

Brenda Brinsdon v. McAllen Independent School District, Yvette Cavazos, and Reyna Santos  
2016 WL 4204797 (U.S. Ct. App. 5th Cir)

December 19, 2016

### **Background**

As part of an assignment in Spanish III class at a high school in McAllen, Texas, students were given an assignment to memorize and recite the Pledge of Allegiance of Mexico in Spanish as well as sing the Mexican National Anthem in Spanish. Students were to mimic the pledge ceremony that Mexican citizens observe by saying the words while standing with their right arm raised as a 45-degree angle. The exercise was intended to promote cultural awareness and language fluency.

The plaintiff-student, Brenda Brinsdon, objected to the assignment, saying that pledging allegiance to another country was wrong. She felt pressure to practice the pledge after raising her objection and wanted the entire class to be exempt from the assignment. Eventually, she was given an alternate assignment to complete. The situation garnered national publicity after the student secretly recorded her classmates reciting the pledge and her father contacted the media. The student's father was interviewed by Glenn Beck on the radio, and the student was interviewed by Fox News. Thereafter, the school was flooded with calls, letters and emails, many of which were derogatory and threatening. Approximately one month after the student raised her objection, the student was removed from the class and completed Spanish III by self-study in the teacher's office.

The student filed suit against the school district, the teacher and the principal, claiming her First Amendment Rights were violated and that she received disparate treatment when she was removed from the class. The trial court granted summary judgment in part for the teacher and principal on their qualified immunity defense. The court also granted the school district's motion for summary judgment regarding the student's removal from class. The First Amendment "compelled speech" and equal protection claims went to trial, at which time the court entered judgment as a matter of law in favor of the school district. The student appealed on all issues.

### **Holding**

On appeal, the court found no liability on the school district because the student did not show an official policy or that the school district had knowledge of the Mexican Pledge of Allegiance assignment. The student argued that the school district had constructive knowledge of this

assignment because this same assignment had been given for 15 years and the principal's children had even done the assignment. The court reasoned that the school district's knowledge of an assignment was not the equivalent of requiring student to recite the pledge. Moreover, no evidence was presented of any previous complaints about the assignment. With respect to the student's compelled speech allegations under the First Amendment, the court found that the recitation of the Mexican pledge was not trying to change students' beliefs, but was a simulation. The court noted that a school may compel some speech, and that students generally cannot pick and choose what assignments they find proper. The court accordingly determined that the qualified immunity on compelled speech was properly granted.

The court further found that removal of the student from the Spanish III classroom was a reasonable action, given the level of threats that were directed to the school and the teacher. Therefore, qualified immunity was properly given to the teacher and the principal on the First Amendment and the Equal Protection claims.

### **Learning Point**

This case highlights how a classroom assignment that seems innocuous can be interpreted as controversial. It is possible that the "simulation" aspect of this assignment – standing and raising the right hand while reciting – was the true reason why this student found the assignment to be objectionable. This school district did not seem to have much opportunity to de-escalate the situation prior to the student secretly recording in the classroom and the parent going to the media. However, since the purpose of the assignment was to promote cultural awareness and language fluency, these learning goals would still be accomplished even without the simulated "pledging" allegiance to another country.