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Michael Nelson, Principal
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Dr. John Harper, Superintendent
Bartow County School System
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Via E-mail

Re: Forcing students to engage in the March 14 National School Walkout in violation of their First Amendment rights

Dear Principal Nelson and Superintendent Harper,

Schools are places of education, not indoctrination. The Supreme Court reaffirmed this venerable principle nearly 80 years ago, when it struck down attempts to force students to participate in the nationwide ritual of saluting the American flag and reciting the Pledge of Allegiance. "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." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). For that reason, the First Amendment "protects the right to be free from compelled speech." *Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004).

The ACLU of Georgia writes on behalf of Allison Green, whose son attends Cass High School, out of concern that your school unconstitutionally forced her son and other students to collectively participate in a symbolic act of compelled speech on March 14, 2018, the day of the National School Walkout. Specifically, it is our understanding that after students presented a skit on school shootings over the intercom system that morning, the entire school was instructed to exit their classrooms and stay in the hallways for several minutes to observe a moment of silence. No advance notice was given to parents. Ms. Green's son did not want to engage in this symbolic act but did so because participation was clearly mandatory.[1]

Forcing students to participate in this collective symbolic act was an egregious violation of the First Amendment. Compelling students to engage in speech "transcends constitutional limitations . . . and invades the sphere of intellect and spirit which it is the purpose of the First

[1] *See Holloman v. Harland*, 370 F.3d 1252, 1269 (11th Cir. 2004) ("Given the gross disparity in power between a teacher and a student, . . . comments . . .coming from an authority figure with tremendous discretionary authority . . . carry a presumption of legitimacy [and] cannot help but have a tremendous chilling effect on the exercise of First Amendment rights.").

Amendment to our Constitution to reserve from all official control." *Barnette*, 319 U.S. at 642. It was widely understood throughout the United States that the act of walking out of the classroom on March 14, 2018 constituted a public declaration of belief that the status quo was responsible for the tragic Parkland shootings and that something other than the status quo was necessary to address the problem. It was unconstitutional to force students who did not share this view to engage in this symbolic act of public protest. Even students who do share this view may not wish to express that view in such a public and exposed manner, and they are free to choose their own manner of expression, if any.

It makes no difference that students were not technically required to utter specific words, because the ritual of walking out of the classroom to observe a moment of silence on March 14 was inextricably intertwined with a widely-known message, just like the compulsory flag salute that was struck down by the Supreme Court nearly 80 years ago in *Barnette*. The physical act of saluting the flag was considered a "ceremony of assent" and a "form of utterance," even if that component of the speech contained no words. *Barnette*, 319 U.S. at 632, 634. The symbolic act of walking out on March 14 is no different. *Cf. United States v. O'Brien*, 391 U.S. 367 (1968) (expressive conduct can be the equivalent of spoken words); *Riley v. Nat'l Fed. Of the Blind of N.C.*, 487 U.S. 781, 796-97 (1988) ("There is certainly some difference between compelled speech and compelled silence, but in the context of protected speech, the difference is without constitutional significance").

The Parkland shootings were an undeniable tragedy, and schools are free to encourage students to debate the response, if any, to that tragedy. Indeed, schools have a responsibility to "educat[e] the young for citizenship," *Barnette*, 319 U.S. at 637, which includes the ability to debate issues in a civilized manner. But it is because of that very educational mission that schools must be "scrupulous" to protect the "constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *Id.* That means that schools cannot force their students to express the same opinion, whatever that opinion may be. "Compulsory unification of opinion" is anathema to the First Amendment. *Id.* at 641.

We respectfully urge you to issue a formal apology to all students who were compelled to participate in the walkout on March 14, and to take steps to ensure that the First Amendment rights of all students are respected in the future. We look forward to your response and are happy to discuss this matter by phone.

Sincerely,

Sean J. Young
Legal Director
ACLU of Georgia