

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KIZZY LANDRY, <i>Individually, and as</i>)	Civil Action No.: 4:17-cv-3004
<i>next friend of I.L., a minor;</i>)	
)	
<i>Plaintiff,</i>)	
)	PLAINTIFFS' ORIGINAL
)	COMPLAINT FOR DECLARATORY
-vs-)	JUDGMENT, INJUNCTIVE RELIEF,
)	AND DAMAGES
CYPRESS FAIRBANKS ISD, and)	
PRINCIPAL MARTHA STROTHER,)	
<i>Individually,</i>)	
)	
Defendants.)	

**PLAINTIFF'S ORIGINAL COMPLAINT FOR
DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND DAMAGES**

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES PLAINTIFF KIZZY LANDRY, *Individually, and as next friend of I.L., a minor;* complaining of CYPRESS FAIRBANKS ISD and PRINCIPAL MARTHA STROTHER *Individually,* and will show the following:

I. INTRODUCTORY STATEMENT

1. I.L., 17, a student at Windfern High School had respectfully sat for the Pledge of Allegiance (the pledge) around 200 times in class through six or more teachers without incident. October 2, 2017 I.L. happened, however, to be sitting in head principal Martha Strother's office when the pledge was recited over the school intercom. I.L. continued to sit. Principal Strother upon seeing this immediately expelled I.L. from school saying "Well you're kicked outta here." Assisatnt Principal Fitt then gave Kizzy Landry fiveminutes to pick up I.L. or the police would escort here out of the school. Windfern

administration had recently been whipped into a frenzy by the publicity of African-American National Football League players kneeling for the National Anthem.

2. The right for a student not to be forced to stand for the pledge is an old one. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) (*We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.*) The plaintiff seeks appropriate declaratory and injunctive relief, as well as damages. Furthermore, instant expulsion from a public school is not allowed if a student is a danger. *Goss v. Lopez*, 419 U.S. 565 (1975).

II. JURISDICTION, VENUE, AND CAUSE OF ACTION

3. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as the facts arose in Harris County, Texas within the U.S. Southern District of Texas and defendants are located within the district.
5. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
6. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution.

III. PARTIES

7. Plaintiff Kizzy Landry, individually and as next friend of I.L., a minor, is a resident of Harris County, Texas.

8. Cypress Fairbanks ISD is a governmental entity existing under the laws of the state of Texas and can be served with process by serving Superintendent Mark Henry at 10300 Jones Road, Houston, Texas 77065 or wherever he is found.
9. Defendant Principal Martha Strother is an individual and resident of Harris County, Texas and can be served with process 12630 Windfern Road, Houston, Texas 77064 or wherever she is found.

IV. FACTS

10. Kizzy Landry is the mother of I.L., 17.
11. I.L., a student at Windfern High School of the Cypress Fairbanks ISD, had respectfully sat for the Pledge of Allegiance (the pledge) around 200 times in class through six or more teachers without incident. October 2, 2017 I.L. happened, however, to be sitting in head principal Martha Strother's office, with school secretary Mrs. Walter's present, at 9:30 am when the pledge was recited over the school intercom. I.L. continued to sit. Principal Strother upon seeing this immediately expelled I.L. from school saying "*Well you're kicked outta here.*" After sitting for a few minutes I.L. was directed to Assistant Principal Fitt's office. Principal Fitt told India to call her mother to come pick her up and if your mom does not get her in five minutes an officer will escort you from the building. Mrs. Walters said, "This is not the NFL." Ms. Fitt said India was going to stand for the pledge like the other African-American in her class.

12. Principal Strother had recently been whipped into a frenzy by the publicity of African-American National Football League players kneeling during the National Anthem at NFL football games.¹
13. Ms. Landry got a phone call from India to pick her up as she was being expelled from school. Ms. Landry arrive at Windfern at about 10 am and tried to talk to the Principal Strother to determine the reason for the pulsion but Principal Strother would not see Ms. Landry. The secretary said to sign I.L. out of school.
14. After Ms. Landry got home she phone at 10:45 am to Superintendent Mark Henry. Ms. Landry explained the entire situation as a message with receptionist and the receptionist said someone would call Ms. Landry that day or the latest the morning of October 3, 2017.
15. The next day October 3, 2017 Ms. Landry again called the Superintendent Henry and told receptionist no one had called as promised and repeated in incident. The receptionist stated she had forward the message and said she would forward the message to Superintendent Henry. About 8 am Cypress Spring High School and spoke Assistant Principal Smith to see if India could return to Cypress Spring High School. Principal Smith phoned Principal Strother and the reported top Ms. Landry that no one can sit for the Pledge at her school. Later that evening around 7 or 8 pm Mr. Campbell an assistant to the superintendent in student services phoned and Ms. Landry phoned again. Mr. Campbell indicated he would contact Principal Strother that night or in the morning.

¹ Strother later assumes that India was sitting for the same reasons as National Football League players were kneeling during the National Anthem-disparate treatment of African Americans in U.S. society-when India had not divulged her reasons.

16. October 4, 2017 in the afternoon Mr. Campbell affirmed he had spoken with Principal Strother and that Principal Strother should be calling Mr. Landry that day. Ms. Landry received no phone call. Principal Strother called in the evening and asked to meet the possibilities of India returning to Windfern. A meeting time was set up for October 5, 2017 at 8:30 am.
17. October 5, 2017 at 8:30 am Ms. Landry and India met with Principal Strother. Principal iterated that India must stand for the pledge to be let back in at Windfern. Principal Strother said that sitting was disrespectful and would not be allowed. Principal Strother suggested that India write about justice and African Americans being killed. Ms. Strother then said the meeting is over and if India does not stand for the pledge she cannot return to Windfern.
18. At about 10 am Ms. Landry got a call from a local TV reporter from KHOU Channel 11 about the “pledge controversy.” At 5 pm that afternoon a story aired on KHOU Channel 13 News about the situation.
19. October 6, 2017 at about 8:41 am Principal Strother called and said now India could sit for the pledge. India returned to Windfern at 10:30 am.

V. LEGAL CLAIMS

Violation of the 1st Amendment

20. Plaintiff reasserts all previous paragraphs.
21. The First Amendment to the Constitution provides that “Congress shall make no law...abridging the freedom of speech...”

22. This First Amendment right extends to public school students who do not wish to be forced to stand for the pledge. *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943). Because I.L. peacefully exercised her right not to stand for the pledge Principal Strother instantly expelled I.L. from school.

Violation of the 5th and 14th Amendments

23. Plaintiff reasserts all previous paragraphs.
24. The Fifth Amendment to the Constitution provides that “No person shall...be deprived of life, liberty, or property, without due process of law...”
25. The Fourteenth Amendment applies this right to the State action “...nor shall any state deprive any person of life, liberty, or property, without due process of law...”
26. This Fifth Amendment right extends to public school students who are subject to being expelled from public school. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Brown v. Board of Education*, 347 U.S. 483 (1954). “*The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the plaintiffs were students in good standing.*” *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961).
27. Regarding students, such as I.L, subject to suspension and expulsion “*due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.*” *Goss v. Lopez*, 419 U.S. 565 (1975).

28. Defendant Principal Strother's instant expulsion of I.L. from school without notice and opportunity to be heard violated I.L.'s due process rights and she suffered at least loss of education and great mental anguish.

VI. REQUEST FOR RELIEF

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Enter judgment for plaintiff against defendants jointly and severally for their damages;
2. Declare that the defendants have violated the rights of the plaintiffs for the reasons described above;
3. Award the plaintiff exemplary and punitive damages against the individual defendants;
4. Award the plaintiff her costs and attorneys' fees pursuant to 42 U.S.C. § 1988;
5. Award pre- and post-judgment interest; and
6. Award all other relief to which plaintiff shows herself entitled.

RESPECTFULLY SUBMITTED,
LAW OFFICE OF RANDALL L. KALLINEN PLLC

/s/ Randall L. Kallinen

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