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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THE REV. DR. MICHAEL  
A. NEWDOW, et al.,

NO. CIV. S-05-17 LKK/DAD

Plaintiffs,

v.

O R D E R

THE CONGRESS OF THE UNITED  
STATES OF AMERICA, et al.,

Defendants.

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On October 11, 2005, the court ordered plaintiffs to file affidavits in support of an injunction regarding their standing and the merits. Defendants were ordered to file a motion for summary judgment as to Elverta Joint Elementary School District, if appropriate. Defendants were also ordered to file responsive affidavits, if any.

The court is in receipt of the parties' affidavits and motions. On October 25, 2005, the parties stipulated that plaintiffs Jan Roe and RoeChild-1 are dismissing the complaint in

1 its entirety as it pertains to Elverta Joint Elementary School  
2 District, resulting in the dismissal from this lawsuit of DoeChild-  
3 1 and the Elverta Joint Elementary School District.

4 On November 16, 2005, Elk Grove Unified School District  
5 ("EGUSD") moved to dismiss plaintiffs Jan Doe, Pat Doe and  
6 DoeChild's claims against it.<sup>1</sup> Defendant EGUSD explains that the  
7 declaration of DoeChild filed in support of the request for a  
8 permanent injunction establishes that he or she currently attends  
9 one of EGUSD's middle schools and that his or her teacher does not  
10 lead the students in reciting the Pledge, and that the last time  
11 the Pledge was recited in his or her classroom was last year. They  
12 thus contend that because DoeChild is no longer in elementary  
13 school, he or she is not affected by EGUSD's Patriotic Observances  
14 Elementary School Administrative Regulation which states that  
15 "[e]ach elementary school class [shall] recite the pledge of  
16 allegiance to the flag once each day." Mot. at 2. The court has  
17 confirmed that DoeChild is currently a student in one of EGUSD's  
18 Middle Schools and that DoeChild's teacher does not lead him or her  
19 in saying the Pledge. DoeChild Decl. at ¶¶ 4, 9.<sup>2</sup>

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22 <sup>1</sup> Defendants explained that they were not made aware of the  
23 fact that the Doe plaintiffs do not have standing to bring a claim  
against EGUSD until October 24, 2005.

24 <sup>2</sup> The Pledge of Allegiance is not recited on a daily basis  
25 in EGUSD middle and high schools. Pursuant to EGUSD AR 6115, the  
26 Pledge is just one way that secondary schools may satisfy the  
patriotic observance requirement of Education Code § 52720. Ladd  
Decl. at ¶ 4.

1 With respect to EGUSD, in the First Amended Complaint filed  
2 on behalf of plaintiffs, the policy complained of applies only  
3 elementary schools. Because plaintiff DoeChild is no longer in  
4 elementary school, the Doe plaintiffs are unable to establish an  
5 injury-in-fact that provides them standing to challenge the EGUSD  
6 Patriotic Observance Policy and they fail to meet the legal  
7 standard for issuance of a permanent injunction. DoeChild states  
8 that he or she is afraid that the "Pledge will be recited again  
9 every day next year" and that "this will be a bigger problem," but  
10 this fear is insufficient to constitute actual injury or imminent  
11 harm. See Friends of the Earth v. Laidlaw Env'tl. Svcs. Inc., 52  
12 U.S. 167, 180-81 (2000) (To have standing, injury or harm must be  
13 actual or imminent, not conjectural or speculation). Accordingly,  
14 based on the declarations and papers filed herein, the court hereby  
15 ORDERS as follows:

16 1. Doe plaintiffs are DISMISSED on the ground that they lack  
17 standing to challenge the EGUSD Elementary School Pledge Policy.  
18 As a result, EGUSD is DISMISSED as a defendant in this case.

19 2. Defendant Rio Linda School District is PROHIBITED from  
20 applying its Board Policy AR 6115 to the extent the policy requires  
21 the recitation of the Pledge of Allegiance so as to fulfill the  
22 patriotic exercise requirement of California Education Code Section  
23 52720. Employees and agents of defendant Rio Linda School District  
24 are also enjoined from leading students in reciting the Pledge of  
25 Allegiance for the purpose of satisfying the patriotic exercise  
26 requirement of California Education Code 52720.

3. The permanent injunction issued by this Court as to Rio Linda School District is hereby STAYED pending the resolution of any and all appeals regarding this matter brought before the U.S. Court of Appeals for the Ninth Circuit and the United States Supreme Court.

IT IS SO ORDERED.

DATED: November 18, 2005.

/s/Lawrence K. Karlton  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT