, homeless, handicapped, or in need of education, supervision, or companionship." (A-54; emphasis in original). Service is defined by the Board as the "direct provision of a basic human service to a person or people in need without remuneration." (A-54; emphasis added).

In order to pass the course and receive a high school

diploma, every student must answer the question, "What DID YOU GAIN FROM THIS SERVICE?" (A-52; emphasis in original; A-66).

Summary of Argument

The Rye Neck School District Board of Education has established a morality test for graduating from high school. No longer is it sufficient for students to demonstrate that they have mastered a certain body of knowledge. Now, students must also demonstrate that they have practiced a certain code of morality. Mandatory service to the needy accomplishes no legitimate pedagogical goal. Rather, its aim is merely to establish altruism as the official morality of the Rye Neck School District. By prescribing what shall be orthodox in this crucial matter of opinion, the Board of Education has impermissibly infringed upon the constitutionally protected liberties of its students.

Argument

SCHOOL OFFICIALS WHO, FOR THE PURPOSE OF INCULCATING THE MORAL DOCTRINE OF SELF-SACRIFICE, REQUIRE STUDENTS TO RENDER FREE SERVICES TO THE NEEDY AS A PREREQUISITE FOR GRADUATION, ARE IMPERMISSIBLY PRESCRIBING WHAT SHALL BE ORTHODOX IN MATTERS OF OPINION.

In West Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943), the Supreme Court stated: "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" Barnette, 319 U.S. at 642; see also Board of Educ. v. Pico, 457 U.S. 853, 872 (1982). School boards must not impose "ideological discipline" upon their students, noted the Court in Barnette, 319 U.S. at 637. "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." Id. at 641 (emphasis added).

Elaborating on this same theme, the Court in Pratt v. Independent Sch. Dist., 670 F.2d 771, 776 (8th Cir. 1982), warned against permitting local authorities to impose a "'pall of orthodoxy' on classroom instruction which implicates the state in the propagation of a particular religious or ideological viewpoint." (Emphasis added). See also Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967).

Few decisions are more fundamental than the moral choice of who should benefit from one's actions. Should all of our efforts redound to the greater glory of God? Or, do we live only to serve our fellow human beings? Or, can we properly choose to regard ourselves as the proper ultimate beneficiaries of our own actions? This moral issue, in philosophical terms, is: altruism versus egoism.

"The basic principle of altruism is that man has no

right to exist for his own sake, that service to others is the only justification of his existence, and that self-sacrifice is his highest moral duty, virtue and value." Ayn Rand, "Faith and Force: The Destroyers of the Modern World," in Philosophy: Who Needs It 74 (1982). The essential meaning of egoism, on the other hand, is concern with one's own interests.

Thus, people who embrace self-sacrifice, whether for the benefit of God, humanity, or both, are altruists. People who pursue their own self-interest are egoists.

"Altruism," writes Ayn Rand, "declares that any action taken for the benefit of others is good, and any action taken for one's own benefit is evil. Thus the beneficiary of an action is the only criterion of moral value--and so long as that beneficiary is anybody other than oneself, anything goes." Ayn Rand, "Introduction," The Virtue of Selfishness vii (1964) (emphasis in original). To an altruist, then, service to the needy is intrinsically good, and pursuit of self-interest intrinsically evil. By wiping out the possibility of personal gain, altruists ensure the dominance of their morality.

To an egoist, on the other hand, service to those in need is not intrinsically good. While egoists may render services to those in need, without pay, egoists engage in such service only when they expect to benefit personally in some way. For most egoists, the process of judging what is

in one's self-interest is an essential part of living a moral life. Personal choice cannot be left out of the picture. There are many varieties of egoist, including adherents of Ayn Rand's philosophy of Objectivism as well as persons influenced by major figures in the history of philosophy such as Aristotle, Spinoza, and John Locke, all of whom advocated some form of egoism and therefore opposed altruism.

Obviously, an individual's choice of altruism or egoism as a guiding principle is complex, delicate, and personal. The nuances cannot be addressed, much less resolved, in a legal brief. Yet we are here because the Rye Neck School District Board of Education has arrogated to itself the authority, in defiance of constitutional guarantees, to decide this issue for its students. The Board has, in effect, established a morality test for graduating from high school. To receive a diploma, a student must, for at least 40 hours, practice the altruist code of morality. Egoistic students must set aside their own code of values and submit to the Board's prescription of what is orthodox in this matter of morality.

The Board is very clear about this. Its dictates leave no room for misunderstanding. If a student receives remuneration in exchange for service, the service does not count. (A-54). All service must be rendered "in conjunction with a not-for-profit corporation." (A-57; emphasis

added). Thus, one who accepts money for taking care of another human being gets no course credit (A-37), whereas one who renders the exact same services to someone who cannot afford to pay receives full credit. What legitimate pedagogical goal is served by forbidding payment? There is none. Only the Board's moral agenda is served. By forbidding personal benefit, the Board seeks to ensure that students experience the knife-in-the-gut feeling of giving something for nothing, of realizing that their own choices do not count, and that their own lives can properly be placed at the disposal of others who have nothing of value to offer in return.

There is no reason, aside from moral indoctrination, that can possibly account for the Board's single-minded effort to eradicate all possibility of personal benefit. Damnation of self-interest and personal benefit in favor of self-sacrifice to the needy are hallmarks of one particular moral doctrine. No recognized pedagogical doctrine regards self-interest as contemptible or incompatible with learning. Only if one's goal is to implant the moral principle of altruism does the issue even arise.

Mandatory student service is not education but moral indoctrination. It is Sunday School without the cross.

Through its mandatory service program, the Board thus "implicates the state in the propagation of a particular . . . viewpoint," imposing a "pall of orthodoxy" over the

classroom. The word "orthodox" means "conforming to established doctrine." Webster's New Collegiate Dictionary 804 (1979). The essential characteristic of an orthodoxy is the establishment of a monolithic viewpoint where diversity would otherwise exist. By establishing altruism as the preferred moral choice for its students, the Board is attempting to "prescribe what shall be orthodox" in violation of the teachings of Barnette. This is wrong, for exactly the same reasons that the establishment of an official State religion is wrong.

The lower court concluded that "parents may not use this Court to interpose their own way of life or their own philosophy, however laudable, as a barrier to reasonable state and local regulation of the educational curriculum." (A-79). What a contrast to Barnette, which stressed the limits on a government's right to dictate moral choices for its citizens. When considered in the context of what Barnette teaches us, the Board's regulations here cannot be called reasonable.

It is customary for the advocates of mandatory service to cloak their moral agenda in a recitation of neutral, secular pedagogical purposes. But the mere listing of educational purposes for a mandatory service program cannot erase the stain of constitutional infirmity. Remember the efforts of "creation scientists" to erect a scientific justification for teaching the Book of Genesis in the public

schools. Edwards v. Aguillard, 482 U.S. 578 (1987). In Edwards, the Supreme Court stated: "While the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham." Id. at 586-87.

Here, the Board's reasons for mandatory student service bear all the earmarks of a sham. The Board's justifications divide neatly into two categories: (1) those aimed at convincing students that self-sacrifice is really in their self-interest, and (2) those that simply assume altruism's superiority to egoism as an uncontrovertible, universal truth.

The first group of justifications includes the following:

- "[H]elps provide the student with a chance to enhance their own self-esteem, contact with a distinct career possibility, activities for their college applications and a training ground for job opportunity." (A-34).
- "To learn about yourself" (A-54).
- "In order for students to learn about the community they must go out into the community. The organizations to which students provide services are a major component of any community as are government offices and agencies." (A-35).
- "[B]ecome aware of the varied social, educational, and economic needs of both their community and school." (A-34).
- Enhance "the students' awareness of these needs, how needs can be met, and the opportunity to give a 'hands-on' response to what they encounter." (A-34).
- "[M]ove from the theoretical position of awareness

of a problem and into the real possibility of doing something about it. The normal classroom procedure does not always allow this possibility." (A-34).

The Board suggests that students' "self-esteem" can be enhanced by treating them like beasts of burden, forcing them into service without pay. The idea is ludicrous. Could anyone really believe that students will develop self-esteem by succumbing to orders, abandoning their own personal projects, and serving the needs of strangers? The true source of self-esteem is the achievement of one's own values. Pride in oneself cannot result from wiping one's own values out of existence. The only thing students will learn from this kind of exercise is: what is their breaking point?

As for career possibilities and job opportunities, this justification is an obvious sham, as careers and jobs are expected to be remunerative, whereas monetary compensation is forbidden by the Board's program.

As for the other goals, there are obviously dozens of ways to permit students to "learn about the community" without resorting to establishment of a moral orthodoxy. While courts will not normally second-guess local educational agencies in their choice of educational techniques, a program that is plainly aimed at moral indoctrination will not survive constitutional scrutiny.

The remainder of the Board's justifications simply assume the validity of altruism as a universally accepted

truth. The Board asserts as reasons the very principle of self-sacrifice whose imposition on unwilling students is to be justified. This second approach is logically circuitous and therefore begs the question:

- "To respond affirmatively and actively to the need for community service." (A-54).
- "To make a positive difference in the lives of people in need." (A-54).
- "To contribute back to a larger community that has served you." (A-54).
- "[T]o develop a sense of responsibility." (A-54).

It can readily be seen that each of these reasons is merely a reformulation of the same basic idea, assumed by the Board to be undisputed by all civilized people, namely, that self-sacrifice is a moral virtue. As soon as that premise is challenged--as soon as one recognizes that self-sacrifice is not a universal value--the constitutional implications become clearer. The choice between altruism and egoism is a matter of opinion within the meaning of Barnette. If no official, "high or petty," can prescribe what shall be orthodox in such matters, then the Rye Neck School District Board of Education, a decidedly petty arm of officialdom, must not be permitted to prescribe a moral code for its students.

Finally, the Board also offers the following reason why students should render free service to the poor:

- "To fulfill a graduation requirement of Rye Neck High School." (A-54).

This is the most absurd "reason" of all. It is equivalent to every frustrated parent's argument of last resort:

"Because I said so, that's why!"

On even minimal scrutiny, the so-called "educational purposes" for mandatory community service are revealed to be just so much window dressing. Any program, no matter how perverse, can be rationalized with secular justifications. But if an educator tried to justify breaking students' legs by asserting that students would benefit, by developing "personal coping skills" or "pride in their ability to overcome adversity," such a thin veil of rationalization would convince nobody. Why is it so easy to see the horror in a program that breaks students' bones, and yet so hard to see the same horror in a program that breaks students' spirits? While courts should normally defer to the decisions of school boards in curricular matters, this deference should not be employed so as to permit school boards to invade the sanctity of individual moral choices in the name of education.

Plainly, the Board is attempting to win converts to the moral code of self-sacrificial service. Those who are already practicing altruists obviously do not need such a mandatory program. Undoubtedly, some students will be converted to the Board's moral point of view. What is just as frightening, however, is that even those who are not converted will be expected to mouth agreement with the altruist

opinions underlying the program. Every student must answer the question, "What DID YOU GAIN FROM THIS SERVICE?" (A-52; emphasis in original; A-66). Passing grades go only to students who have properly "documented" their service. (A-57). Can it be doubted that a student who denies having gained anything, and who protests the loss of his or her time and effort, will fail the course and be denied a diploma? What better way to enforce moral orthodoxy?

The Board's entire scheme brings to mind the plight of the Jewish conversos in 15th century Spain. Although the situation here differs drastically in its historical significance, the moral and political principles involved are the same. The conversos were Jews who adopted the outward manifestations of the Catholic religion. Although some conversos genuinely changed their beliefs to satisfy the Catholic rulers, there were suspected to be "large numbers of backsliders, pretenders, crypto-Jews, and Judaizers who practiced their Hebraic rites in secret." Kirkpatrick Sale, The Conquest of Paradise 373 n.2 (1990). The Inquisition put great pressure on the conversos, many of whom were prominent at the Spanish court, and ultimately a number of conversos turned on their own religious brethren and cooperated with the Inquisition in forcing all Jews out of Spain in 1492. Id.

By modern methods of force that bear no visible resemblance to the methods of the Inquisition, the Rye Neck

School District is achieving the same goal, creating its own little army of conversos, impressionable young students who are intimidated into ignoring their own moral judgment in favor of a State-mandated orthodoxy. This would not be an achievement for any governmental agency to be proud of, but it is especially disgraceful emanating from a school district charged with nurturing and developing healthy young minds.

The Court below was concerned, understandably, with the need to preserve the basic educational mission of public schools from the splintering effects of a pluralistic society:

Parents may have 'value' based secular objections to many subjects, such as sociology, literature, or biology and will be tempted ultimately to seek intervention by the federal courts to have their children exempted from various classes, exercises, examinations, or activities, in a curriculum established, as in this case, by their duly elected board of education. No public policy will be served by this Court usurping the legitimate authority of school officials to perform their duties in educating citizens; to attempt to do so, because we, or Plaintiffs consider the Program undesirable on purely secular grounds would wreak havoc in the administration of the schools, and involve the federal judiciary impermissibly in matters of local Home Rule.

(A-77-78). Although this reasoning has the obvious advantage of not involving the courts in the day-to-day operation of schools, see Pico, 457 U.S. at 866, it has the drawback of leaving courts powerless to arrest the gradual accretion

of power, in the hands of school boards, to dictate students' moral choices. Logically, the only complete cure for this dilemma would be to shut down the public schools and allow parents to use the tax savings to send their children to private schools. If all schools were private and all parents free to choose the schools that their children would attend, the problem of compulsory exposure to unwanted ideas would not arise.

But the instant case does not present the issue of the desirability vel non of public schools. Rather, the issue is: given that public schools exist and function, shall limits be set on the discretion of school boards in enforcing particular viewpoints as to matters of opinion? The answer is clearly yes. It is admittedly difficult, if not impossible, to draw a consistent line between education and moral indoctrination. Yet if the Courts retire from the field altogether, except where religion is involved, then local educational agencies will be accountable to no one. It is not enough to prevent school boards from imposing religion on their students. Although all religions have a code of morality, not all codes of morality are religious. Dissenting moralities are not the less deserving of constitutional protection for that reason.

Public schools must be made to observe the distinction between communicating knowledge by educational techniques and inculcating a particular moral value system. Under

Barnette, schools can properly teach facts such as (1) the number of electrons in an atom of oxygen, (2) the validity of the Pythagorean theorem, and (3) the necessity of wearing protective goggles when grinding metal in shop class.

Barnette also permits educators to teach facts about altruism, including (1) the fact that it is one of several moral principles adhered to by many people, (2) information about how people practice altruism, and (3) information about the benefits that people believe to result from practicing altruism. But neither Barnette nor the Constitution permits the public schools to turn all of their students into practicing altruists.

The lower Court suggests that the best remedy for the students aggrieved by mandatory service is to "throw the rascals out" at the next school board election. (A-75). Justice Jackson, addressing a similar argument in his deservedly venerated opinion in Barnette, wrote for the Court:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

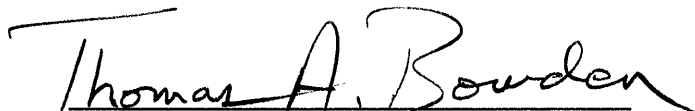
319 U.S. 638. The choice whether to live one's life as an altruist or an egoist is one of the fundamental rights that

majorities must not be permitted to touch, lest this Nation dissolve into factional warfare among the advocates of incompatible moral views.

Conclusion

For the reasons stated above, The Association for Objective Law respectfully requests that the decision of the lower Court be REVERSED.

Respectfully submitted,



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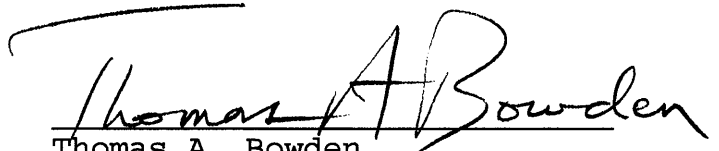
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CERTIFICATE OF CONSENT TO FILING OF AMICUS BRIEF

Pursuant to Fed. R. App. P. 29, this Brief is accompanied by the written consent to the filing of this Brief by

all parties to this case.


Thomas A. Bowden

CERTIFICATE OF SERVICE

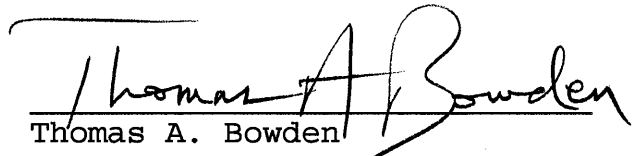
I CERTIFY that on this 21st day of April,
1995, two copies of this Brief of Amicus Curiae were mailed
via U.S. Mail, first class, postage prepaid, to the persons
listed below:

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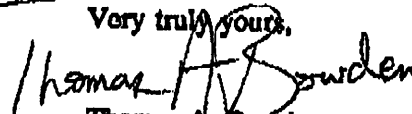
Re: Immediato, et al. v. Ryc Neck School District, et al.
 Civil Action No. 94 Civ 2831(CLB)

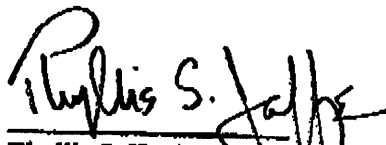
Dear Ms. Jaffe:

I am writing to you at the suggestion of Scott Bullock with respect to the filing of an *amicus* brief on behalf of the appellants before the Second Circuit in the referenced case. I am a member of the Board of Directors of The Association for Objective Law, an international organization of lawyers, law students, and others, whose purpose is to advance Objectivism, the philosophy of Ayn Rand, as the basis of a proper legal system. The Association has a standing interest in the controversy over mandatory student service, as evidenced by the *amicus* brief we filed in the case of *Steirer v. Bethlehem Area School District*, which was acknowledged by the Third Circuit Court of Appeals in footnotes 3 and 9 of its opinion.

If you consent to the filing of an *amicus* brief by The Association for Objective Law, would you be so kind as to indicate your assent by signing this letter in the space provided below and faxing it back to me, at (410) 385-4070. In view of the tight schedule for filing, a prompt response would be very much appreciated.

Very truly yours,


 Thomas A. Bowden


 Phyllis Jaffe, Esq.

cc: Scott Bullock, Esq.
 Board of Directors, The Association for Objective Law

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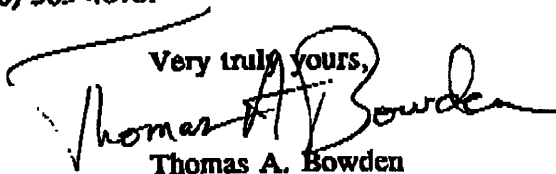
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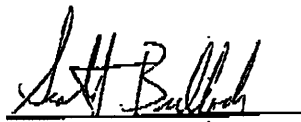
Dear Mr. Bullock:

I am writing to you with respect to the filing of an *amicus* brief on behalf of the appellants before the Second Circuit in the referenced case. As you know, I am a member of the Board of Directors of The Association for Objective Law, an international organization of lawyers, law students, and others, whose purpose is to advance Objectivism, the philosophy of Ayn Rand, as the basis of a proper legal system. The Association has a standing interest in the controversy over mandatory student service, as evidenced by the *amicus* brief we filed in the case of *Steirer v. Bethlehem Area School District*, which was acknowledged by the Third Circuit Court of Appeals in footnotes 3 and 9 of its opinion.

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Scott Bullock, Esq.