

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL A. NEWDOW; JAN ROE, and ROECHILD-2,
Plaintiffs/Appellees,
vs.
RIO LINDA UNION SCHOOL DISTRICT,
Defendant/Appellant,
and
UNITED STATES OF AMERICA,
Defendant/Intervenor-Appellant,
and
JOHN CAREY, et al.,
Defendant/Intervenor-Appellants.

On Appeal from the United States District Court
for the Eastern District of California
Honorable Lawrence K. Karlton
Case No. CIV-05-0017-LKK/DAD

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. 2:05-CV-00017-LKK-DAD

THE REV. DR. MICHAEL A. NEWDOW, IN PRO PER;
JAN DOE AND PAT DOE, PARENTS; DOECHILD, A MINOR CHILD;
JAN ROE; PARENT; ROECHILD-1 AND ROECHILD-2, MINOR CHILDREN;

Plaintiffs,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
PETER LEFEVRE, LAW REVISION COUNSEL;
THE UNITED STATES OF AMERICA;
ARNOLD SCHWARZENEGGER, GOVERNOR OF CALIFORNIA;
RICHARD J. RIORDAN, CALIFORNIA SECRETARY FOR EDUCATION,
THE ELK GROVE UNIFIED SCHOOL DISTRICT ("EGUSD");
DR. STEVEN LADD, SUPERINTENDENT, EGUSD;
THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT ("SCUSD");
DR. M. MAGDALENA CARRILLO MEJIA, SUPERINTENDENT, SCUSD;
THE ELVERTA JOINT ELEMENTARY SCHOOL DISTRICT ("EJESD");
DR. DIANNA MANGERICH, SUPERINTENDENT, EJESD;
THE RIO LINDA UNION SCHOOL DISTRICT ("RLUSD");
FRANK S. PORTER, SUPERINTENDENT, RLUSD;

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs allege as follows:

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JURISDICTION AND VENUE

1. This is a civil action claiming (among others) violations of the First, Fifth and Fourteenth Amendments of the Constitution of the United States of America. As such, this Court has jurisdiction under 28 U.S.C. § 1331.
2. This is a civil action claiming violations of 42 U.S.C. §§ 2000bb et seq. (Religious Freedom Restoration Act (RFRA)). As such, this Court has jurisdiction under 42 U.S.C. §§ 2000bb-1(c) and 28 U.S.C. § 1331.
3. This action is founded in part upon the Constitution of the United States of America. As such, this Court has jurisdiction over Defendant United States of America under 28 U.S.C. § 1346(a)(2).
4. This action is in the nature of mandamus, and seeks to compel the Congress of the United States of America; Peter LeFevre, Law Revision Counsel; the United States of America, its agents and its officers; to perform their duties owed Plaintiffs under the terms of the First and Fifth Amendments of the Constitution of the United States and under 42 U.S.C. § 2000bb et seq. As such, this Court has jurisdiction under 28 U.S.C. § 1361.
5. This action alleges that Defendants Arnold Schwarzenegger, Governor of the State of California; Richard J. Riordan, California Secretary for Education; and the School District Defendants¹ have deprived Plaintiffs of rights secured by the First, Fifth and Fourteenth Amendments to the Constitution of the United States of America. As such, this Court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a)(3).
6. Defendants the Congress of the United States of America; Peter LeFevre, Law Revision Counsel; and the United States of America are each an officer or employee of the United States, an agency of the United States, or the United States. All Plaintiffs reside in this judicial district. Venue is therefore proper under 28 U.S.C. § 1391(e)(1) and § 1391(e)(3).
7. A substantial part of the events or omissions giving rise to this claim occurred, occur or will occur in the Eastern District of California. Venue is therefore proper under 28 U.S.C. § 1391(b)(2) and § 1391(e)(2).

¹ For convenience, the Elk Grove Unified School District ("EGUSD"); Dr. Steven Ladd, Superintendent, EGUSD; the Sacramento City Unified School District ("SCUSD"); Dr. M. Magdalena Carrillo Mejia, Superintendent, SCUSD; the Elverta Joint Elementary School District ("EJESD"); Dr. Dianna Mangerich, Superintendent, EJESD; the Rio Linda Union School District ("RLUSD"); and Frank S. Porter, Superintendent, RLUSD will henceforth be referred to as the "School District Defendants."

8. Defendants Arnold Schwarzenegger, Governor of the State of California; Richard J. Riordan, California Secretary for Education; and the School District Defendants reside in Sacramento County, California. Venue is therefore proper under 28 U.S.C. § 1391(b)(3).

PARTIES

9. Plaintiff Michael A. Newdow is a resident and citizen of the United States, of the State of California, and of Sacramento County. He is also the owner of property situated in Elk Grove and in Sacramento, California. Accordingly, he pays taxes that are used to fund the EGUSD, the SCUSD, and their respective schools. He is the father of a child enrolled in one of EGUSD's schools.

10. Plaintiffs Jan Doe and Pat Doe are residents and citizens of the United States, of the State of California, and of Sacramento County. They own property situated in Elk Grove, California. Accordingly, they pay taxes that are used to fund the EGUSD and its schools. They are the parents of DoeChild, with full legal custody of that child.

11. Plaintiff DoeChild is a resident and citizen of the United States, of the State of California, and of Sacramento County. DoeChild is the child of Jan and Pat Doe, and is enrolled in one of the EGUSD's schools.

12. Plaintiff Jan Roe is a resident and citizen of the United States, of the State of California, and of Sacramento County. Jan Roe is also the owner of property situated in the Elverta section of Sacramento, California. Accordingly, Jan Roe pays taxes that are used to fund the EJESD and its schools. Jan Roe is the parent of RoeChild-1 and RoeChild-2, with full joint legal custody of those children.

13. Plaintiff RoeChild-1 is a resident and citizen of the United States, of the State of California, and of Sacramento County. RoeChild-1 is enrolled in one of the EJESD's schools. RoeChild-1 is a child of Jan Roe, and a sibling of RoeChild-2.

14. Plaintiff RoeChild-2 is a resident and citizen of the United States, of the State of California, and of Sacramento County. RoeChild-2 is enrolled in one of the RLSD's schools. RoeChild-2 is a child of Jan Roe, and a sibling of RoeChild-1.

15. Defendant the Congress of the United States of America is the branch of government in which all legislative Powers are granted under Article I, Section 1 of the United States Constitution.

1 16. Defendant Peter LeFevre is the Law Revision Counsel. As such – pursuant to 2 U.S.C. §
2 285b – he is responsible for the preparation and publication of the United States Code,
3 wherein Defendants United States Congress and the United States of America make the
4 purely religious assertion that that the United States is a nation “under God.”

5 17. Defendant the United States of America is the constitutionally established government of
6 the United States of America.

7 18. Defendant Arnold Schwarzenegger is the Governor of the State of California. As such, he
8 is the chief executive office of the State, responsible for ensuring that all State actors
9 abide by both the State Constitution and the Constitution and the laws of the United States
10 of America. He is also holds the ultimate responsibility for the California Department of
11 Education.

12 19. Defendant Richard J. Riordan is the California Secretary for Education. As such – after
13 Defendant Schwarzenegger – he is the highest-ranking State official responsible for the
14 education of California’s schoolchildren.

15 20. Defendant the Elk Grove Unified School District (“EGUSD”) is the governing body
16 responsible for operating, controlling and supervising free public schools in Elk Grove,
17 California.

18 21. Defendant Dr. Steven Ladd is the Superintendent of Schools for the EGUSD. He is
19 responsible for the administration and management of the District’s schools.

20 22. Defendant the Sacramento City Unified School District (“SCUSD”) is the governing body
21 responsible for operating, controlling and supervising free public schools in Sacramento,
22 California.

23 23. Defendant Dr. M. Magdalena Carrillo Mejia is the Superintendent of Schools for the
24 SCUSD. She is responsible for the administration and management of the District’s
25 schools.

26 24. Defendant the Elverta Joint Elementary School District (“EJESD”) is the governing body
27 responsible for operating, controlling and supervising free public schools in Elverta,
28 California.

29 25. Defendant Dr. Dianna Mangerich is the Superintendent of Schools for the EJESD. She is
30 responsible for the administration and management of the District’s schools.

1 26. Defendant the Rio Linda Union School District ("RLUSD") is the governing body
2 responsible for operating, controlling and supervising free public schools in Rio Linda,
3 California.

4 27. Defendant Frank S. Porter, is the Superintendent of Schools for the RLUSD. He is
5 responsible for the administration and management of the District's schools.
6

CLAIM FOR RELIEF

A. GENERAL HISTORY RELATED TO THE PLEDGE OF ALLEGIANCE

28. This action is one of first impression,² charging that the Congress of the United States of America violated the Religion Clauses of the First Amendment by altering the Pledge of Allegiance to include the words “under God.” The pertinent facts follow.

29. In preparation for the 400th anniversary of Columbus’s arrival in the New World, *The Youth’s Companion* – a children’s magazine based in Boston – published on September 8, 1892 the following short recitation:

I pledge allegiance to my Flag and to the Republic for which it stands: one Nation indivisible, with Liberty and Justice for all.

30. With the support of President Benjamin Harrison, schools throughout the nation were encouraged to use that “pledge” that year as part of their Columbus Day festivities.

31. Subsequently, the nation’s schools adopted this pledge to be recited daily by the students, led by their teachers.

32. As increasing numbers of immigrants flowed into the country, “my Flag” became somewhat ambiguous. Thus, in 1923, those two words were replaced by “the flag of the United States.” The phrase “of America” was appended a year later.

33. In 1942, Congress sent a joint resolution regarding an official Code of Flag Etiquette to President Franklin D. Roosevelt. The president approved the resolution and Pub. L. No. 622, 56 Stat. 380 took effect on June 22 of that year.

34. Section (7) of Pub. L. No. 622, 56 Stat. 380 contained the Pledge of Allegiance to the Flag of the United States of America (hereinafter “the Pledge”). It read:

I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all.

35. It is to be noted that there is and was nothing religious in the 1942 version of the Pledge.

36. The First Amendment of the United States Constitution states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...”

² A similar lawsuit was filed in March, 2000. However, it was ruled that the Plaintiff lacked “prudential” parental standing in that case. Elk Grove Unified Sch. Dist. v. Newdow, 159 L. Ed. 2d 98, 124 S. Ct. 2301 (2004).

1 37. Despite these “Religion Clauses,” Congress – in 1954 – promulgated its Act of June 14,
2 1954, Pub. L. No. 396, 68 Stat. 249 (hereinafter “Act of 1954”). The sole legislative
3 purpose of that Act – as stated by Congress, itself – was to spatchcock the two words
4 “under God” into the previously secular Pledge.³ As codified in 4 U.S.C. § 4, the Pledge
5 of Allegiance to the Flag of the United States of America now reads:

6 I pledge allegiance to the flag of the United States of America, and to the Republic for
7 which it stands, one Nation under God, indivisible, with liberty and justice for all.
8

9 38. Support for (Christian) Monotheism pervaded American society when the Act of 1954
10 was instituted. APPENDIX B.

11 39. Anti-Atheistic sentiment was also pervasive at that time. APPENDIX C.

12 40. The text of the phrase that the Act of 1954 intruded into the Pledge of Allegiance is
13 “under God.” This is patently, facially, unquestionably and clearly religious text.

14 41. The legislative history demonstrates that the Act of 1954 was passed for the purposes of
15 endorsing (Christian) Monotheism and disapproving of Atheism. Accordingly, the
16 legislative history demonstrates that the Act of 1954 was passed for religious purposes.

17 APPENDIX D.

18 42. The implementation of the Act of 1954 demonstrates that the Act was religious in nature.
19 APPENDIX F.

20 43. The governmental endorsement of Monotheism and disapproval of Atheism that were
21 factors in the passage of the Act of 1954 have continued to be fostered and accentuated by
22 the current sectarian Pledge of Allegiance. APPENDIX I.

23 44. As a result of the foregoing, Atheistic (and other non-Monotheistic) Americans have been
24 turned into “political outsiders” due to their religious beliefs.

25 45. Additionally, Atheistic (and other non-Monotheistic) Americans have had their religious
26 free exercise rights abridged, since they cannot attend government meetings, attend public
27 schools or participate in other activities without being given the message that their
28 religious beliefs are wrong.

29
30

³ “Section 7 of [the Act of June 22, 1942] contains the pledge of allegiance to the flag; and it is the purpose of this proposed legislation to amend that pledge by adding the words ‘under God’ so as to make it read, in appropriate part, ‘one Nation under God, indivisible.’” H.R. 1693, 83rd Cong., 2d Sess., reprinted in 1954 U.S. Code Cong. & Ad. News, vol. 2: 2339, 2340.

B. PERTINENT LAWS AND RULES

46. The First Amendment to the Constitution of the United States of America states, in pertinent part, that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. ...”

47. The Fifth Amendment to the Constitution of the United States of America states, in pertinent part, that “No person shall be ... deprived of life, liberty, or property, without due process of law.” The Supreme Court has read an Equal Protection component into this Due Process Clause. Adarand Constructors, Inc. v. Mineta, 534 U.S. 103, 105 (2001).

48. 42 U.S.C. §§ 2000bb et seq. (Religious Freedom Restoration Act (RFRA)) states, in pertinent parts:

§ 2000bb(a)(3): “The Congress finds that governments should not substantially burden religious exercise without compelling justification.”

§ 2000bb(b)(1) and (b)(2): “The purposes of this chapter are to restore the compelling interest test ... and to guarantee its application in all cases where free exercise of religion is substantially burdened; and to provide a claim or defense to persons whose religious exercise is substantially burdened by government.”

§ 2000bb-1(b)(1) and (b)(2): “Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.”

§ 2000bb-2(4): “[T]he term ‘exercise of religion’ means religious exercise, as defined in section 2000cc-5 of this title.” [§ 2000cc-5(7)(A) “The term ‘religious exercise’ includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”]

§ 2000bb-3(a): “This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.”

§ 2000bb-3(c): “Nothing in this chapter shall be construed to authorize any government to burden any religious belief.”

49. The Fourteenth Amendment to the Constitution of the United States of America states, in pertinent part, that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

50. By way of the Fourteenth Amendment, the States are subject to the First Amendment of the Constitution. “The First Amendment declares that Congress shall make no law

1 respecting an establishment of religion or prohibiting the free exercise thereof. The
2 Fourteenth Amendment has rendered the legislatures of the states as incompetent as
3 Congress to enact such laws.” Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940).

4 51. Article I (Declaration of Rights), Section 4 of the California State Constitution provides,
5 in pertinent part:

6 Free exercise and enjoyment of religion without discrimination or preference are
7 guaranteed ... The Legislature shall make no law respecting an establishment of
8 religion.
9

10 52. Article I (Declaration of Rights), Section 7 of the California State Constitution provides,
11 in pertinent part:

12 A person may not be deprived of life, liberty, or property without due process of law
13 or denied equal protection of the laws.
14

15 53. Article IX (Education), Section 8 of the California State Constitution provides, in
16 pertinent part:

17 No ... sectarian or denominational doctrine [shall] be taught, or instruction be
18 permitted, directly or indirectly, in any of the common schools of this State.
19

20 54. California State Education Code, Section 52720, reads as follows:

21 In every public elementary school each day during the school year at the beginning of
22 the first regularly scheduled class or activity period at which the majority of the pupils
23 of the school normally begin the schoolday, there shall be conducted appropriate
24 patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United
25 States of America shall satisfy the requirements of this section.
26

27 In every public secondary school there shall be conducted daily appropriate patriotic
28 exercises. The giving of the Pledge of Allegiance to the Flag of the United States of
29 America shall satisfy such requirement. Such patriotic exercises for secondary
30 schools shall be conducted in accordance with the regulations which shall be adopted
31 by the governing board of the district maintaining the secondary school.
32

33 55. The School District Defendants have all adopted Rule AR 6115,⁴ which states in pertinent
34 part:

35 Each school shall conduct patriotic exercises daily. At elementary schools, such
36 exercises shall be conducted at the beginning of each school day. The Pledge of
37 Allegiance to the flag will fulfill this requirement.

⁴ EGUSD’s version is “Each elementary school class [shall] recite the pledge of allegiance to the flag once each day.” [Plaintiffs have been unable to confirm that EJESD has implemented AR.6115. Nonetheless, RoeChild-I is being led in classroom Pledge recitations.]

1 **C. PLAINTIFFS**

2 56. Plaintiffs all acknowledge and stipulate to the fact that none of them are or have been
3 actually compelled to say the words, “under God,” in the Pledge of Allegiance. Due to the
4 setting and peer pressures, however, they all have been coerced.⁵
5

6 **I. PLAINTIFF REV. DR. MICHAEL NEWDOW**

7 57. Plaintiff Michael Newdow is a minister, having been ordained more than twenty-five
8 years ago. His ministry espouses the religious philosophy that the true and eternal bonds
9 of righteousness and virtue stem from reason rather than mythology. It recognizes that it
10 is never possible to prove that something does not exist, but finds that fact to be an absurd
11 justification to accept the unproved. The bizarre, the incredible and the miraculous
12 deserve not blind faith, but rigorous challenge. To Plaintiff Newdow and his religious
13 brethren, belief in a deity represents the repudiation of rational thought processes, and
14 offends all precepts of science and natural law. His religion incorporates the same values
15 of goodness, hope, advancement of civilization and elevation of the human spirit common
16 to most others. However, it presumes that all these virtues must ultimately be based on
17 truth, and that they are only hindered by reliance upon a falsehood, which its adherents
18 believe any God to be.

19 58. Plaintiff Newdow would like to run for public office. However, polls show that nearly
20 50% of Americans would refuse to vote for an Atheist merely because of his religious
21 beliefs.⁶ As a result, Newdow has not tried to run for public office since it would be futile.
22 The public antipathy towards Atheism – and, thus, Newdow’s inability to obtain elected
23 office – is due in part to the official endorsement of monotheism contained in the Pledge.

24 59. Plaintiff Newdow attends official governmental meetings – including the EGUSD and
25 SCUSD school board meetings – where the Pledge of Allegiance is recited under the
26 direction of the Boards. During those times, Plaintiff Newdow is turned into a “political
27 outsider” due to the religious words, “under God,” in the Pledge. In fact, he has been
28 publicly insulted by at least one school board member during one of those meetings

⁵ “I think there is a clear difference between compulsion (Barnette) and coercion (Lee).” Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2328 n.4 (2004) (Rehnquist, C.J., concurring).

⁶ 48% of respondents stated they would not vote for an atheist, even if they agreed with his positions on the issues. Poll given Feb 19-21, 1999, reported March 29, 1999. Copyright © 1999 The Gallup Organization, Princeton, NJ.

specifically as a result of his objection to this governmental use of sectarian religious dogma.

60. Plaintiff Newdow is the father of a child currently attending a public school in EGUSD.

Newdow has joint legal custody of his child, who lives with him approximately 30% of the time. Although the mother of the child currently has final decision-making authority for the child, Plaintiff Newdow believes that order has been wrongfully and unconstitutionally imposed.⁷ Meanwhile, the mother is required to fully consult Plaintiff Newdow prior to making any significant decision in the care of their child.

61. Plaintiff Newdow's child is forced to confront the teacher-led recitation of the now-religious Pledge of Allegiance as part of the morning exercises that take place in the child's public school.

62. Plaintiff Newdow has requested from his child's principal and the EGUSD that the recitation of the religious Pledge cease. That request has been denied.

63. Plaintiff Newdow volunteers in his child's classroom. On some of those occasions, he is there while the teacher leads his child and the rest of the students in reciting the now-religious Pledge of Allegiance.

64. Plaintiff Newdow is a resident of Sacramento, California. He is the owner of real property in Sacramento and in Elk Grove, California, and pays the associated local property taxes in both locales. He earns income in California, and pays the associated federal and state income taxes. He purchases items in California and pays the associated federal and state sales taxes.

II. PLAINTIFFS JAN AND PAT DOE

65. Plaintiffs Jan and Pat Doe are Atheists who deny the existence of a God.

66. Plaintiffs Jan and Pat Doe are the parents of Plaintiff DoeChild, who attends the EGUSD public schools. The Pledge of Allegiance has been recited in DoeChild's classes.

⁷ There is not now and has never been any justification for any abridgement of Plaintiff Newdow's full and equal shared custody. It is only due to the abusiveness of the family laws of the State of California – that (a) grant unbridled discretion to judges using unconstitutional criteria to trample on the most important of all rights, (b) do not permit appeals of custody orders until they become “final,” and (c) require victims such as Newdow to fund attorneys who can deplete the victims' savings to deprive those victims of their own fundamental constitutional rights – that Newdow has not yet been able to challenge this gross violation of his basic liberty to care for and nurture his child.

1 67. Plaintiffs Jan and Pat Doe have written to the principal of their child's school, asking for
2 assurance that the Pledge will no longer be recited in DoeChild's classes. The principal
3 has not provided that assurance.

4 68. Plaintiffs Jan and Pat Doe have attended official governmental meetings – including those
5 of the EGUSD school board – where the Pledge of Allegiance is recited. Because of the
6 religious aspect of the Pledge, Plaintiff Jan Doe has ceased attending school board
7 meetings.

8 69. Plaintiffs Jan and Pat Doe have attended DoeChild's classes and other events where the
9 Pledge has been recited.

10 70. Plaintiffs Jan and Pat Doe are residents of Sacramento, California. They are the owners of
11 real property located in Sacramento, and pay the associated local property taxes. Portions
12 of those taxes go to the Elk Grove Unified School District (in which, as already noted,
13 DoeChild is enrolled in public school). They earn income in California, and pay the
14 associated federal and state income taxes. They purchase items in California and pay the
15 associated federal and state sales taxes.

16 71. Plaintiff Pat Doe has purchased California lottery tickets.
17

18 **III. PLAINTIFF DOECHILD**

19 72. Plaintiff DoeChild is a student in the 7th grade at a public school administered by the
20 EGUSD.

21 73. Plaintiff DoeChild is an Atheist, who specifically denies the existence of God.

22 74. Plaintiff DoeChild has been forced to confront the now-religious Pledge of Allegiance as
23 DoeChild's class has been led by public school teachers in DoeChild's classrooms and at
24 school assemblies.

25 75. Plaintiff DoeChild has suffered harassment by other students due to DoeChild's refusal to
26 participate in the now-religious Pledge of Allegiance.
27

28 **IV. PLAINTIFF JAN ROE**

29 76. Plaintiff Jan Roe is an Atheist who denies the existence of a God.

30 77. Plaintiff Jan Roe is the parent of Plaintiff RoeChild-1 and Plaintiff RoeChild-2, who
31 attend schools in the EJESD and RLUSD, respectively. The Pledge of Allegiance has been
32 recited in both children's classes.

- 1 78. Plaintiff Jan Roe has written to the principals of both children's schools, asking for
2 assurances that the Pledge will no longer be recited in the children's classes. The
3 principals have not provided those assurances.
- 4 79. Plaintiff Jan Roe has been present in the classes of both RoeChild-1 and RoeChild-2 while
5 their teachers have led their classes in reciting the Pledge of Allegiance.
- 6 80. Plaintiff Jan Roe is a resident of Elverta, California, and the owner of real property in
7 Elverta, California. Plaintiff Roe pays the associated local property taxes. Plaintiff Roe
8 earns income in California, and pays the associated federal and state income taxes.
9 Plaintiff Roe purchases items in California and pays the associated federal and state sales
10 taxes.
- 11 81. Plaintiff Jan Roe has purchased California lottery tickets.

12
13 **V. PLAINTIFF ROECHILD-1**

- 14 82. Plaintiff RoeChild-1 is a student in the 3rd grade at a public school administered by the
15 EJESD.
- 16 83. Plaintiff RoeChild-1 is a pantheist, who denies the existence of a personal God.
- 17 84. Plaintiff RoeChild-1 has been forced to confront the now-religious Pledge of Allegiance
18 as RoeChild-1's class has been led by public school teachers in RoeChild-1's classrooms
19 and at school assemblies.
- 20 85. Plaintiff RoeChild-1 recites the Pledge, but leaves out the words "under God." RoeChild-1
21 has been singled out and ostracized by other students because of this, and thus now
22 attends school fearful of ridicule and other social consequences due to this difficulty.

23
24 **VI. PLAINTIFF ROECHILD-2**

- 25 86. Plaintiff RoeChild-2 is a student in kindergarten at a public school administered by the
26 RLUSD.
- 27 87. Plaintiff RoeChild-2 has been forced to confront the now-religious Pledge of Allegiance
28 as RoeChild-2's class has been led by public school teachers in RoeChild-2's classrooms
29 and at school assemblies.
- 30 88. Knowing of Plaintiff Jan Roe's objections to the religious indoctrination inherent in the
31 now-monotheistic Pledge, RoeChild-2's teachers have been unable to devise any way to
32 avoid the indoctrination without other adverse effects to RoeChild-2.

D. CLAIMS OF INJURY

89. Plaintiffs Newdow, Doe and Roe are all Atheists who absolutely deny the existence of any god and find belief in such an entity to be a significantly distasteful notion. None of these plaintiffs have any desire to impart their Atheistic beliefs upon others or to proselytize regarding Atheism. Nor do they need assistance dealing with the significant amounts of (Christian) monotheism that pervades American society. However, each plaintiff finds it deeply offensive to have their government and its agents advocating for a religious view they each specifically decry.

90. Each adult plaintiff has been made to feel like a “political outsider” due to the government’s embrace of (Christian) monotheism in the Pledge of Allegiance. Every recitation of that Pledge further drives home this sense of being “outsiders” – solely on account of religious beliefs.

91. This “political outsider” status is not some merely theoretical and inconsequential condition. This is a very real circumstance, of which Plaintiffs are made acutely aware quite frequently. Some of the many ramifications of being an Atheist in America are seen in APPENDIX I and in the Declarations provided in the previously-submitted *Memorandum in Support of Plaintiff’s Motion for Protective Order*. Each of the adult Plaintiffs Newdow, Doe and Roe can provide examples where knowledge by others of their Atheism has resulted in adverse consequences.

92. This “political outsider” status is especially serious in the context of the public schools. Each of the adult Plaintiffs is deeply involved in the education of his or her child(ren), and has attempted to participate in school matters. Once one’s Atheism is known, a significant hurdle arises, interfering with an ability to “fit in” and effect changes within the political climate of parent-teacher associations, school board meetings, and the like. Thus, when faced with a recital of the Pledge of Allegiance, Plaintiffs Newdow, Doe and Roe are each placed in the untenable situation of having to choose between effectiveness as an advocate for his or her child’s education, and the free exercise of his or her religious beliefs.

93. This has been especially true for Plaintiff Newdow, whose opportunities for political office and lobbying – now that his Atheism is known – have been essentially annihilated. See APPENDIX M, ¶¶ 20-21.

94. Plaintiff DoeChild – a staunch Atheist in his/her own right – has also been made to feel like a “political outsider.” That has occurred in his/her role as a student, in the setting of

1 the public school classroom. His/her life has literally been changed – with harassment and
 2 ostracism – on account of adherence to religious belief. This is an egregious harm to
 3 inflict on a child.

4 95. Plaintiffs DoeChild, RoeChild-1 and RoeChild-2 are all adversely affected as well by the
 5 message they receive vis-à-vis their parents' religious beliefs. They are told with each
 6 recitation that their parents' religious choices are wrong. This is an injury both to the
 7 children, and to the parents.

8 96. In the event that Plaintiffs are unable to communicate the gravity of this situation, it might
 9 be useful to consider analogous recitations that might be included in the nation's Pledge of
 10 Allegiance. Imagine being a Jew, being led by government agents to standing each
 11 morning and affirm that the United States is "one Nation under Jesus." Imagine being a
 12 lone Christian among Muslims, whose leaders ask you to join in saying we are "one
 13 Nation under Mohammed." Constitutionally, there is not one iota of difference between
 14 those recitations and the one intruded in the current Pledge.

15 97. Alternatively, a situation might be thought of where our citizens are asked to stand and
 16 say we are " ... one nation that denies God, indivisible, with liberty and justice for all."
 17 The uproar over such a recitation – deafening as it would be – would have no greater
 18 justification in terms of constitutional principles than the claims brought by Plaintiffs here.

19 98. In addition to the Establishment Clause violations caused by this governmental practice,
 20 Plaintiffs – by being forced by government to countenance religious dogma they dispute
 21 while simply participating in society – have had their fundamental constitutional rights of
 22 Free Exercise violated as well.

23 99. By endorsing the religious notion that God exists, the now-religious Pledge creates a
 24 societal environment where prejudice against Atheists – and, thus, against Plaintiffs here –
 25 is perpetuated. Accordingly, in addition to the Religion Clause violations, the
 26 governmental use and advocacy of the now-religious Pledge of Allegiance violates the
 27 requirements of Equal Protection as found in the Fifth and Fourteenth Amendments to the
 28 United States Constitution.⁸

⁸ The constitutional claims that are raised in this Complaint also apply to the similar provisions in the California State Constitution. To avoid redundancy, those provisions are not being specifically addressed. However, Plaintiffs assert the State-based similar constitutional claims as well.

100. Although the reach of the Establishment Clause extends far beyond prayer, Plaintiffs all agree with President George Bush's assessment that the inclusion of the words, "under God" turns the Pledge into a faith-based means of "humbly seeking the wisdom and blessing of Divine Providence."⁹ Whether or not that makes it a "prayer" per se is merely a matter of semantics.

101. In addition to the Establishment Clause, Free Exercise Clause, and Equal Protection Clause violations, "under God" in the Pledge infringes upon the adult Plaintiffs' rights of parenthood. As parents, the adult Plaintiffs have an unrestricted right to inculcate in their children the Atheistic beliefs they find persuasive, free from governmental interference. Yet – due to the now-religious Pledge – government agents are weighing in on the quintessential question of faith and religious belief in the public schools. Government is prohibited from taking sides in such a debate in any setting. That it has ritualized this conduct in the public school setting is unconscionable.

102. The government's use of the words "under God" in the Nation's Pledge of Allegiance infringes upon each of these fundamental constitutional rights (of not being turned into "political outsiders," of Free Exercise of religion, of Equal Protection, and of parenthood). Such infringements may not occur without a compelling state interest. No such compelling interest exists.

103. Being forced to confront government-sponsored monotheistic religious dogma is injury enough for an individual who denies the existence of any god. To be asked to affirm a belief in that dogma – especially when part of a group undertaking – furthers the injury.

104. Such a situation is also made more onerous when the affirmation is made part of a patriotic ritual, thus calling the individual's patriotism into question in front of his or her peers.

105. On top of all this is the fact that the procedure involves standing, facing the Flag of the United States of America, and placing one's hand over one's heart.

⁹ "When we pledge allegiance to One Nation under God, our citizens participate in an important American tradition of humbly seeking the wisdom and blessing of Divine Providence." Letter of George W. Bush, November 13, 2002, addressed to the Hawaii State Federation of Honpa Hongawanji Lay Associations, cited in the *Amicus Curiae* Brief of Americans United for Separation of Church and State et al. in Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

1 106. For government to impose an adverse religious burden upon adults in such a setting is
2 unquestionably in violation of the Religion Clauses of the First Amendment.

3 107. For the government to impost an adverse religious burden upon children in the public
4 schools in incomprehensible under the First Amendment's Religion Clauses.

5 108. No one – much less impressionable children in the public schools – should ever be
6 forced to choose between conforming to the state-endorsed religious belief or appearing as
7 unpatriotic, political (and religious) “outsiders.” That this occurs repeatedly in the lives of
8 Plaintiffs (and especially the schoolchildren Plaintiffs) demands an immediate remedy.

9
10 109. “[T]o compel a man to furnish contributions of money for the propagation of opinions
11 which he disbelieves, is sinful and tyrannical.”¹⁰

12 110. Some of the federal tax dollars paid by the adult Plaintiffs and utilized in connection
13 with Defendants' maintenance and utilization of the Pledge of Allegiance are apportioned
14 under the taxing and spending clause of Article I, Section 8 of the Constitution of the
15 United States.

16 111. Some of the state tax dollars paid by the adult Plaintiffs are also utilized in connection
17 with the State Defendants' maintenance and utilization of the Pledge of Allegiance.

18 112. A substantial portion of the profits made from the California State Lottery also go to
19 the public schools. Those Plaintiffs who have purchased Lottery tickets suffer an
20 additional injury as those moneys go towards furthering the religious dogma they dispute.

21 113. The aforementioned tax dollars are used to directly fund the governmental agents who
22 lead the students (including their children) and others (including themselves) in recitations
23 of the now-religious Pledge.

24 114. Numerous federal, state and local governmental employees – using governmental
25 facilities – recite the now-sectarian Pledge of Allegiance while being paid from the
26 government coffers. These employees include, but are not limited to, members of
27 Defendant Congress (including members of both the House of Representatives and the
28 Senate), and the school board members and teachers of the School District Defendants.

¹⁰ Thomas Jefferson, *Bill for Establishing Religious Freedom* (1799), in *Basic Writings of Thomas Jefferson*, Foner PS (ed.) (Willey Book Company: New York, 1944), p. 48.

1 115. The recitation of the now-sectarian Pledge of Allegiance by any of the above-
 2 referenced governmental employees while performing their duties involves the use of
 3 Plaintiffs' tax moneys in a religious exercise as prohibited by the First Amendment.

4 116. These tax moneys are used to perpetuate the notion that "real Americans" believe in
 5 God, and those who do not believe in God are second class citizens, to be "tolerated" by
 6 our society. As George Washington stated, "It is now no more that toleration is spoken of,
 7 as if it was by the indulgence of one class of people that another enjoyed the exercise of
 8 their inherent natural rights."¹¹

9 117. These tax moneys are also used in the education of the schoolchildren of the localities,
 10 of the States, and of the Nation. Presently included in that "education" is the repeated
 11 recitation of the now-sectarian Pledge of Allegiance, which indoctrinates all the
 12 schoolchildren – including Plaintiffs' children – with the religious dogmas that (a) there
 13 exists a god, and that (b) we are "one Nation under God."

14 118. The aforementioned tax moneys are used to pay for (i) the teachers' salaries, (ii) the
 15 flags and other items, (iii) the physical plant (including the classrooms), and (iv) the
 16 utilities of the classrooms.

17 119. Although even a minimal expenditure of funds that serves religious ends violates the
 18 Constitution,¹² these funds are not minimal. At EGUSD, teacher salaries alone are
 19 approximately \$138 million.¹³ To impart the religious dogma found in the words, "under
 20 God," adds approximately 1.25 seconds to the Pledge. Assuming that the average teacher
 21 works nine and a half hours a day, more than \$5,000 per year is spent by EGUSD on that
 22 purely religious indoctrination. For the State of California, it is estimated that the figure is
 23 close to \$1,000,000 per year.

24 120. Federal tax money is used to pay the salary of Defendant Peter LeFevre, Law Revision
 25 Counsel, who is responsible for the preparation and publication of the United States Code,

¹¹ Washington, G. "Letter to the Hebrew Congregation of Newport, August, 1790." In Padover SK. *The Washington Papers* (Harper & Brothers: New York, 1955), at 411.

¹² "Who does not see ... that the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" James Madison, *Memorial and Remonstrance against Religious Assessments*, II Writings of Madison 183, at 185-186.

¹³ Information obtained by accessing <http://www.egusd.k12.ca.us/district/budgetfact.htm> on December 25, 2004.

wherein Defendants United States Congress and the United States of America make the purely religious assertion that that the United States is a nation “under God.”

121. Federal Tax money is also used for the printing and distribution of the United States Code (including 4 U.S.C. § 4) as well as pamphlets, etc., that contain the Pledge of Allegiance.

122. Federal, State and County tax moneys are used when the Pledge is recited at federal, state and county governmental functions.

123. Federal tax money is used to support the “Pause for the Pledge of Allegiance” (Pub. L. 99 Stat. 97) annual festivities.¹⁴

124. The preceding examples show that Plaintiffs’ tax moneys are used for governmental functions designed to bolster the use and status of the Pledge of Allegiance to the Flag, including the religious notions that there exists a God and that we exist under that God. The taking by the government of Plaintiffs’ (and the rest of the citizenry’s) personal wealth to be used to advocate a Pledge that places the government’s imprimatur on religious beliefs to which those Plaintiffs do not adhere is a violation of both the Establishment and Free Exercise clauses.

125. Some (if not all) of the federal dollars spent in the aforementioned activities are apportioned under the taxing and spending clause of Article I, Section 8 of the Constitution of the United States. (“[F]ederal taxpayers have standing to raise Establishment Clause claims against exercises of congressional power under the taxing and spending power of Article I, 8, of the Constitution.” Bowen v. Kendrick, 487 U.S. 589, 618 (1988).)

126. Article XVI (Public Finance), Section 5 of the California State Constitution provides in pertinent part, that:

Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall **ever** make an appropriation, or pay **from any public fund whatever**, or **grant anything** to or in aid of any religious sect, church, creed, or sectarian purpose, ... nor shall any grant or donation of personal property or real estate **ever** be made by the State, or any city, city and county, town, or other

¹⁴ Sponsored by The National Flag Day Foundation, this event involves the participation of thousands of Maryland school children, a high school choir, use of governmental buildings, a concert given by the 229th Maryland Army National Guard band, and a “Fly-over” by the A-10 “Thunderbolt” jets of the 104th Fighter Squadron 175th Wing Maryland Air National Guard. The estimated cost to taxpayers of the Fly-over, alone, is on the order of \$10,000.00.

municipal corporation **for any religious creed, church, or sectarian purpose whatever.**¹⁵

127. By allowing – and encouraging – the continued use of the now-sectarian Pledge, and by utilizing tax money as noted above, the State of California is making appropriations in aid of theistic religious belief, thereby violating California State Constitution Article XVI, Section 5.

128. By interlarding the Pledge of Allegiance with the purely religious words, “under God,” the Congress of the United States – by passing the Act of 1954 – has violated the Establishment Clause of the First Amendment to the Federal Constitution, as well as the Fifth Amendment’s Due Process Clause. Specifically, it has violated the rights of each of the Plaintiffs to have a government that:

- (1) Remains neutral with respect to religion,¹⁶ so that their religious beliefs are treated the same as others,
- (2) Does not pass laws for a religious purpose, so that their religious beliefs are not deprecated,
- (3) Does not pass laws that have religious effects, so that their religious beliefs are not shown disrespect,
- (4) Does not turn them into “political outsiders” based on their religious beliefs,
- (5) Does not endorse religious ideas, so that their religious ideas are not denigrated,
- (6) Does not indoctrinate them with any religious dogma, much less dogma with which they disagree,
- (7) Does not coerce them to unwillingly confront religious doctrine,
- (8) Does not place its imprimatur upon religious ideals with which they disagree, and
- (9) Does not spend their tax dollars to further religious ideals with which they disagree.

129. Congress has also violated RFRA.¹⁷ The Free Exercise of religion for each Plaintiff is “substantially burdened” when government requires an affirmation of religious belief contrary to their religious beliefs in order to exercise their rights as citizens to join with their neighbors in reciting the Nation’s Pledge of Allegiance to the Flag.

¹⁵ Emphases added.

¹⁶ In addition to lacking neutrality in its purpose and in its effect, the Act of 1954 lacked neutrality on its face. “A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.” Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 533 (1993).

¹⁷ Although the Supreme Court has struck down RFRA as it applies to the states, City of Boerne v. Flores, 521 U.S. 507 (1997), multiple circuits – including the Ninth Circuit – have found that RFRA is

1 130. By preparing and publishing the United States Code – which includes the now-
 2 religious Pledge of Allegiance, as provided in 4 U.S.C. § 4 – Defendant Peter LeFevre,
 3 Law Revision Counsel, has similarly acted to violate the First and Fifth Amendments, as
 4 well as RFRA.

5 131. As the ultimate party responsible for upholding the Constitution, Defendant United
 6 States of America has violated its duty to protect Plaintiffs' fundamental liberties by
 7 permitting the Congress to further (Christian) monotheistic dogma.

8 132. Defendants Arnold Schwarzenegger and Richard J. Riordan support, encourage and/or
 9 administer California State Education Code, Section 52720. In so doing, each has violated
 10 the Establishment and Free Exercise Clauses of the First Amendment to the Federal
 11 Constitution; the Due Process Clause of the Fifth Amendment; and Article I, Section 4
 12 and Article IX, Section 8 of the California State Constitution. Specifically, each has
 13 violated the rights of each of the Plaintiffs to have their state government protect them
 14 against public schools that:

- 15 (1) Don't remain neutral with respect to religion, and thus treat their religious beliefs
- 16 differently from others,
- 17 (2) Act in ways that have religious effects, thus deprecating their religious beliefs,
- 18 (3) Turn them into "political outsiders" based on religion,
- 19 (4) Endorse religious ideas, thus denigrating their religious ideas,
- 20 (5) Indoctrinate them with any religious dogma, much less dogma with which they
- 21 disagree,
- 22 (6) Coerce them to unwillingly confront religious doctrine,
- 23 (7) Place the State's imprimatur upon religious ideals with which they disagree, and
- 24 (8) Spend their tax dollars on religious ideas with which they disagree.

25
 26
 27 133. By requiring the recitation of the Pledge of Allegiance (with the purely religious
 28 words, "under God") as a patriotic exercise in which its public school students are to be
 29 led by their public school teachers, the Defendant School Districts (EGUSD, SCUSD,
 30 EJESD, and RLUSD) and their respective Superintendents (Dr. Steven Ladd, Dr. M.
 31 Magdalena Carrillo Mejia, Dr. Dianna Mangerich, and Frank S. Porter) – by passing and
 32 enforcing Rules AR 6115 – have violated the Establishment and Free Exercise Clauses of
 33 the First Amendment to the Federal Constitution; the Due Process Clause of the Fifth
 34 Amendment; and Article I, Section 4 and Article IX, Section 8 of the California State

still constitutional as it applies to the federal government. See, Guam v. Guerrero, 290 F.3d 1210,
 1221 (9th Cir. 2002).

1 Constitution. Specifically, they have violated the rights of each of the Plaintiffs to have
2 their public schools:

- 3 (1) Remain neutral with respect to religion, so that their religious beliefs are treated
4 the same as others,
 - 5 (2) Not have rules that have religious effects, so that their religious beliefs are not
6 shown disrespect,
 - 7 (3) Not turn them into "political outsiders" based on their religious beliefs,
 - 8 (4) Not endorse religious ideas, so that their religious ideas are not denigrated,
 - 9 (5) Not indoctrinate them with any religious dogma, much less dogma with which
10 they disagree,
 - 11 (6) Not coerce them to unwillingly confront religious doctrine,
 - 12 (7) Not place the given school's imprimatur upon religious ideals with which they
13 disagree, and
 - 14 (8) Not spend their tax dollars to further religious ideals with which they disagree.
- 15
16

17 134. It should be noted that Plaintiffs are making no objection to the recitation of a patriotic
18 Pledge of Allegiance. The government certainly has the right to foster patriotism, and it
19 may certainly determine that recitation of a Pledge of Allegiance serves that purpose.
20 However, government may not employ or include sectarian religious dogma towards this
21 end. "[G]overnment may not employ religious means to serve secular interests, however
22 legitimate they may be, at least without the clearest demonstration that nonreligious means
23 will no suffice." Abington School District v. Schempp, 374 U.S. 203, 265 (1963)
24 (Brennan, J., concurring) (provided with his n. 29, citing six other cases emphasizing this
25 principle).

26 135. If the Defendants wish to have patriotic recitations, they can well recommend the
27 secular, pre-1954 version of the Pledge or use some other nonsectarian prose. In fact,
28 under the strict scrutiny standard they must follow ("If a law effects a preference among
29 religions, the governmental policy is presumptively suspect and subject to strict scrutiny."
30 Walker v. Superior Court, 47 Cal. 3d 112, 145 n.1 (Mosk, J., concurring)), the need to
31 narrowly tailor legislation to meet any putative compelling interest mandates such a
32 recommendation.

33

34 136. In addition to failing the demands of strict scrutiny, the Act of 1954 fails the
35 principled application of every test ever enunciated by the Supreme Court to determine
36 whether a governmental activity violates the Establishment Clause. In contrast, none of
37 the myriad excuses used to justify Establishment Clause violations – a rather questionable

endeavor in its own right – work to exempt the Act of 1954 from its constitutional obligations.

137. Plaintiffs readily acknowledges that the majority of Americans – certain of their belief in the existence of a God – are completely blind to the offensiveness the words “under God” in the Nation’s Pledge of Allegiance hold for Plaintiffs and their religious brethren. That is precisely what one would expected to see as a result of religious bias, and the Framers’ recognition of this sort of ecclesiastically-based myopia is largely why the Religion Clauses were created. The rights of religious freedom are fundamental constitutional rights, and, as such, they must be examined from the perspective of those individuals whose rights are abridged. “The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 894 (1992).

138. Accordingly, with respect to the Religion Clauses, this “focus” is measured in terms of sectarianism, which – in constitutional terms – refers not only to beliefs held by any one religious sect, but to all religious beliefs that are not universal. In other words, any belief that is not adhered to by all is – from the point of view of the Constitution as well as the nonadherent – a sectarian belief. This is graphically illustrated in APPENDIX O.

139. Sectarianism – on the part of government – is forbidden by the First Amendment. (“[T]he *government’s* use of religious symbols is unconstitutional if it effectively endorses sectarian religious belief.” Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753, 765 (1995) (emphasis in original).)

140. The phrase “under God” expresses a religious belief that is not adhered to by a significant segment of the population.¹⁸ Again, this phrase is constitutionally sectarian, especially in the current American society that has become increasingly religiously diverse. “This Nation is heir to a history and tradition of religious diversity that dates from the settlement of the North American Continent. Sectarian differences among various Christian denominations were central to the origins of our Republic. Since then, adherents of religions too numerous to name have made the United States their home, as have those whose beliefs expressly exclude religion.” Allegheny County v. Greater Pittsburgh

¹⁸ A recent poll found that approximately 10% of Americans are atheists or agnostics. This is more than five times the percentage of the population that is Jewish, Muslim, and a multitude of other non-Christian religions. (For references, please see at footnote 26 and Appendix G.)

1 ACLU, 492 U.S. 573, 589 (1989). See, also, Elk Grove Unified Sch. Dist. v. Newdow,
 2 124 S. Ct. 2301, 2326 (2004) (O'Connor, J., concurring) ("The phrase 'under God,' [was]
 3 conceived and added at a time when our national religious diversity was neither as robust
 4 nor as well recognized as it is now.").

5 141. Sectarianism is often denied as such by legislators, scholars, "experts" and courts.
 6 Viewing themselves as broadminded because they have embraced religions and sects
 7 beyond their own, some such individuals fail to see that they still are taking a limited view
 8 when they don't embrace all religions and sects. In colonial New Jersey, for instance,
 9 those who set forth:

10 That there shall be no establishment of any one religious sect in this Province, in
 11 preference to another; and that no Protestant inhabitant of this Colony shall be denied
 12 the enjoyment of any civil right, merely on account of his religious principles; but that
 13 all persons, professing a belief in the faith of any Protestant sect, who shall demean
 14 themselves peaceably under the government, as hereby established, shall be capable of
 15 being elected into any office of profit or trust, or being a member of either branch of
 16 the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed
 17 by others their fellow subjects.¹⁹

18
 19 apparently felt themselves to be advocating nonsectarianism. New Jersey's Catholics
 20 likely felt otherwise. In Abington School District v. Schempp, 374 U.S. 203 (1963), it was
 21 noted that "Dr. Weigle stated that the Bible was non-sectarian." Id., at 210. Perhaps it was
 22 in response to Jewish objections that "[h]e later stated that the phrase 'non-sectarian'
 23 meant to him non-sectarian within the Christian faiths." Id. (quoting the trial court's
 24 summary).

25 142. Similarly, when Representative Overton Brooks sponsored the introduction of a
 26 National Day of Prayer, he must have felt himself to be quite the liberal by encompassing
 27 "Catholics, Jewish and Protestants" in his definition of "all denominations." 98 Cong.
 28 Rec. 771 (1952). Would Muslim, Hindu and other Americans not take issue with that
 29 proclamation?

30 143. For Atheists, of course, exclusion such as that just noted is the norm.²⁰ Yet the
 31 endorsement of theism, as a religious belief system in opposition to Atheism, involves

¹⁹ Constitution of the State of New Jersey (1776), Section XIX.

²⁰ As was written in 1955, "Americans are proud of their tolerance in matters of religion: one is expected to 'believe in God,' but otherwise religion is not supposed to be a ground of 'discrimination.'" Herberg, Will. *Protestant - Catholic - Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 88.

sectarianism exactly as occurs when Catholics are excluded from other Christians, Jews are excluded from other Judeo-Christians, and non-Judeo-Christians are excluded from other monotheists. Justice Blackmun, in Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 615 (1989), addressed this exact idea when he wrote that “The simultaneous endorsement of Judaism and Christianity is no less constitutionally infirm than the endorsement of Christianity alone.” And, similarly, the simultaneous endorsement of all monotheistic religions is no less constitutionally infirm than the endorsement of any one of those monotheistic religions alone.

144. Analogous sectarianism can be illustrated with regard to the Pledge. Again, “one Nation under Jesus,” for instance, is no different, constitutionally, from “one Nation under God.”

145. In an effort to obscure the obvious, some have attempted to apply the rubric of “ceremonial deism” to phrases such as “under God.” Even momentarily accepting this as a constitutionally valid construct,²¹ history shows that this was definitely not the case for the Act of 1954. APPENDIX B, APPENDIX C, APPENDIX D, APPENDIX E, APPENDIX F, and APPENDIX H.

146. Nor has the “under God” wording become “ceremonial” since its 1954 introduction. APPENDIX I, APPENDIX J.

147. Nor does “under God” in the Pledge constitute a mere “acknowledgement” of religion or the alleged role it has played in our nation’s history. Rather, that phrase is a manifest endorsement of the purely religious claims that there exists a “God,” and that we – as a sovereign nation – exist “under” that God. APPENDIX K.

148. The phrase “under God” (as used in our now-sectarian Pledge of Allegiance to the Flag) requires a belief in “God” and assumes or implies that “God” occupies some high position. Again, this phrase is religious.

149. In fact, the phrase places the government on one side in the quintessential theological debate: Does God exist? This is forbidden under both the Federal and the California State Constitutions. “[T]he First Amendment[requires] ... on the part of all organs of

²¹ Which it is not. The entire idea of the First Amendment is that government may not make pronouncements as to the proper interpretation of religious references. “In the realm of religious faith, ... sharp differences arise. [There] the tenets of one man may seem the rankest error to his neighbor.” Cantwell v. Connecticut, 310 U.S. 296, 310 (1940).

government a strict neutrality toward theological questions” Abington School District v. Schempp, 374 U.S. 203, 243 (1963) (Brennan, J., concurring).²²

150. To tell Plaintiffs that there is a God and enroll them in a governmentally-sponsored theistic milieu is no less an affront that it is to tell Buddhists there is no Buddha, Christians there is no Jesus, Muslims there is no Allah, and so on for every other faith.

151. The history, purpose and effect of the Act of 1954 was to endorse the ideas that (a) there is a God, and (b) that we are “one Nation under God.” Such an endorsement violates the Federal Constitution. (“Government promotes religion as effectively when it fosters a close identification of its powers and responsibilities with those of any – or all – religious denominations as when it attempts to inculcate specific religious doctrines. If this identification conveys a message of government endorsement or disapproval of religion, a core purpose of the Establishment Clause is violated.” Grand Rapids School District v. Ball, 473 U.S. 373, 389 (1985).)

152. Plaintiffs are citizens of the United States of America, often proud of their nation. When they may wish to join their fellow citizens and pledge allegiance to the country’s flag, extraneous and offensive (to Plaintiffs) religious dogma is imposed as the phrase “one Nation under God” is uttered (as scripted in 4 U.S.C. § 4). This impermissible intrusion of religion into the government’s only patriotic pledge violates the Establishment and Free Exercise Clauses of the very Bill of Rights underlying that pledge.

²² Neutrality has been deemed essential by every current member of the Supreme Court: Zelman v. Simmons-Harris, 536 U.S. 639, 662 (2003) (Chief Justice Rehnquist ruled that a voucher program accords with the Establishment Clause when it “is entirely neutral with respect to religion.”); Mitchell v. Helms, 530 U.S. 793, 809 (2000) (Justice Thomas wrote, “In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality.”); Agostini v. Felton, 521 U.S. 203, 231 (1997) (Justice O’Connor approved of “neutral, secular criteria that neither favor nor disfavor religion”); Rosenberger v. University of Virginia, 515 U.S. 819, 839 (1995) (Justice Kennedy referenced “the guarantee of neutrality”); Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 704 (1994) (Justice Souter wrote that “civil power must be exercised in a manner neutral to religion.”); Employment Div. v. Smith, 494 U.S. 872, 886 (1990) (Justice Scalia focused on “generally applicable, religion-neutral laws”); Wallace, 472 U.S. at 60 (Justice Stevens explained that “government must pursue a course of complete neutrality toward religion”). Justices Ginsburg and Breyer joined Justice Souter’s dissent in Rosenberger, 515 U.S. at 879 (noting that it is key for a law to be “truly neutral with respect to religion”) and Justice Stevens’ majority opinion in Santa Fe, 530 U.S. at 304 (“The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views” (quoting Board of Regents v. Southworth, 529 U.S. 217, 235 (2000))).

153. In 1998, the United States Department of Education issued a *Statement on Religious Expression in Public Schools*, which included a portion holding that “[t]eachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the Establishment Clause from soliciting or encouraging religious activity, and from participating in such religious activity with students.” According to the accompanying letter of Secretary of Education Richard W. Riley, “schools may not endorse religious activity or doctrine.”

154. When teachers lead their students in a daily recitation that states in part that we are “one Nation under God,” they endorse religious doctrine and inculcate a belief that not only is there a God, but that we are one nation “under” that entity. This is unconstitutional. (“As we have repeatedly recognized, government inculcation of religious beliefs has the impermissible effect of advancing religion.” *Agostini v. Felton*, 521 U.S. 203, 223 (1997).)

155. According to the Department of Education’s February 7, 2003 Statement entitled *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*:²³

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer. Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment’s scope. As the Court has explained in several cases, “there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”

156. The indoctrination of children against their parents’ wills – to occur continuously for thirteen consecutive years – with a religious viewpoint that Plaintiffs feel is offensive not only violates the Establishment Clause, but violates the parents’ fundamental constitutional rights of privacy and parenthood. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) (“Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.” *Id.*, at 851); *Santosky v. Kramer*, 455 U.S. 745 (1982)

1 (“[F]reedom of personal choice in matters of family life is a fundamental liberty interest
 2 protected by the Fourteenth Amendment. Quilloin v. Walcott, 434 U.S. 246, 255 (1978);
 3 Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977); Moore v. East
 4 Cleveland, 431 U.S. 494, 499 (1977) (plurality opinion); Cleveland Board of Education v.
 5 LaFleur, 414 U.S. 632, 639-640 (1974); Stanley v. Illinois, 405 U.S. 645, 651-652 (1972);
 6 Prince v. Massachusetts, 321 U.S. 158, 166 (1944); Pierce v. Society of Sisters, 268 U.S.
 7 510, 534-535 (1925); Meyer v. Nebraska, 262 U.S. 390, 399 (1923).” *Id.*, at 753; “[T]he
 8 interest of parents in their relationship with their children is sufficiently fundamental to
 9 come within the finite class of liberty interests protected by the Fourteenth Amendment.”
 10 *Id.*, at 774 (Rehnquist, C.J., dissenting).)

11 157. The government-led recitation of the now-sectarian Pledge of Allegiance at the
 12 EGUSD meetings – or in the schools, or anywhere else, for that matter – endorses the
 13 religious view that there is a God. Such endorsement is prohibited by the First
 14 Amendment. (“Over the years, this Court has declared the invalidity of many noncoercive
 15 state laws and practices conveying a message of religious endorsement.” Lee v. Weisman,
 16 505 U.S. 577, 618 (1992) (Souter, J., concurring).)

17 158. Governmentally mandated recitations in the public schools of any pledge containing a
 18 religious claim such as one saying we are “one Nation under God” is a blatant violation of
 19 the Establishment Clause. Abington School District v. Schempp, 374 U.S. 203 (1963)
 20 (“[P]ublic schools serve a uniquely public function: the training of American citizens in an
 21 atmosphere free of parochial, divisive, or separatist influences of any sort – an atmosphere
 22 in which children may assimilate a heritage common to all American groups and religions.
 23 This is a heritage neither theistic nor Atheistic, but simply civic and patriotic.” *Id.*, at 241-
 24 242 (cites omitted) (Brennan, J., concurring))

25 159. The daily, governmentally mandated recitation, in the public schools, of any pledge
 26 containing a religious statement such as “under God,” inflicted upon a child who holds
 27 religious beliefs offended by such a statement is a blatant violation of the Free Exercise
 28 Clause. Abington, 374 U.S. 203 (1963) (“In consequence, even devout children may well
 29 avoid claiming their right and simply continue to participate in exercises distasteful to
 30 them because of an understandable reluctance to be stigmatized as Atheists or

²³ Accessed at http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html on
 December 30, 2004. Footnotes omitted.

1 nonconformists simply on the basis of their request.” Id., at 290. (Brennan, J.,
2 concurring)).

3 160. The Constitutional requirement that religion be kept separated from government is
4 especially strict in the public schools. (“Our public school ... is organized on the premise
5 that secular education can be isolated from all religious teaching so that the school can
6 inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as
7 to religion.” Everson v. Board of Education, 330 U.S. 1, 23-24 (1947) (Jackson, J.,
8 dissenting); “We start down a rough road when we begin to mix compulsory public
9 education with compulsory godliness.” Zorach v. Clausen, 343 U.S. 306, 325 (1952)
10 (Jackson, J., dissenting); “The sharp confinement of the public schools to secular
11 education was a recognition of the need of a democratic society to educate its children,
12 insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in
13 which pressures are most resisted and where conflicts are most easily and most bitterly
14 engendered. Designed to serve as perhaps the most powerful agency for promoting
15 cohesion among a heterogeneous democratic people, the public school must keep
16 scrupulously free from entanglement in the strife of sects. The preservation of the
17 community from divisive conflicts, of Government from irreconcilable pressures by
18 religious groups, of religion from censorship and coercion however subtly exercised,
19 requires strict confinement of the State to instruction other than religious, leaving to the
20 individual’s church and home, indoctrination in the faith of his choice.” McCormack v.
21 Board of Education, 333 U.S. 203, 216-217 (1948) (Frankfurter, J., concurring); “The
22 vigilant protection of constitutional freedoms is nowhere more vital than in the
23 community of American schools.” Shelton v. Tucker, 364 U.S. 479, 487 (1960);
24 “[Academic freedom is] ... a special concern of the First Amendment, which does not
25 tolerate laws that cast a pall of orthodoxy over the classroom.” Keyishian v. Board of
26 Regents, 385 U.S. 589, 603 (1967)).

27
28 161. The issue of “coercion” is certain to be raised repeatedly by the defendants. It should
29 first be noted that there is a difference between compulsion and coercion. See footnote 5,
30 supra.

1 162. It should next be noted that (a) coercion is not a necessary element for an
 2 Establishment Clause violation,²⁴ although (b) if coercion is present, that is sufficient to
 3 demonstrate an Establishment Clause violation.²⁵

4 163. Plaintiffs again all stipulate that none of them have ever been “compelled” to say the
 5 Pledge. Nonetheless, as defined by Lee v. Weisman, 505 U.S. 577 (1992), all the child
 6 Plaintiffs have clearly been coerced. APPENDIX L Thus, the Defendant’s Pledge policies
 7 must be stricken. “Adherence to Lee would require us to strike down the Pledge policy,
 8 which, in most respects, poses more serious difficulties than the prayer at issue in Lee.”
 9 Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2328 (2004) (Thomas, J.,
 10 concurring).

11 164. It is not an answer to maintain that Plaintiffs can “opt out” of the Pledge. To begin
 12 with, the Establishment Clause is violated when a citizen must alter his/her behavior in
 13 order to avoid a governmental infusion of religion. Secondly, Plaintiffs have considered
 14 this possibility. It has been determined that it is not possible to accomplish such an “opt
 15 out” without the individual feeling like a “political outsider” and – in the public schools –
 16 without classmates realizing that the individual is “an outsider” as well. This is in direct
 17 violation of the Religion Clauses.
 18

19 165. Atheists are a disenfranchised minority in this nation. National polls have revealed that
 20 93-96% of Americans believe in God – only 3% to 4% do not.²⁶ APPENDIX N. See, also,
 21 APPENDIX I and APPENDIX M.

²⁴ “The absence of any element of coercion ... is irrelevant to questions arising under the Establishment Clause. In School District of Abington Township v. Schempp ... it was contended that Bible recitations in public schools did not violate the Establishment Clause because participation in such exercises was not coerced. The Court rejected that argument.” Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756, 786 (1973).

²⁵ “Although our precedents make clear that proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient. Government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion.” Lee v. Weisman, 505 U.S. 577, 604 (1992) (Blackmun, J., concurring).

²⁶ Polls have actually shown a fairly wide divergence. These figures represent what Plaintiffs believe are a best integration of the various data, including such sources as Harris Interactive® (Harris Poll #59, October 15, 2003; American Religious Identification Survey, 2001 (“ARIS 2001”), from The Graduate Center of the City University of New York; Louis Harris and Associates, August 12, 1998; Opinion Dynamics, December 5, 1997; the Pew Research Center for the People and the Press, May 31 through June 9, 1996. Of course, constitutional principles do not change based on the percentages, whatever they may actually be.

166. Defendants Peter LeFevre, Arnold Schwarzenegger, Richard J. Riordan, Dr. Steven Ladd, Dr. M. Magdalena Carrillo Mejia, Dr. Dianna Mangerich, and Frank S. Porter are all individuals serving in governmental capacities who have a sworn duty to uphold and/or abide by the Constitution of the United States. Specifically, each must act to protect disenfranchised religious minorities. Thus, they must prevent the creation, execution or perpetuation of laws that endorse any form of religion – including monotheism – in violation of the Establishment Clause. Similarly, each must act to prevent the creation, execution or perpetuation of laws that interfere with the ability of Plaintiffs to practice their religion(s) free from governmental intrusion. By the actions and the circumstances enumerated above, each of these Defendants has failed to perform and continues to fail to perform his sworn duty.

167. Defendants the Congress of the United States of America, the United States of America, EGUSD, SCUSD, EJESD, and RLUSD are all governmental entities obligated to ensure that the Constitution of the United States of America is upheld. By the actions and the circumstances enumerated above, each of these Defendants has failed to maintain and continues to fail to maintain its obligation.

168. Defendants Arnold Schwarzenegger, Richard J. Riordan, Dr. Steven Ladd, Dr. M. Magdalena Carrillo Mejia, Dr. Dianna Mangerich, and Frank S. Porter are all individuals serving in governmental capacities who have an obligation to ensure that the Constitution of the State of California is upheld. By the actions and the circumstances enumerated above, each of these Defendants has failed to maintain and continues to fail to maintain his obligation.

169. Defendants EGUSD, SCUSD, EJESD, and RLUSD are all governmental entities obligated to ensure that the Constitution of the State of California is upheld. By the actions and the circumstances enumerated above, each of these Defendants has failed to maintain and continues to fail to maintain its obligation.

170. Establishment Clause restrictions are especially austere in public schools. Thus, even if there were some non-religious justification for the placement of the words “under God” into the Pledge and the daily recitation of those words – which, it must be repeated, there is not – that justification would never meet the burden necessary to warrant the abridgment of fundamental Religion Clause liberties in the public schools. (“The Court

has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary.” Edwards v. Aguillard, 482 U.S. 578, 583-584 (1987).)

171. There is an overwhelming amount of principled dicta that supports Plaintiff’s position in this case. APPENDIX P (highlighting that five justices have admitted that the Pledge is unconstitutional under four of the Supreme Court’s enunciated tests), APPENDIX Q (revealing principled quotes from twenty-nine separate justices, inconsistent with “under God” in the Nation’s Pledge of Allegiance), APPENDIX R (providing – as just a sample – two hundred Supreme Court dicta incompatible with “under God” in the Pledge), and APPENDIX S (with more than fifty separate statements from Lee v. Weisman and Santa Fe Independent School District v. Doe – the last two religion in the public schools cases) all demonstrate that the current Pledge simply does not comport with the Constitution’s guarantees.

172. There are no principled dicta supporting “under God” in the Pledge. All one finds is attempts to manufacture excuses for what is an obvious constitutional violation.

173. Plaintiffs expects that Defendants will reference the three “concurrences” in Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004). Plaintiffs will note that (a) five justices chose not to offer any agreement with the “concurrences,” (b) neither Chief Justice Rehnquist nor Justice O’Connor based their “concurrences” on any constitutional principles, and (c) Justice Thomas specifically wrote, “I conclude that, as a matter of our precedent, the Pledge policy is unconstitutional.” Id., at 2330 (Thomas, J., concurring).

174. Of far greater precedential value than dicta are the holdings of the Supreme Court. In nine out of nine cases involving government-sponsored religious doctrine in the public schools, the Supreme Court has found that the states’ actions violated the First Amendment. McCullum v. Board of Education, 333 U.S. 203 (1948) (religious teaching); Engel v. Vitale, 370 U.S. 421 (1962) (prayer); Abington School District v. Schempp, 374 U.S. 203 (1963) (Bible-reading); Epperson v. Arkansas, 393 U.S. 97 (1968) (forbidding the teaching of evolution); Stone v. Graham, 449 U.S. 39 (1980) (posting Ten Commandments); Wallace v. Jaffree, 472 U.S. 38 (1985) (moment of silence/prayer);

1 Edwards v. Aguillard, 482 U.S. 578 (1987) (“creation science”); Lee v. Weisman, 505
2 U.S. 577 (1992) (graduation benedictions); and Santa Fe Independent School District v.
3 Doe, 530 U.S. 290 (2000) (prayer at football games) provide unequivocal evidence that
4 the recitation of the words “under God” in the Pledge cannot be countenanced under our
5 Constitution.

6
7 175. In addition to its constitutional infirmities, the placement of the words “under God”
8 into the Pledge of Allegiance is void as against public policy. The very purpose of the
9 Pledge of Allegiance to the Flag – as can be appreciated from its legislative history – is to
10 provide a means of demonstrating patriotism and engendering national unity. By placing
11 the religious words “under God” into the Pledge, Congress not only interfered with the
12 patriotism and national unity the Pledge was meant to engender, but it actually fostered
13 divisiveness ... in a manner expressly forbidden by the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- I. To declare that Congress, in passing the Act of 1954, violated the Establishment and Free Exercise Clauses of the United States Constitution;
- II. To declare that by including “under God” in the Pledge of Allegiance to the Flag of the United States of America, 4 U.S.C. § 4 violates the Establishment and Free Exercise Clauses of the United States Constitution;
- III. To demand that Defendant the Congress of the United States of America immediately act to remove the words “under God” from the Pledge of Allegiance to the Flag as now written in 4 U.S.C. § 4;
- IV. To demand that Defendant the Congress of the United States of America immediately act to remove the words “under God” from the Pledge of Allegiance to the Flag as now written in 4 U.S.C. § 4;
- V. To demand that Defendant Peter LeFevre, Law Revision Counsel, immediately act to remove the words “under God” from the Pledge of Allegiance to the Flag as now written in 4 U.S.C. § 4;
- VI. To demand that Defendants Arnold Schwarzenegger and Richard J. Riordan immediately act to alter, modify or repeal Education Code § 52720 – or end its enforcement – so that the now-sectarian Pledge of Allegiance is no longer permitted in the public schools.
- VII. To demand that Defendants the Elk Grove Unified School District; Dr. Steven Ladd, Superintendent, EGUSD; the Sacramento City Unified School District; Dr. M. Magdalena Carrillo Mejia, Superintendent, SCUSD; the Elverta Joint Elementary School District; Dr. Dianna Mangerich, Superintendent, EJESD; the Rio Linda Union School District; and Frank S. Porter, Superintendent, RLUSD; forbid the use of the now-sectarian Pledge of Allegiance in the public schools within their jurisdictions;
- VIII. To allow Plaintiff to recover costs, expert witness fees, attorney fees, etc. as may be allowed by law; and
- IX. To provide such other and further relief as the Court may deem proper.

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Respectfully submitted,

/s/ - Michael Newdow

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APPENDIX A

PERTINENT CODE SECTIONS AND CONSTITUTIONAL PROVISIONS

28 U.S.C. § 1331

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 – DISTRICT COURTS; JURISDICTION
SECTION 1331 – Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1346 (a) (2)

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 – DISTRICT COURTS; JURISDICTION
SECTION 1346 – United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or ...

28 U.S.C. § 1361

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 – DISTRICT COURTS; JURISDICTION
SECTION 1361 – Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

42 U.S.C. § 1983

TITLE 42 – THE PUBLIC HEALTH AND WELFARE
CHAPTER 21 – CIVIL RIGHTS
SUBCHAPTER I - GENERALLY
SECTION 1983 – Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1988

TITLE 42 – THE PUBLIC HEALTH AND WELFARE
CHAPTER 21 – CIVIL RIGHTS
SUBCHAPTER I - GENERALLY
SECTION 1988 – Proceedings in vindication of civil rights

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 (20 U.S.C. 1681 et seq.), the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.), the Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. 2000cc et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

28 U.S.C. § 1343 (3)

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 85 – DISTRICT COURTS; JURISDICTION
SECTION 1343 – Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

28 U.S.C. § 1391(e)

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 87 – DISTRICT COURTS; VENUE
SECTION 1391 – Venue generally

(e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

28 U.S.C. § 1391(b)(2)

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 87 – DISTRICT COURTS; VENUE
SECTION 1391 – Venue generally

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in ...

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated ...

28 U.S.C. § 1391(b)(3)

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE
PART IV – JURISDICTION AND VENUE
CHAPTER 87 – DISTRICT COURTS; VENUE
SECTION 1391 – Venue generally

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in ...

(3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

4 U.S.C. § 4

TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES
CHAPTER 1 - THE FLAG

SECTION 4 – Pledge of allegiance to the flag; manner of delivery

The Pledge of Allegiance to the Flag: “I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.”, should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I. SECTION 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

THE CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE I DECLARATION OF RIGHTS
SECTION 4

Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

THE CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE 9 EDUCATION
SECTION 8

No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

THE CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE 16 PUBLIC FINANCE SECTION 5

Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI.

THE CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE 1 DECLARATION OF RIGHTS
SECTION 4. Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

CALIFORNIA EDUCATION CODE

TITLE 1. GENERAL EDUCATION CODE PROVISIONS
DIVISION 1. GENERAL EDUCATION CODE PROVISIONS
PART 23. GENERAL INSTRUCTIONAL PROGRAMS
CHAPTER 11. MISCELLANEOUS
ARTICLE 2. PATRIOTIC EXERCISES
SECTION 52720

§ 52720. In every public elementary school each day during the school year at the beginning of the first regularly scheduled class or activity period at which the majority of the pupils of the school normally begin the school day, there shall be conducted appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy the requirements of this section.

In every public secondary school there shall be conducted daily appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy such requirement. Such patriotic exercises for secondary schools shall be conducted in accordance with the regulations which shall be adopted by the governing board of the district maintaining the secondary school.

APPENDIX B

AMERICAN SOCIETY WAS OVERTLY PARTIAL TO (CHRISTIAN) MONOTHEISM AT THE TIME OF THE PASSAGE OF THE ACT OF 1954, WHICH WAS INTENDED TO ENDORSE (CHRISTIAN) MONOTHEISM

After the Second World War and into the 1960s, the United States was in the grips of the “Cold War.” This was the period of time in which Senator Joseph McCarthy rose to power with his wanton accusations of communist affiliations, and “an admission of membership in the Communist Party ... [could] be used to prosecute the registrant under ... federal criminal statutes.” Albertson v. Subversive Activities Control Board, 382 U.S. 70, 77 (1965) (Brennan, J., majority).¹ Within this milieu were serious infringements upon American civil liberties.² Even suspected affiliation with the Communist Party could lead to the loss of job and friends.³ “In 1947 [President Truman] sought to root out subversion through the Federal Employee Loyalty Program. The program included a loyalty review board to investigate government workers and fire those found to be disloyal. The government dismissed hundreds of employees, and thousands more felt compelled to resign. By the end of Truman’s term, 39 states had enacted ant subversion laws and loyalty programs. In 1949 the Justice Department prosecuted 11 leaders of the Communist Party, who were convicted and jailed under the Smith Act of 1940.”⁴ President Eisenhower – who followed President Truman – had a loyalty program of his own. “Under [Eisenhower’s] loyalty program, some 10,000 federal employees resigned or were dismissed.”⁵

¹ The Communist Control Act of 1954 contained the following: “The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States.” Under the Act, “any” participation – including preparing documents, mailing material, or imparting information of any kind – was to be considered by the jury. U.S. Statutes at Large (1954), Public Law 637, Chap. 886, p. 775-780 (Sec. 2, “Findings of Fact”).

² “When Senator Joseph McCarthy was at his prime ... there were scarcely a dozen papers in this Nation that stood firm for the citizen’s right to due process and to First Amendment protection.” Columbia Broadcasting System, Inc. v. Democratic Nat’l Committee, 412 U.S. 94, 154-155 (1973) (Douglas, J., concurring).

³ The blacklisting of the “Hollywood Ten” is but one example of the vile consequences of that era’s mindset.

⁴ [http://encarta.msn.com/encyclopedia_1741500823_16/United_States_\(History\).html](http://encarta.msn.com/encyclopedia_1741500823_16/United_States_(History).html)

⁵ Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Doubner, 1986) p. 177.

The world's main communist stronghold was the Union of Soviet Socialist Republics (USSR), which had instituted a repressive, totalitarian form of government. As a result, Soviet citizens were deprived of many of the freedoms that Americans cherish. One of those lost freedoms was the right to worship freely, because the USSR – lacking the protections found in our First Amendment's religion clauses – officially espoused Atheism. Wishing to differentiate our nation from that evil regime (but failing to recognize that the difference was America's guarantee of religious liberty, not our de facto majoritarian (Christian) monotheism), our politicians took to touting the superiority of a belief in God and in Jesus Christ. Vermont Senator Ralph Flanders, for instance, attempted to put through a Constitutional Amendment stating that “this nation devoutly recognizes the authority and law of Jesus Christ, Saviour and Ruler of Nations, through whom are bestowed the blessings of Almighty God.”⁶ Adlai Stevenson, the Democratic candidate for President in both 1952 and 1956, claimed that, “We are all children of the same Judaic-Christian civilization, with very much the same religious background,”⁷ and that “God has set for us an awesome mission: nothing less than the leadership of the free world.”⁸ Earl Warren, then the newly-appointed Chief Justice of the United States Supreme Court, stated in 1954 that the United States is “a Christian land governed by Christian principles.”⁹ While serving as Secretary of State from 1953-1959, John Foster Dulles stated that, “there is no way to solve the great perplexing international problems except by bringing to bear on them the force of Christianity.”¹⁰ In fact, President Eisenhower's staff was so monotheistically religious that one writer, in referring to the Secretary of Defense, stated he was “the only man in the Administration who doesn't talk about God.”¹¹

Perhaps most important were the words and acts of President Eisenhower, himself. Starting with his 1953 inauguration, where “[t]he lead float ... was ‘God's Float,’ exhibiting pictures of churches and other religious places and the slogans ‘In God We Trust’ and ‘Freedom of

⁶ Miller, William Lee. *Piety Along the Potomac*. The Reporter (11 August 1954) p. 25.

⁷ Stevenson, Adlai. *Major Campaign Speeches of Adlai E. Stevenson*, 1952 (New York, 1953), p. 282.

⁸ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 307.

⁹ “Eisenhower Joins in a Breakfast Prayer Meeting.” New York Times, February 5, 1954, A-10.

¹⁰ “Miller, William Lee. *Piety Along the Potomac*. The Reporter (11 August 1954), pp. 41-42.

¹¹ Brogan, D.W. *Unnoticed Changes in America*. Harper's Magazine (February, 1957) p. 33.

Worship' written in Gothic script,"¹² faith in God permeated his presidency. The new President was actually baptized two weeks after taking office.¹³ He worked "to get legislative support for a national day of prayer, attend[ed] annual presidential prayer breakfasts, and appoint[ed] a minister to a new special presidential post for religious matters."¹⁴ "On April 8, 1954, Eisenhower issued the first stamp bearing the motto 'In God We Trust.'"¹⁵ He participated in the American Legion's *Back to God* crusade, proclaiming that "Recognition of the Supreme Being is the first, the most basic, expression of Americanism. Without God, there could be no American form of government, nor an American way of life."¹⁶ As Chief Executive, he was "determined to use his influence and his office to help make this period a spiritual turning point in America."¹⁷ In fact, the Republican National Committee declared that "in every sense of the word, [President Eisenhower] is not only the political leader, but the spiritual leader of our times,"¹⁸ an assessment that was widely shared.¹⁹ In short, "Eisenhower often used religious phrases and talked about the need for religious faith and spiritual values. He frequently called on divine aid for himself and his country in speeches, held prayer breakfasts, received church delegations in his office, and had Billy Graham and Norman Vincent Peale as overnight guests at the White House. He also began cabinet meetings with a prayer."²⁰ As another author wrote of the President:

His priesthood was part of his role as leader of a "crusade," as he called it, against "godless Communism" ... "The things that make us proud to be Americans are of the soul and of the spirit," Eisenhower declared. And being American, for a president who was

¹² Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 320.

¹³ Marty, Martin. *Modern American Religion*, vol. 3, "A Civic Religion of the American Way of Life," (Chicago: University of Chicago Press, 1986) p. 303..

¹⁴ Marty, Martin. *Modern American Religion*, vol. 3, "A Civic Religion of the American Way of Life," (Chicago: University of Chicago Press, 1986) p. 303.

¹⁵ Medhurst MJ. "God Bless the President: The Rhetoric of Inaugural Prayer." (The Pennsylvania State University, 1980). (Available on microfilm from University Microfilms International, Ann Arbor, MI (800-521-0600). At 231-232.

¹⁶ Life Magazine, April 11, 1955, page 138; New York Herald Tribune, February 22, 1955.

¹⁷ High, Stanley. *What the President Wants*. Reader's Digest (April, 1953) pp 2-4.

¹⁸ Resolution of the Republican National Committee, February 17, 1955, as reported Marty, Martin. *Modern American Religion*, vol. 3, "A Civic Religion of the American Way of Life," (Chicago: University of Chicago Press, 1986) p. 295.

¹⁹ "The central symbol of the nation's political piety was the President himself." Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 89-90.

²⁰ Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 153.

baptized and who joined a church for the first time after having been elected, meant being a theist.²¹

This entanglement of religiosity and politics led to the precise circumstances the Establishment Clause was meant to address: "Among a growing number of Americans, belief in God became intertwined with patriotism."²² In other words, it became "un-American to be unreligious."²³ In fact, as was reflected in the words and deeds of their governmental officials, it wasn't simply belief in a Supreme Being that was involved. Belief in the Christian God was often specifically implicated. Thus, "th[e] nationalization of Christianity in the fifties" was "pervasive."²⁴ As written in Time Magazine in 1954, "today in the U.S., the Christian faith is back in the center of things."²⁵

Americans flocked to their churches in droves: "the conservative fifties saw a major revival of religion. Year after year the statistics pointed to unprecedented increases in church membership."²⁶ In 1955, "of adult Americans ... 96.9 per cent were found to identify themselves religiously (70.8 per cent Protestants, 22.9 per cent Catholics, 3.1 per cent Jews)."²⁷ From 1949-1953, alone, "the distribution of Scripture in the United States increased

²¹ Marty, Martin. *Modern American Religion*, vol. 3, "A Civic Religion of the American Way of Life," (Chicago: University of Chicago Press, 1986) p. 296.

²² Reader's Digest Association, *Our glorious century*. Harvey, Edmund H. Jr., ed. (Pleasantville, N.Y.: Reader's Digest Association, 1994), p. 266.

²³ Eckardt, A. Roy. *The New Look in American Piety*. *The Christian Century* 71 (17 November 1954), p. 1396. See, also, Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 92. ("Patriotism and religion seemed synonymous. Atheists or agnostics were not tolerated."); Herberg, Will. *Protestant-Catholic-Jew* (Garden City, 1960) p. 53 ("[B]eing a Protestant, a Catholic, or a Jew is understood as the specific way, and increasingly perhaps the only way, of being an American and locating oneself in American society."); Wittner, Lawrence S., *Cold War America: From Hiroshima to Watergate* (New York: Praeger, 1974), p. 123. ("Recognition of the Supreme Being is the first, most basic expression of Americanism."); Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 324 ("[I]n the fifties ... atheists were automatically considered to be unpatriotic, un-American, and perhaps even treasonous.")

²⁴ Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 324.

²⁵ Time Magazine, April 19, 1954, p. 62

²⁶ Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 185.

²⁷ Herberg, Will. *Protestant - Catholic - Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 78 (note 2) (citing Public Opinion News Service, March 20, 1955).

140 per cent.”²⁸ Clergymen – with remarkably successful books, radio shows, television shows, crusades and the like – became increasingly popular and influential.²⁹ In 1942, when Americans were questioned about which groups did the most “good” for the country, religious leaders came in third. By the mid-fifties, “[n]o other group – whether government, congressional, business, or labor – came anywhere near matching the prestige and pulling power of the men who are the ministers of God.”³⁰ Billy Graham,³¹ Fulton Sheen³² and Norman Vincent Peale,³³ for example, became household names.

As might be expected, popular culture and mercantilism reflected this religious growth. For instance, the Ideal Toy Company manufactured “praying dolls” with flexible knees for kneeling, created due to “the resurgence of religious feeling and practice in America today.”³⁴ Religious songs were noted to be obtaining a stronghold in the nation’s juke boxes.³⁵ The Boy Scouts of America – which had previously maintained a relatively tepid religious emphasis – increased its ecclesiastical fervor “in the fifth edition (1948) [when] the authors of the [Boy Scout] *Handbook* began to expand their explanation of ‘duty to God.’”³⁶ And Norman

²⁸ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 14 (citing Report of the American Bible Society at its 138th annual meeting, *Time*, May 24, 1954).

²⁹ Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) pp. 321-327.

³⁰ Polls conducted by Elmo Roper, as reported in Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 85-86.

³¹ Billy Graham’s masterful crusades are legendary. See, e.g., *The New Evangelist* *Time Magazine* 64 (25 October 1954), at 54. “Like many other evangelists of the day, [Rev. Graham] also often equated Christianity with Americanism and with anticommunism.” Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) p. 322. As Graham characterized it, “a great sinister and anti-Christian movement masterminded by Satan has declared war upon the Christian God.” Lewis, Peter *The fifties* (New York: Lippincott, 1978) p. 73-74.

³² *Life Is Worth Living*, a TV show with Rev. Fulton J. Sheen, aired from 1952-1957. Rev. Sheen “warned that no peace was possible with Russia, the leader of international godless communism.” Oakley, J. Ronald. *God’s Country: America in the Fifties*. (New York: Dembner, 1986) p. 322-3.

³³ Norman Vincent Peale’s *The Power of Positive Thinking* “quickly went to the top of the nonfiction best-seller list and stayed there for 112 consecutive weeks. In 1954 it sold more copies than any other book except the Bible.” *Id.*, at 323. That book, according to Dr. Peale, “teaches applied Christianity,” [Peale, Norman Vincent *The Power of Positive Thinking* (New York: Prentice-Hall, 1952) at ix], noting that “there is no problem, difficulty, or defeat that you cannot solve or overcome by faith, positive thinking, and prayer to God.” *Id.*, at 275. The concluding line of the work is: “God will help you – so believe and live successfully.” *Id.*, at 276.

³⁴ *Time Magazine*, 20 September 1954, *Words and works*, p. 65.

³⁵ *Life Magazine*, April 11, 1955, pp. 138-40.

³⁶ That edition contained the admonition that, “Above all you are faithful to Almighty God’s Commandments,” Mechling, Jay. *On my honor: Boy Scouts and the making of American youth*

Rockwell – arguably the most popular and influential artist of America of the 1950’s – ably
“combined “duty to God” and “duty to country” in a single picture.””³⁷

(University of Chicago Press: Chicago, 2001), p. 41. Mechling notes that the 1948 *Handbook* incorporated a “wedding of religion and democratic ideology, of religion and patriotism.” *Id.*, at 42. Even in this book – on the Boy Scouts – can one find acknowledgement of the entanglement of religion, government and politics:

Religion had become an important marker distinguishing between the Communists and the Western democracies. “They” were “godless communists,” while we were religious. ... [I]t was living in Eisenhower’s America of the 1950s that made so clear to everyone the ways Protestant Christianity and Cold War ideology became tangled in the definitions of America ... A boy had to have a faith, for atheism—and probably agnosticism—was the characteristic of Communists, our sworn enemies.

Id., at 43-44.

³⁷ Mechling, Jay. *On my honor : Boy Scouts and the making of American youth* (University of Chicago Press: Chicago, 2001), p. 46 (quoting Hillcourt W. *Norman Rockwell's World of Scouting* (Abrams: New York, 1977), p. 144).

APPENDIX C

AMERICAN SOCIETY WAS OVERTLY ANTAGONISTIC TO ATHEISM AT THE TIME OF THE PASSAGE THE ACT OF 1954

As is the case with discrimination against blacks and women, discrimination against atheists predates the founding of our nation. However, whereas conscientious efforts have been made to end racial and gender prejudice, government – to this day – has continued to foster anti-atheistic sentiment. Thus, antagonism to atheism was still extant when the Act of 1954 was passed.

In tracing the history of this bigotry, one can start with the Bible, in which it is stated that Atheists are “corrupt ... there is none that doeth good”¹ and disbelief in God is equated with “unrighteousness.”² Under the common law of England, from which our legal system arose, denying God’s existence was punishable “by fine and imprisonment, or other infamous corporal punishment.”³ Additionally, of the eleven state constitutions in existence during the framing of our secular federal constitution, nine required professions of belief in God to obtain full benefits of citizenship.⁴

With this background, the secular nature of our federal Constitution – with no reference to God or Jesus – is remarkable. Yet, although objection was heard from the outset,⁵ criticism was quite

¹ Psalms 14:1.

² 2 Corinthians 6:14.

³ 4 Blackstone Commentaries 59.

⁴ Delaware (1776) Article 22: “I ...do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost;” Pennsylvania (1776) Article 2, Section 10: “I do believe in one God, the creator and governor of the universe;” New Jersey (1776) Article 19: “[A]ll persons, professing a belief in the faith of any Protestant sect. ... shall be capable of being elected into any office;” Georgia (1777) Article VI: “The representatives ... shall be of the Protestant religion;” Massachusetts (1780) Article 2: “It is ... the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING.” Article 3: “[E]very denomination of christians ...shall be equally under the protection of the law;” Maryland (1776) Section 33: “[A]ll persons, professing the Christian religion, are equally entitled to protection in their religious liberty;” South Carolina (1778) Article 38: “[A]ll persons ... who acknowledge that there is one God ... shall be freely tolerated. The Christian Protestant religion ... is ... the established religion of this State;” New Hampshire (1784) Article VI: “[E]very denomination of christians ... shall be equally under the protection of the law;” North Carolina (1776) Article 32: “[N]o person, who shall deny the being of God or the truth of the Protestant religion, ...shall be capable of holding any office.”

⁵ For instance, the First Presbytery Eastward in Massachusetts and New Hampshire complained about the absence of “some explicit acknowledgment of the only true God and Jesus Christ whom He has sent, inserted somewhere in the Magna Carta of our country” in a letter written to George Washington on

rare during the founding era.⁶ Only as an increasing number of citizens more fervently embraced (Christian) monotheistic belief – thus leading to the very circumstances that the principles underlying the Religion Clauses seek to address – did cries for a reversion to the melding of religion and government become prominent.⁷

Hopes for governmental godliness increased during the Civil War era, too, as Christian Americans claimed that the nation's conflict was a sign of His wrath. In fact, that theory was used in an attempt to Christianize the nation with a Constitutional amendment. The movement was led by the newly formed National Reform Association, whose goal was to alter the Preamble so that it would begin with the following verbiage:

We, the people of the United States, humbly acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Ruler among the nations, his revealed will as the supreme law of the land, in order to constitute a Christian government, ...⁸

As might be expected, anti-Atheistic sentiment was blatant during that campaign. For instance, at the National Reform Association convention held on February 26–27, 1873 in New York, Jonathan Edwards, D. D. uttered the following:

Tolerate atheism, sir? There is nothing out of hell that I would not tolerate as soon! The atheist may live, as I have said; but, God helping us, the taint of his destructive creed shall not defile any of the civil institutions of all this fair land! Let us repeat, atheism and

October 27, 1789. McAllister D. *Testimonies to the religious defect of the Constitution of the United States*. Christian Statesman Tract No. 7, Philadelphia (1874) at 2-3.

⁶ McAllister's tract was an attempt to demonstrate that "[t]his defect ... never passed altogether unnoticed" by placing all "testimony" into "one complete summary." *Tract No. 7* at 1. Yet, for the 22 years between 1790 and 1812, McAllister apparently could find only three protestations within all of the colonial literature. *Tract No. 7* at 3-4.

⁷ Perhaps the most renowned example was Timothy Dwight's 1812 oratory:

We formed our Constitution without any acknowledgement of GOD; without any recognition of his mercies to us, as a people, of his government, or even of his existence. The Convention, by which it was formed, never asked, even once, his direction, or his blessing upon their labours. Thus we commenced our national existence under the present system, without GOD.

A discourse in two parts: delivered July 23, 1812, on the public fast, in the chapel of Yale College by Timothy Dwight, D.D.L.L.D., President of that Seminary; Published at the request of the students, and others; New Haven, Published by Howe and Deforest; Sold also by A.T. Goodrich and Co. No. 124, Broadway, New-York; Printed by J. Seymour, 49, John Street, New York, p. 40.

⁸ *American State Papers Bearing on Sunday Legislation*. [1st Edition] Compiled and Annotated by Blakely WA (1890). Revised and Enlarged Edition, [2nd Edition] Edited by Colcord W (The Religious Liberty Association: Washington, DC; 1911) pp 341-343.

Christianity are contradictory terms. They are incompatible systems. They cannot dwell together on the same continent!⁹

With such a legacy of antipathy towards Atheism, the official espousal of that creed by the nation's chief political rival was seized upon by the (Christian) monotheistic majority as the Cold War took shape. "Believing that 'atheistic Communism' threatened America both without and within, Americans saw the world in terms of good and evil, godly and godless."¹⁰ In fact, "[i]n th[e] confused times of the fifties, socialists and Atheists were often thought to be communists."¹¹ Accordingly, it was believed that "Communists were our mortal enemies and they were atheists. Religion, therefore, came to seem essential in the fight against communism,"¹² which the monotheistic majority readily joined.¹³

"Godless communism" became a catch-phrase, permeating that era's American society. Even dictionary definitions of "godless" standardly included "wicked" as one of the synonyms,¹⁴ and that word's relative, "ungodly," was defined to include "sinful."¹⁵ Thus, the stage was set for governmental agents to parlay this manifest prejudice against adherents of a minority religious belief system to their advantage in terms of popular support. For instance, the Director of the Federal Bureau of Investigation, J. Edgar Hoover, stated:

⁹ Jones AT. *Civil Government and Religion, or Christianity and the American Constitution*, American Sentinel, 26 & 28 College Place, Chicago, Ill. 1059 Castro St. Oakland, Cal.; 43 Bond St. N Y Atlanta, Georgia. 1889. Facsimile Reproduction Printed 1973 by Atlantic Printers & Publishers Sherrington, P. Q. pp. 53-56

¹⁰ Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY: Doubleday & Co. 1977) p.82.

¹¹ Oakley, J. Ronald. *God's Country: America in the Fifties*. (New York: Dembner, 1986) p. 185.

¹² Miller, Douglas T. & Nowak, Marion. *The Fifties: The Way We Really Were* (Garden City, NY, Doubleday & Co. 1977) p. 91.

¹³ For example, a National Conference on the Spiritual Foundations of Our Democracy was held shortly after the Act of 1954 was passed. There, "[t]he interfaith leaders [sought] a statement of common faith on which to fight Communism." *The New York Times*, November 11, 1954.

¹⁴ "Godless" was defined in *Webster's New Twentieth Century Dictionary of the English Language - Unabridged*. (Standard Reference Works Publishing Co., Inc.: New York, 1956) as "Having no reverence for God; impious; ungodly; irreligious; wicked." Page 749. In *Funk & Wagnalls New Practical Standard Dictionary of the English Language*, Volume One: A-P (Funk & Wagnalls Co.: New York, 1956) the definition was "Ungodly; atheistical; wicked." Page 569.

¹⁵ *The New Century Dictionary of the English Language*, Volume 2 (D. Appleton-Century Co.: New York, 1948), p. 2095. That definition exists to this day: "ungodly: 1 a : denying or disobeying God : IMPIOUS, IRRELIGIOUS b : contrary to moral law : SINFUL, WICKED." Merriam-Webster Online Dictionary, accessed at <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=ungodly> on September 12, 2004.

I think that the criminal flood is an inescapable result of our earlier failure to teach God convincingly to the youthful unfortunates who are our juvenile delinquents of today and who will be our adult criminals of tomorrow.¹⁶

Former President Herbert Hoover wrote that, “[w]hat the world need today is a definitive, spiritual mobilization of the nations who believe in God against this tide of Red agnosticism,” and actually suggested reorganizing or replacing the United Nations with a “moral and spiritual co-operation of God-fearing free nations.” He concluded that, “in rejecting an Atheistic other world, I am confident that the Almighty God will be with us.”¹⁷

The phrase “godless communists” filled the pages of the Congressional Record as the movement to intrude “under God” into the Pledge took hold. Rep. Louis Charles Rabaut – the chief House sponsor of the Act of 1954 – went so far as to place in that setting the incredible assertion that “[a]n atheistic American ... is a contradiction in terms.”¹⁸ On Flag Day in 1955 – commemorating the one-year anniversary of the religious alteration of the Pledge – Rep. Rabaut stated, “We cannot afford to capitulate to the atheistic philosophies of godless men.”¹⁹ Rep. George H. Fallon felt the Congressional Record was a proper locale to claim that “when Francis Bellamy wrote this stirring pledge, the pall of atheism had not yet spread its hateful shadow over the world.”²⁰ Also placed into the Congressional Record (with the unanimous consent of the Senate) was an editorial from the Milwaukee Sentinel that stated, “[I]n times like these when Godless communism is the greatest peril this Nation faces, it becomes more necessary than ever to avow our faith in God and to affirm the recognition that the core of our strength comes from Him.”²¹ As Congress changed our national motto from “e pluribus unum” – which had been chosen by a committee formed on July 4, 1776 (and comprised of Benjamin Franklin, Thomas Jefferson and John Adams) – to “In God We Trust,”²² Rep. Louis C. Rabaut sponsored another bill; this one to have “Pray for Peace” as the cancellation stamp of all first- and second-class

¹⁶ 99 Cong. Rec. 12 (Appendix), A4155 (May 22, 1953) (Attributed to J. Edgar Hoover in article inserted into the record by Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

¹⁷ Hoover, Herbert. *Addresses upon the American Road 1948-1950* (Stanford, California: Stanford University Press, 1951) pp. 66-67.

¹⁸ 100 Cong. Rec. 2, 1700 (Feb. 12, 1954).

¹⁹ 101 Cong. Rec. 6, 8156 (June 14, 1955) (Rep. Louis C. Rabaut’s statement during the 1955 Flag Day ceremonies.)

²⁰ 100 Cong. Rec. 18 (Appendix), A3448 (May 11, 1954).

²¹ 100 Cong. Rec. 5, 5915 (May 4, 1954).

²² July 30, 1956, ch. 795, 70 Stat. 732.

mail. This, he contended, would help counter “the ever increasing attacks upon us by forces of godlessness and atheism.”²³

The other branches of government joined in the fray. The Supreme Court equated Atheism with subversion: “[T]he Court of Appeals felt that the Legislature’s reasonable belief in such conditions justified the State in enacting a law to free the American group from infiltration of such atheistic or subversive influences.”²⁴ And the nation’s “spiritual leader” – President Eisenhower – succinctly stated that, “Recognition of the Supreme Being is the first, the most basic, expression of Americanism.”²⁵

The media, also, fanned the flames of this bigotry. For instance, William Randolph Hearst – who was eventually to use his vast newspaper empire to advocate for interlarding the Pledge with “under God” – wrote a 1940 opinion column denigrating “atheism, anarchism and Godless despotism.”²⁶ Thus, socially and politically, Atheists were set up to be disenfranchised, as it was accepted by the majority that “[n]ot to be ... either a Protestant, a Catholic, or a Jew is somehow not to be an American.”²⁷ Worse yet, Atheism “may imply being obscurely ‘un-American.’”²⁸

At the time of the Act of 1954, therefore, “a professed ‘unbeliever’ ... would have no chance whatever in political life.”²⁹ The statistics bore this out, demonstrating that any complaints about this barrage of societal monotheistic indoctrination³⁰ were to no avail. In 1946, for instance, 57%

²³ Silk M. *Spiritual Politics: Religion and America since World War II*. (New York; Simon and Schuster, 1988) p. 100.

²⁴ *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 109 (1952).

²⁵ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 274 (citing the President’s “address launching the American Legion’s ‘Back to God’ campaign” for 1955.)

²⁶ Coblenz Edmond D. *William Randolph Hearst: A Portrait in his Own Words* (Simon and Schuster: New York, 1952) Pp 302-303.

²⁷ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 274.

²⁸ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 274.

²⁹ Herberg, Will. *Protestant – Catholic – Jew: An Essay in American Religious Sociology*. (Garden City, NY: Doubleday & Co., 1955), p. 65. As Herberg also noted, “every candidate for public office is virtually required to testify to his high esteem for religion.” *Id.*

³⁰ “From every corner and on every level, high, low, and middle brow, we have for years been bombarded with theological propaganda.” Russell, B. *Why I am not a Christian* (Touchstone / Simon & Schuster, Inc.: New York; 1957) (Editor’s Introduction by P. Edwards, at xii.)

of Americans felt that Atheists should be denied the opportunity to even broadcast their religious views on radio.³¹ A poll taken eight years later showed that 60% of the population would not grant Atheists the right to do the same in a speech, 60% favored removing any of their books on the topic from the public libraries, and an amazing 84% believed that Atheists should not be permitted to teach in college or universities.³² In 1958, more than three-quarters of the population stated they would not vote for an otherwise qualified candidate for president if that person were an Atheist.³³ Perhaps most incredible of all, 27% of the population stated in 1965 that they didn't think Atheists should even be allowed to vote! In contrast, when asked if "people who have quit school and never completed high school" should be have that right, only 6% of the population felt that group should be excluded.³⁴ As the author of a treatise on the Supreme Court and the Religion Clauses noted in 1962, "Atheism is fair game for the sniper, and overtones of 'blasphemy' and 'sacrilege' still linger."³⁵

³¹ Gallup Poll – A.I.P.O. (December 18, 1946).

³² Joint survey conducted in 1954 by the Gallup Poll and the National Opinion Research Center of the University of Chicago, as reported in Stouffer, Samuel. *Communism, Conformity, and Civil Liberties: A Cross Section of the Nation Speaks Its Mind* (Garden City, NY: Doubleday & Co. 1955), pp. 32-33.

³³ The poll looked into other religions and race as well. The results are revealing: Would not vote for a: Baptist (4%), Catholic (27%), Jew (29%), Negro (54%), Atheist (77%). *Id.*

³⁴ Gallup Poll – A.I.P.O. (July 21, 1965).

³⁵ *The Supreme Court on Church and State*. Tussman J. (ed.). (Oxford University Press: New York; 1962), at xxi.

APPENDIX D

THE HISTORICAL RECORD CLEARLY DEMONSTRATES THAT THE ACT OF 1954 WAS PASSED AS A RESULT OF THE DESIRE TO ENDORSE (CHRISTIAN) MONOTHEISM AND TO DISAPPROVE OF ATHEISM

It was in the previously described markedly pro-monotheistic (APPENDIX A) and anti-Atheistic (APPENDIX C) environment that the previously secular Pledge of Allegiance was interlarded with the words, “under God.” The specific movement began in 1951, when the Board of Directors of the Knights of Columbus – “the largest Catholic laymen’s organization”¹ – inserted those two words after “one Nation” for their members to recite when uttering the Pledge. The Knights recommended the change to our federal leaders in 1952,² the same year Congress requested that the president “set aside and proclaim ... a National Day of Prayer, on which the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals.”³

The Knights’ idea received its initial legislative backing on April 20, 1953, two months after the introduction of H. Con. Res. 60 to create a “Prayer Room” in the Capitol “to seek Divine strength and guidance.”⁴ On that date, the first of eighteen separate bills to place “under God” into the Pledge was proposed.⁵ Authored by Michigan’s Rep. Louis Charles Rabaut, the bill gathered its main support on February 7, 1954, when the Rev. George M. Docherty spoke before his congregation at Washington, DC’s New York Avenue Presbyterian Church. Thus, the chief catalyst for placing purely religious words into our perfectly functioning secular pledge was a Sunday sermon – a sermon in which Rev. Docherty asserted that “[a]n atheistic American is a contradiction in terms.”⁶

¹ *Elk Grove Unified Sch. Dist. v. Newdow*, 159 L. Ed. 2d 98, 124 S. Ct. 2301 (2004), *Brief for amicus curiae Knights of Columbus* at 1.

² *Id.* at 1-2.

³ 66 Stat. 64 (1952); 36 U.S.C. § 169h.

⁴ *The Prayer Room in the United States Capitol*, Document No. 234, 84th Cong., 1st Sess. (1954); US GPO, Washington: 1956, at 1.

⁵ *Big Issue in D.C.: The Oath of Allegiance*. New York Times, May 23, 1954, E-7. The eighteen separate resolutions of the 83rd Congress which were introduced to place the words, “under God,” into the Pledge of Allegiance were: S.J. Res. 126, H.J. Res. 243, H.J. Res. 334, H.J. Res. 371, H.J. Res. 383, H.J. Res. 479, H.J. Res. 497, H.J. Res. 502, H.J. Res. 506, H.J. Res. 513, H.J. Res. 514, H.J. Res. 518, H.J. Res. 519, H.J. Res. 521, H.J. Res. 523, H.J. Res. 529, H.J. Res. 531, and H.J. Res. 543.

⁶ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 301.

Attending that sermon was President Eisenhower. Three days earlier, the President and other of the nation's leaders publicly joined in attending a prayer breakfast sponsored by the International Council for Christian Leadership.⁷ On the afternoon of Rev. Docherty's sermon, the President took part in a radio and television broadcast of the American Legion's "Back to God" program. The program was "an appeal to the people of America and elsewhere to seek Divine guidance in their everyday activities, with regular church attendance, daily family prayer and the religious training of youth."⁸ From the White House, the President stated he was "delighted that our veterans are sponsoring a movement to increase our awareness of God in our daily lives."⁹ He also claimed, "In battle, they learned a great truth – that there are no atheists in the foxholes."¹⁰

Over the next months, the House and Senate worked together on the legislation, with numerous congressmen openly expressing pro-Monotheistic and anti-Atheistic biases. APPENDIX E (providing nine pages of citations). As noted in the New York Times, the Act was religious: "All of the various sponsors, as well as the Rev. Mr. Docherty, agree on one thing: the widespread support the bill is receiving must bear testimony to a religious revival of significance."¹¹ An article in the same edition spoke of a lecture delivered the day before in by Agnes E. Meyer, a Washington author and civic leader:

Mrs. Meyer said that among some people religion had simply become the latest fad.

"If you don't bring God into every cabinet meeting, political convention or other assembly it is bad public relations," she asserted.

She cited as being contrary to the principle of separation of church and state Senator Homer Ferguson's resolution to insert "under God" in the pledge of allegiance. She also was critical of Senator Ralph E. Flanders' proposed amendment to the Constitution, which reads:

⁷ *Eisenhower Joins in a Breakfast Prayer Meeting*. New York Times, February 5, 1954, A-10.

⁸ *Nation Needs Positive Acts of Faith, Eisenhower Says*. New York Times, February 8, 1954, A-1, 11.

⁹ "Text of President's Talk on Faith." New York Times, February 8, 1954, A-11.

¹⁰ *The Public Papers of the Presidents, Dwight D. Eisenhower, 1954* (Office of the Federal Register, National Archives and Records Service, General Services Administration, U.S. Government Printing Office, 1960) pp 243-244. For those not struck by the egregious offensiveness of this oft-repeated statement, the analogous claims that, "There are no Jews in foxholes," or "There are no Catholics in foxholes," might be considered.

¹¹ Knowles, Clayton. *Big Issue in D.C.: The Oath of Allegiance* NY Times May 23, 1954, pg E7.

“This nation devoutly recognizes the authority and law of Jesus Christ, Saviour and Ruler of Nations, through whom are bestowed the blessings of Almighty God.”¹²

With Rep. Rabaut stating that the new Pledge would remind children that “democratic... institutions presuppose a Supreme Being,”¹³ the final bill passed without objection in either house.¹⁴ The result was the Act of 1954. As noted, this Act did nothing but add the two purely religious words, “under God,” to the Nation’s Pledge of Allegiance, which – up until that time – had never included any religious dogma. As one commentator noted, the Act resulted from “the pressure of sanctimonious zeal unrestrained by constitutional principle.”¹⁵

Perhaps the most unequivocal evidence that the act of 1954 was passed as a result of the desire to endorse (Christian) monotheism and to disapprove of Atheism can be found in the Summary of the Act delivered to the Senate by the Senate’s chief sponsor of the legislation, Senator Homer Ferguson, placed into the Congressional Record eight days after the ceremony commemorating the new religious wording. The entire entry is provided in APPENDIX H.

The fifteen most glaring excerpts are provided here:

- (1) Recognizing that the pledge did not specifically acknowledge that we are a people who do believe in and want our Government to operate under divine guidance, I introduced in the Senate a resolution to add the words which forever, I hope, will be on the lips of Americans.
- (2) To put the words “under God” on millions of lips is like running up the believer’s flag as the witness of a great nation’s faith. It is also displayed to the gaze of those who deny the sacred sanctities which it symbolizes.
- (3) Then, appropriately, as the flag was raised a bugle rang out with the familiar strains of “Onward, Christian Soldiers!”
- (4) Thus at the White House and at the Capital was “under God” written across the Stars and Stripes, in its homage to deity taking its place with the “In God We Trust” on our coinage and “the power that hath made and preserved us a Nation” in our national anthem. Concerning this meaningful event the White House made

¹² *Surpass Orthodoxy, Christianity Urged*. NY Times May 23, 1954 pg 30

¹³ “Under God,” *Newsweek*, May 17, 1954

¹⁴ 100 Cong. Rec. H7757-66 (June 7, 1954); 100 Cong. Rec. S7833-34 (June 8, 1954).

¹⁵ *The Supreme Court on Church and State*. Tussman J. (ed.). (Oxford University Press: New York; 1962), at xvii.

this thrilling pronouncement, to which is the sound of a great "Amen" in a mighty host of God-fearing hearts:

- (5) "From this day forward the millions of our schoolchildren will daily proclaim in every city and town, every village and rural schoolhouse the dedication of our Nation and our people to the Almighty.
- (6) To be "under God" is to be under an intelligible explanation of the mysterious universe in which we find ourselves. To believe in nothing higher than the flag of one's nation is to thwart the soul's highest instincts, as well as to insult the intellect.
- (7) The results of blasphemous denials of God on a tremendous scale already are being shudderingly shown by the baneful social pattern of atheistic materialism.
- (8) Suspicion begins to grow that it is not the believer who is irrational, but the cynical denier.
- (9) Certainly, one who accepts the beliefs of unbelief, with its assumption of a universe that is dead and godless, is called before the bar of reason to explain such undeniable facts as self-sacrifice, nobility, and heroism, which have made the earthen vessels of humanity blaze with a shining glory.
- (10) The unbeliever has to assert that the grandeur and splendor of life at its best are but the product of blind chance. To deny the implications of "under God" and to point to dust to explain destiny is about as sensible as declaring that you could take a bag containing the letters of the alphabet and, throwing a few handfuls of them into the air, expect them to fall to the ground in the form of a Shakespeare's sonnet or of a Tennyson's In Memoriam. The thing is absurd.
- (11) There is no liberty anywhere except under God.
- (12) The promising streams of freedom disappeared in the sands of futility when there is nothing higher than the state. With a deified state in a godless realm iron curtains but hide broken strands of rainbows which once arched the sky of those who imagined themselves pioneers of a new freedom. Without God, unkept promises became the fetters of a worse thralldom at the hands of alleged emancipators.
- (13) We are suddenly aghast at the dire possibilities of stupendous power in the hands of men who have no God in their hearts.
- (14) Any so-called freedom, if it is not under God, is under sentence of death.
- (15) I hope, and respectfully suggest, that every newspaper in the country, at least once before the Fourth of July, print on its front page the new Pledge of Allegiance with the words "under God" in bold-face type, so that all the people may know the new pledge of allegiance.

APPENDIX E

SELECTED EXCERPTS FROM THE CONGRESSIONAL RECORD (Circa 1954)

"I think that the criminal flood is an inescapable result of our earlier failure to teach God convincingly to the youthful unfortunates who are our juvenile delinquents of today and who will be our adult criminals of tomorrow."¹

"Without these words, ... the pledge ignores a definitive factor in the American way of life and that factor is belief in God."²

"[T]he fundamental issue which is the unbridgeable gap between America and Communist Russia is a belief in Almighty God."¹⁸

"From the root of atheism stems the evil weed of communism."¹⁸

"An atheistic American ... is a contradiction in terms."¹⁸

"[T]he American way of life is ... 'a way of life that sees man as a sentient being created by God and seeking to know His will, whose soul is restless till he rests in God.'"¹⁸

"From their earliest childhood our children must know the real meaning of America. Children and Americans of all ages must know that this is one Nation which 'under God' means 'liberty and justice for all.'"¹⁸

"[T]he fundamental basis of our Government is the recognition that all lawful authority stems from Almighty God."³

"[W]e recognize the spiritual origins and traditions of our country as our real bulwark against atheistic communism."³

"[O]nly under God will our beloved country continue to be a citadel of freedom."³

¹ 99 Cong. Rec. 12 (Appendix), A4155 (May 22, 1953) (Attributed to J. Edgar Hoover in article inserted into the record by Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words "under God" into the previously secular Pledge of Allegiance)

² 100 Cong. Rec. 2, 1700 (Feb. 12, 1954) (Statement of Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words "under God" into the previously secular Pledge of Allegiance)

³ 100 Cong. Rec. 17 (Appendix), A2515-A2516 (Apr. 1, 1954) (Statement of Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words "under God" into the previously secular Pledge of Allegiance)

"The pledge of allegiance should be proclaimed in the spirit ... recogni[zing] God as the Creator of mankind, and the ultimate source both of the rights of man and of the powers of government."⁴

"Certainly, in these days of great challenge to America, one can hardly think of a more inspiring symbolic deed than for America to reaffirm its faith in divine providence."⁵

"What better training for our youngsters could there be than to have them, each time they pledge allegiance to Old Glory, reassert their belief, like that of their fathers and their fathers before them, in the all-present, all-knowing, all-seeing, all-powerful Creator."⁵

"[I]n times like these when Godless communism is the greatest peril this Nation faces, it becomes more necessary than ever to avow our faith in God and to affirm the recognition that the core of our strength comes from Him."⁶

"Hence it is fitting that those two profoundly meaningful words 'under God' should be included in the pledge of allegiance so that we and our children, who recite the pledge far more often than adults, may be reminded that spiritual strength derived from God is the source of all human liberty."²¹

"[The] principles of the worthwhileness of the individual human being are meaningless unless there exists a Supreme Being."⁷

"It is the Nation itself which was born and lives 'under God.'"⁷

"[T]he one fundamental issue which is the unbridgeable gap between America and Communist Russia is belief in Almighty God."⁷

"More importantly, the children of our land, in the daily recitation of the pledge in school, will be daily impressed with a true understanding of our way of life and its origins. ... Fortify our youth in their allegiance to the flag by their dedication to 'one Nation, under God.'"⁷

"He is the God, undivided by creed, to whom we look, in the final analysis, for the well-being of our Nation. Therefore, when we make our pledge to the flag I believe it fitting that we recognize by words what our faith has always been."⁸

⁴ 100 Cong. Rec. 4, 5069 (Apr. 13, 1954) (Statement of Rep. Peter W. Rodino, Jr. in support of the resolution to insert the words "under God" into the previously secular Pledge of Allegiance)

⁵ 100 Cong. Rec. 5, 5915 (May 4, 1954) (Statement of Sen. Alexander Wiley in support of Sen. Ferguson's resolution to insert the words "under God" into the previously secular Pledge of Allegiance)

⁶ 100 Cong. Rec. 5, 5915 (May 4, 1954) (Milwaukee Sentinel editorial printed in the Congressional Record – with the unanimous consent of the Senate – as requested by Sen. Alexander Wiley in support of Sen. Ferguson's resolution to insert the words "under God" into the previously secular Pledge of Allegiance)

⁷ 100 Cong. Rec. 5, 6077-6078 (May 5, 1954) (Statement of Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words "under God" into the previously secular Pledge of Allegiance)

It is a “fundamental truth ... that a government deriving its powers from the consent of the governed must look to God for divine leadership.”⁹

“We are asking that only two words be added to the Pledge of Allegiance, but they are very significant words.”¹⁰

“[T]he Pledge of Allegiance to the Flag which stands for the United States of America should recognize the Creator who we really believe is in control of the destinies of this great Republic.”¹⁰

“It is true that under the Constitution no power is lodged anywhere to establish a religion. This is not an attempt to establish a religion; it has nothing to do with anything of that kind. It relates to belief in God, in whom we sincerely repose our trust.”¹⁰

“Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God’s province over the lives of our people and over this great Nation.”¹⁰

“[The Pledge] is not only a pledge of words but also of belief.”¹⁰

“[B]elief in God is part of our very lives.”¹⁰

“The United States is one of the outstanding nations of the world standing foursquare on the principle that God governs the affairs of men.”¹¹

“Billy Graham [said,] ‘We have dropped our pilot, the Lord Jesus Christ, and are sailing blindly on without divine chart or compass.’”¹¹

“[I]t is well that when the pledge of allegiance to the flag is made by every loyal citizen and by the schoolchildren of America, there should be embodied in the pledge our allegiance and faith in Almighty God. The addition of the words ‘under God’ will accomplish this purpose.”¹¹

⁸ 100 Cong. Rec. 5, 6085 (May 5, 1954) (Statement of Rep. Francis E. Dorn, supporting passage of House Joint Resolution 502 which sought to insert the words “under God” into the previously secular Pledge of Allegiance)

⁹ S. Rep. No. 1287, 83rd Cong., 2d Sess. 2, reprinted in 100 Cong. Rec. 5, 6231 (May 10, 1954) (Letter of Sen. Homer Ferguson, sponsor of the Senate resolution to insert the words “under God” into the previously secular Pledge of Allegiance, to Sen. William Langer, Chairman of the Senate Judiciary Committee, March 10, 1954)

¹⁰ 100 Cong. Rec. 5, 6348 (May 11, 1954) (Sen. Homer Ferguson’s explanation of the joint resolution to insert the words “under God” into the previously secular Pledge of Allegiance, to Sen. William Langer, Chairman of the Senate Judiciary Committee, March 10, 1954)

¹¹ 100 Cong. Rec. 5, 6919 (May 20, 1954) (Rep. Homer D. Angell’s remarks on the joint resolution to insert the words “under God” into the previously secular Pledge of Allegiance)

"[W]hen Francis Bellamy wrote this stirring pledge, the pall of atheism had not yet spread its hateful shadow over the world, and almost everyone acknowledged the dominion of Almighty God."¹²

"[N]ow that the militant atheistic Red menace is abroad in our land, it behooves us to remind the free people of these United States that they are utterly at the mercy of God."¹²

"Now that pagan philosophies have been introduced by the Soviet Union, there is a necessity for reaffirming belief in God."¹³

"I appear here today in support of any and all bills that would serve to recognize the power and universality of God in our pledge of allegiance."¹⁴

"The inclusion of God in our pledge would acknowledge the dependence of our people, and our Government upon the moral direction and the restraints of religion."¹⁴

"The significant import of our action today ... is that we are officially recognizing once again this Nation's adherence to our belief in a divine spirit, and that henceforth millions of our citizens will be acknowledging this belief every time they pledge allegiance to our flag."¹⁵

"How fitting that we here today should take action to once more affirm our belief in ... the guidance of a divine spirit."¹⁵

"Once again we are proclaiming to the world that ... the flag which flies over our land is a symbol of a nation and of a people under God."¹⁵

"[T]his measure is more than one of passing importance. It goes to the very fundamentals of life and creation. It recognizes that all things which we have in the way of life, liberty, constitutional government, and rights of man are held by us under the divine benediction of the Almighty. There is a hope and a hereafter in these two words and they, of course, should be included in the pledge of allegiance to Old Glory."¹⁶

"One thing separates free peoples of the Western World from the rabid Communist, and this one thing is a belief in God. In adding this one phrase to our pledge of allegiance to our flag, we in effect declare openly that we denounce the pagan doctrine of communism and declare 'under God' in favor of free government and a free world."¹⁶

¹² 100 Cong. Rec. 18 (Appendix), A3448 (May 11, 1954) (Letter entered into the record by Rep. George H. Fallon. This was "[p]assed without a single dissenting vote, and later adopted by the DAR, the Flag House Association, the VFW, the DAV, sections of the American Legion ..., incorporated in the pledge at the 'I Am An American Day' ... etc., etc.")

¹³ 100 Cong. Rec. 18 (Appendix), A4066 (May 24, 1954) (Newspaper article from the Malden (Mass.) Press of May 13, 1954, entered into the record by Rep. Angier L. Goodwin.)

¹⁴ 100 Cong. Rec. 6, 7590-7591 (June 2, 1954) (Rep. John R. Pillion's statement provided on May 5, 1954 to Subcommittee No. 5 of the House Committee on the Judiciary.)

¹⁵ 100 Cong. Rec. 6, 7757 (June 7, 1954) (Statement of Rep. Oliver P. Bolton in support of the joint resolution to amend the previously secular Pledge.)

¹⁶ 100 Cong. Rec. 6, 7758 (June 7, 1954) (Statement of Rep. Brooks in support of the joint resolution to amend the previously secular Pledge.)

“Fortify our youth in their allegiance to the flag by their dedication to ‘one nation under God.’”¹⁷

“Regaining our reverence for God we in America in this 20th century can rediscover our own value and the solid basis on which it rests.”¹⁸

“The first sentence of section 7 of the joint resolution (36 U.S.C. sec. 172), as amended, ‘one Nation indivisible under God,’ is a realistic recognition of the theological and philosophical truth – the existence of a Supreme Being.”¹⁹

“When the forces of anti-God and antireligion so persistently spread their dangerous and insidious propaganda, it is wholesome for us to have constantly brought to our minds the fact that, mighty and essential as armed strength may be, it is the strength of the spirit and the moral force generated by the righteousness of our cause and the purity of our motives to which we must ultimately look for salvation from destruction and for triumph over the evil forces that best us.”²⁰

“Faith in God ... has never been misplaced. House Joint Resolution 243 is a proclamation to all the world and to ourselves, ever to keep us mindful and prayerful, that the United States of America is in truth and in the acknowledged fact, a ‘Nation under God.’”²¹

“This [is a] victory for God and country.”²¹

“[The joint resolution] seems to have struck a note of universal approval, indicating an underlying acknowledgement of our indebtedness to God and our dependence upon Him.”²²

“At this moment of our history the principles underlying our American Government and the American way of life are under attack by a system that does not believe in God. A system that denies the existence of God.”²²

“Thus, the inclusion of God in our pledge of allegiance rightly and most appropriately acknowledges the dependence of our people and our Government upon that divinity that rules over the destinies of nations as well as individuals.”²²

¹⁷ 100 Cong. Rec. 6, 7759 (June 7, 1954) (Statement of Rep. Louis C. Rabaut in support of the joint resolution to amend the previously secular Pledge.)

¹⁸ 100 Cong. Rec. 6, 7759 (June 7, 1954) (Statement of Rep. Charles G. Oakman in support of the joint resolution to amend the previously secular Pledge.)

¹⁹ 100 Cong. Rec. 6, 7760 (June 7, 1954) (Letter written by the Chairman of the Department of Political Science at the University of Detroit, placed into the record by Rep. Brooks in support of the joint resolution to amend the previously secular Pledge.)

²⁰ 100 Cong. Rec. 6, 7760 (June 7, 1954) (Statement of Rep. Keating in support of the joint resolution to amend the previously secular Pledge.)

²¹ 100 Cong. Rec. 6, 7761-7762 (June 7, 1954) (Statement of Rep. Barratt O’Hara in support of the joint resolution to amend the previously secular Pledge.)

²² 100 Cong. Rec. 6, 7762-7763 (June 7, 1954) (Statement of Rep. Wolverton in support of the joint resolution to amend the previously secular Pledge.)

“The God of nations who helped in bringing to a successful conclusion the war of independence, has never ceased to control the destiny of this great Nations, and I trust He never will.”²²

“[O]ne of the greatest differences between the free world and the Communists [is] a belief in God. The spiritual bankruptcy of the Communists is one of our strongest weapons in the struggle for men’s minds and this resolution gives us a new means of using that weapon.”²²

“The use of the phrase ‘under God’ in the pledge of allegiance to the flag sets forth in a mere two words, but, very strong and meaningful words, the fundamental faith and belief of America in the overruling providence of God and our dependence at all times upon Him.”²²

“The recitation of this acknowledgement that God is the foundation of our Nation will be of incalculable value, all through the years, of ever keeping vividly before our people, including our children who from earliest childhood, pledge their allegiance to the flag, that the real source of our strength in the future, as in the past, is God.”²²

“[T]he Government and people of America have recognized the necessity of doing the will of God as we see it, and of relying for our strength and welfare on the protection of His divine providence.”²³

“To insert these two words in the pledge ... would be the most forceful possible defiance of the militant atheism and ‘dialectical materialism’ that are identified with Russian and international communism.”²³

“[W]e wish now, with no ambiguity or reservation, to place ourselves under the rule and care of God.”²³

“We Members of Congress ... felt and acted on the popular urge to give expression to the conviction that our deliberations should be publicly and tangibly submitted to the guidance of God.”²³

“[W]e do well to once more publicly and officially affirm our faith.”²⁴

“[O]ur citizenship is of no real value to us unless our hearts speak in accord with our lips; and unless we can open our souls before God and before Him conscientiously say, ‘I am an American.’”²⁵

“God is the symbol of liberty to America.”²⁵

²³ 100 Cong. Rec. 6, 7763-7764 (June 7, 1954) (Statement of Rep. Peter W. Rodino, Jr. in support of the joint resolution to amend the previously secular Pledge. Amazingly, included in this statement were the words “I am firmly of the opinion that our Founding Fathers ... meant to prevent ... any provision of law that could raise one form of religion to a position of preference over others.”)

²⁴ 100 Cong. Rec. 6, 7764 (June 7, 1954) (Statement of Rep. Oliver P. Bolton in support of the joint resolution to amend the previously secular Pledge.)

²⁵ 100 Cong. Rec. 6, 7765-7766 (June 7, 1954) (Statement of Rep. Hugh J. Addonizio in support of the joint resolution to amend the previously secular Pledge.)

"The amendment to the pledge of allegiance to the flag, by inserting the words 'under God,' is a simple device by which we can verbally proclaim our intense desire to continue this land as 'one Nation, under God, indivisible.'"²⁵

"[L]iberty, justice, and human equality ... are man's own heritage from God."²⁵

"Never before in our national history have so many diverse groups enjoyed such a complete measure of religious freedom as exists in the United States today. But it is even more inspiring to realize that these religious groups are all working 'under God' in their own ways, to help solve the problems which characterize our troubled era."²⁵

"A child's belief in spiritual values is beautiful to behold."²⁵

"I believe it to be of great importance that we as a Nation recognize a higher power than ourselves in the guidance of our existence. This joint resolution recognizes that we believe there is a Divine Power, and that we, our children, and our children's children should always recognize it."²⁶

"I believe we should trust in God and we should recognize that God is guiding our destiny and the hopes and aspirations of this Nation."²⁶

"It is so fitting that we declare to the world, in our position as leader among the sister nations of the earth, our dependence upon Almighty God."²⁷

"In my experience as a public servant and as a Member of Congress I have never seen a bill which was so noncontroversial in nature or so inspiring in purpose."²⁸

"I am proud to have been associated with this effort that produced this legislation which recognizes the importance of divine guidance in our national affairs."²⁸

"We see the pledge, as it now stands, as a formal declaration of our duty to serve God and our firm reliance, now as in 1776, on the protection of divine providence."²⁹

"To put the words 'under God' on millions of lips is like running up the believer's flag as the witness of a great nation's faith."³⁰

²⁶ 100 Cong. Rec. 6, 7833-7834 (June 8, 1954) (Statement of Sen. Homer Ferguson in support of the joint resolution to amend the previously secular Pledge.)

²⁷ 100 Cong. Rec. 6, 7935 (June 9, 1954) (Letter from Rep. Louis C. Rabaut to President Eisenhower, informing him of the passage in Congress of the joint resolution to amend the previously secular Pledge.)

²⁸ 100 Cong. Rec. 6, 7989 (June 10, 1954) (Statement of Rep. Charles G. Oakman recounting the passage of the joint resolution to amend the previously secular Pledge.)

²⁹ 100 Cong. Rec. 7, 8563 (June 22, 1954) (Statement of Sen. Burke, submitting a resolution to provide for printing of the now sectarian Pledge as a Senate document. Sen. Burke also noted that the resolution adding "under God" to the previously secular Pledge "had been passed by House and Senate with no opposition.")

"[A]s the flag was raised a bugle rang out with the familiar strains of 'Onward, Christian Soldiers!'"³⁰

"From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our Nation and our people to the Almighty."³¹

"It is my belief that an extensive circulation of these printed copies of the Pledge of Allegiance to the Flag will imprint, indelibly, upon the minds of those who read them, whether they be young or old, that their great Nation, these United States, exists and endures purposefully 'Under God.'"³²

"Freedom in a world faced with this interminable conflict between communism and Christianity will survive only so long as freemen are willing to fight for that precious principle."³³

"You have learned that you live in a free nation composed of free men and women who are willing to sacrifice all they possess, as did their forefathers, to preserve the Christian principles of a free nation under God."³³

"Today we express ... our national dependence upon almighty God by pledging, as a nation, our allegiance to the Stars and Stripes."³⁴

"Wherever this banner is unfurled there is hope in the hearts of men who believe that God created man and destined him to be free."¹⁹

"[T]he need now is for the Christian ideas to neutralize the preponderance of material know-how. ... We cannot afford to capitulate to the atheistic philosophies of godless men – we must strive to ever remind the world that this great Nation has been endowed by a creator."¹⁹

"The sordid records of the divorce courts, of the juvenile delinquency case histories, the tragedy of broken homes, wandering families, of the cheap price put on human life, the old heads on young children, the disrespect for authority, the contempt for law, the chiseling

³⁰ 100 Cong. Rec. 7, 8617-8618 (June 22, 1954) (Statement of Sen. Homer Ferguson, reviewing the meaning of the new law that added "under God" to the previously secular Pledge, and recapping the events of that first Flag Day celebration with the new Pledge.)

³¹ 100 Cong. Rec. 7, 8618 (June 22, 1954) (Statement by President Dwight D. Eisenhower, as reported by Sen. Ferguson.)

³² 100 Cong. Rec. 7, 8893 (June 24, 1954) (Statement of Rep. Louis C. Rabaut submitting a resolution to provide for printing of the now sectarian Pledge as a House document.)

³³ 101 Cong. Rec. 6, 8073 (June 13, 1955) (From text of address given by Rep. Martin at the joint commissioning ceremonies for Army, Navy and Air Force ROTC graduates at Dartmouth College, June 11, 1955.)

³⁴ 101 Cong. Rec. 6, 8156 (June 14, 1955) (Rep. Louis C. Rabaut's statement during the 1955 Flag Day ceremonies.)

among those in authority, the lack of honor among the citizenry – all of this is the shame of America, the open sores of her secularist spirit.”³⁵

“If we have no rights under God, then America has no purpose of existence. For America is all that she is simply because she recognizes our rights under God.”³⁵

“The further men move from God and His principles, the worse it will be for America.”³⁵

“Our people without God would be a people reading the death warrant to real American freedom.”³⁵

“[The] right to profess God-given principles, to practice God-given commandments, and to live God-ordered lives ... is America and will always be America. There is no other pattern of life that can bear this trademark.”³⁵

“It is time that we really be neighbors in the Christian sense, that we live as neighbors, and have trust one for the other. This is the American way; this is God’s way.”³⁵

“Only God-fearing men can guarantee to America her greatness, her survival, and her continued blessings.”³⁵

“As these words are repeated, ‘one Nation, under God, indivisible, with liberty and justice for all,’ we are reminded not only of our dependence upon God but likewise the assurance of security that can be ours through reliance upon God.”³⁶

“These words, ‘under God,’ ... can be taken as evidence of our faith in that divine source of strength that has meant and always will mean so much to us as a nation.”³⁶

“Let us never forget that recognition of God by this and the other nations of the free world will mean victory and security against the forces of evil that deny God. May we, as a nation under God, ever recognize Him as the source of our refuge and strength.”³⁶

“[O]n June 14, Flag Day, 1954, the President signed into law House Joint Resolution 243, which added to the pledge of allegiance to the flag of the United States the compelling and meaningful words ‘under God.’”³⁷

“‘Under God’ in the pledge of allegiance to the flag expresses, aptly and forcefully, a grateful nation’s attitude of dependence upon Almighty God.”³⁷

“For under God this Nation lives.”³⁷

³⁵ 101 Cong. Rec. 18 (Appendix), A5920-A5921 (Aug. 2, 1955) (Article submitted by Rep. Louis C. Rabaut, sponsor of the House resolution to insert the words “under God” into the previously secular Pledge.)

³⁶ 100 Cong. Rec. 11, 14918-14919 (Aug. 17, 1954) (Remarks of Rep. Wolverton entitled “One Nation – Under God.”)

³⁷ 100 Cong. Rec. 12, 15828-15829 (Aug. 20, 1954) (Remarks of Rep. Louis C. Rabaut, sponsor of the House resolution placing the words “under God” into the previously secular Pledge.)

"Our political institutions reflect the traditional American conviction of the worthwhileness of the individual human being. That conviction, in turn, is based on our belief that the human person is important because he has been created in the image and likeness of God and that he has been endowed by God with certain inalienable rights."³⁷

"These principles of the worthwhileness of the individual human being are meaningless unless there exists a Supreme Being."³⁷

"It is the Nation itself which was born and lives under God."³⁷

"Indeed, the one fundamental issue which is the unbridgeable gap between America and Communist Russia is belief in Almighty God."³⁷

"Fortify our youth in their allegiance to the flag by their dedication to one nation under God."³⁷

APPENDIX F

THE IMPLEMENTATION OF THE ACT OF 1954 WAS CLEARLY RELIGIOUS

Upon the completion of its work in enacting the Act of 1954, Congress issued a final report. In that report was written, “The inclusion of God in our pledge therefore would further acknowledge the dependence of our people and our Government upon the moral directions of the Creator.¹ At the same time it would serve to deny the atheistic and materialistic concepts of communism ...”² Thus, we see the clearest evidence – in Defendant Congress’s own words – that the very intent of the Act of 1954 was to do precisely what the Supreme Court has repeatedly stated the Establishment Clause forbids:

The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.³

The purpose prong of the Lemon test asks whether government’s actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid.⁴

Preparing to celebrate the religious conversion of the previously secular Pledge as part of an enhanced Flag Day ceremony, Rep. Oliver Bolton of Ohio (who sponsored one of the eighteen versions of the Bill) called the White House regarding a picture taking. He recommended “that a Protestant, a Catholic and a Jew be in the group.” APPENDIX G. Similarly, Rep. Peter Rodino of New Jersey asked his colleagues in the House to “join together, Protestant, Jew, and Catholic, in taking this action.”⁵

¹ It might be emphasized that “the Creator” – not “a creator” – was written. This demonstrates that it was the (Judeo-) Christian Creator to which Congress was referring.

² H.R. 1693, 83rd Cong., 2nd Sess. (1954).

³ Lynch v. Donnelly, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring).

⁴ Id. at 690.

⁵ Silk M. *Spiritual Politics: Religion and America since World War II*. (New York; Simon and Schuster, 1988) p. 100.

At the ceremony itself – carried live on CBS’s morning news show⁶ – *Onward Christian Soldiers* was played.⁷ The lyrics to that song are:

Onward, Christian soldiers, marching as to war,
With the cross of Jesus going on before.
Christ, the royal Master, leads against the foe;
Forward into battle see His banners go!

President Eisenhower noted, “From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our Nation and our people to the Almighty.”⁸

The public rejoiced in the injection of the majority’s favored religious doctrine into the nation’s Pledge. As one author wrote, “few things done by the 83rd Congress were more popular than changing the Pledge.”⁹ The change had its desired effects:

A Protestant clergyman declared yesterday that pressure was being put on educators to bring more Bible reading, prayers and references to God into the schools.

Speaking in the Riverside Church, Riverside Drive and 122d Street, the Rev. Dr. J. Gordon Chamberlin contended that administrators and teachers were “under tremendous and often unfair pressure to get religion into education.” This, according to Dr. Chamberlin is part of the “new popular religion” being promoted in America.

“Doing pious things,” he said, “like including ‘under God’ in the Pledge of Allegiance, putting ‘In God We Trust’ on a postage stamp, or putting up posters urging people to ‘Go to Church’ can be the expression of sincere and devout piety, but it can also be a delusion.”¹⁰

⁶ Carter, Paul A. *Another Part of the Fifties*. (New York, Columbia University Press, 1983), p. 116.

⁷ 100 Cong. Rec. 7, 8617-8618 (June 22, 1954) (Statement of Sen. Homer Ferguson).

⁸ 100 Cong. Rec. 7, 8618 (June 22, 1954) (Statement by President Dwight D. Eisenhower, as reported by Sen. Ferguson).

⁹ Marty, Martin. *Modern American Religion*, vol. 3, “A Civic Religion of the American Way of Life,” (Chicago: University of Chicago Press, 1986) p. 299.

¹⁰ *Teachers Declared to Be Under Pressure In Move to ‘Get Religion Into Education’* NY Times September 20, 1954, p. 18.

Others voiced concerns as well. The Episcopal *Living Church*, for instance, proffered an admonition against “popular religion,” writing, “... let us not understand ‘under God’ as a declaration of national righteousness.”¹¹ Jewish groups – obviously alarmed by Senator Flanders’ plan to amend the Constitution with Christian verbiage – realized how “under God” was just a variation on the same theme. Thus, the New York Board of Rabbis said “We believe that such an amendment would violate the principle of religious freedom and would do much to introduce sectarian conflict in our country.”¹² Those brave enough to stand up to the potential stigmatization wrote letters to the editor. In the *New York Times*, for instance, William F. Potter posed this question: “Is the American non-church member (nearly half our population) and the non-believer considered disloyal?”¹³ Martin Abel’s letter on June 14, 1954 sparked a series of replies that revolved around his claim that the phrase “under God” was inconsistent with the phrase “liberty and justice for all.”¹⁴ As Margaret Sandburg of Flat Rock, N.C. noted, “Martin Abel thinks more like the Founding Fathers than those who passed the bill concerning the new pledge.”¹⁵ Additionally, as soon as the call for recitation of the now-religious Pledge was adopted by at least one public school system, a lawsuit was filed, challenging the practice on Establishment Clause grounds. *Lewis v. Allen*, 5 Misc. 2d 68, 159 N.Y.S.2d 807 (N.Y. Sup. Ct. 1957).

¹¹ “Under God,” *Time Magazine*, July 12, 1954

¹² “Rabbis Assail Proposal,” *New York Times*, May 27, 1954

¹³ Letter to the Editor, *New York Times*, June 6, 1954

¹⁴ Letter to the Editor, *New York Times*, June 18, 1954. One of the inane replies still uttered today was heard from Charles A. Henes: “If Mr. Abel does not like the name of God, why does he use the good money of this wonderful country which has the words ‘In God We Trust’?” Letter to the Editor, *New York Times*, June 23, 1954.

¹⁵ Letter to the Editor, *New York Times*, July 17, 1954

APPENDIX G

**JUNE 9, 1954 LETTER OF HOMER GRUENTHER
(PRESIDENT EISENHOWER'S CONGRESSIONAL LIAISON)**

The White House
June 9, 1954

TO: Gerald D. Morgan
Bernard M. Shanley

FROM: Homer H. Gruenther

Congressman Oliver Bolton called about HJ Res 243 which passed the Senate yesterday. This is the Bill which includes the wording "one Nation, under God, indivisible, etc."

The President was attending services on Lincoln's birthday when the Minister recommended this Bill. Several introduced different versions but Bolton's recommendation struck the comas so that it reads "one Nation under God indivisible".

Mr. Bolton says that the legislation has great "patriotic" possibilities. He would like to have two things:

1. The Bill signed on Flag Day (next Monday).
2. A Ceremony--and even a few minutes on T.V. as being most appropriate for a Flag Day Ceremony.

In any event, he would like to have pictures with five or six principal sponsors in attendance--and he recommends that a Protestant, a Catholic, and a Jew be in the group.

Sincerely,



Homer H. Gruenther

No.
gdm
Andrew
Bass.

From the Dwight D. Eisenhower President Library, Reports to the President on Pending Legislation prepared by the White House Records Office (Bill File) June 14, 1954 - June 18, 1954, Box No. 22:

APPENDIX H

SUMMARY OF THE ACT OF 1954 BY SENATOR HOMER FERGUSON, THE ACT'S CHIEF SPONSOR IN THE SENATE

CONGRESSIONAL RECORD

Volume 100--Part 7

June 22, 1954 CONGRESSIONAL RECORD -- SENATE 8617-8618

THE PLEDGE OF ALLEGIANCE TO THE FLAG

Mr. FERGUSON. Mr. President, the verbal manifestation of an American's loyalty and patriotism is the pledge of allegiance to our flag. Recognizing that the pledge did not specifically acknowledge that we are a people who do believe in and want our Government to operate under divine guidance, I introduced in the Senate a resolution to add the words which forever, I hope, will be on the lips of Americans. Representatives OAKMAN and RABAUT, of Michigan, and others, introduced similar measures in the House. These words, "under God", are at this moment officially a part of the pledge of allegiance.

It gives me a genuine and real thrill to know that this very day these words of spiritual recognition are being uttered throughout the length and breadth of this great and free Nation of ours.

In its new form, the pledge of allegiance to the flag now reads:

"I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, *indivisible, with liberty and justice for all.*"

For several weeks, the American Legion has been conducting a broad and successful drive throughout the entire United States to encourage all of our people to fly the Stars and Stripes on all patriotic occasions, particularly Flag Day, June 14, and on Independence Day, July 4.

As a part of this worthy effort, I had the honor and distinction of leading a group of my distinguished colleagues from the Senate and the House of Representatives in first stating the pledge of allegiance with the words "under God" in ceremonies especially arranged by the national headquarters of the American Legion, through Mr. Edward McGinnis, the former Sergeant at Arms of the Senate.

This colorful ceremony on the morning of June 14 was carried on the Columbia Broadcasting System television network throughout the entire Nation. I include, for the RECORD, the script of this program.

There being no objection, the script was ordered to be printed in the RECORD, as follows:

FLAG DAY CEREMONY ON THE CBS TELEVISION MORNING SHOW,
JUNE 14, 1954

Mr. CRONKITE. Way back when -- remember when American flags fluttered from every home on special holidays? It was a wonderful sight -- and we hope the tradition will be begun again. And today -- Flag Day, 1954 -- the American Legion -- along with millions of other Americans -- are hoping to revive that old custom with "new glory for Old Glory". Right now in Washington, D.C. -- 175 years from the official adoption of the Stars and Stripes by The Continental Congress -- top leaders in the House and Senate are standing by to witness a stirring event: The official raising of the national colors over the Capital on Flag Day. The flag -- which we'll see in a moment -- is the one recently presented to Vice President NIXON by the American Legion.

And standing by to describe the colorful ceremony is CBS correspondent, Ron Cochran.

Mr. COCHRAN. Here are the Members of Congress assembled for this special flag-raising ceremony this morning: Senator STYLES BRIDGES, of New Hampshire, President pro tempore of the Senate; Senator WILLIAM KNOWLAND, of California, the Senate majority leader; Senator HOMER FERGUSON, of Michigan; Senator LYNDON JOHNSON, of Texas, Democratic leader of the Senate; Senator EARLE CLEMENTS, of Kentucky, Senate minority whip; Representative LESLIE ARENDS, of Illinois, House majority whip; and Representative GEORGE DONDERO, of Michigan. The flag is escorted by an honor guard from the national headquarters of the American Legion. It will be raised to the standard atop the Capital by the Sergeant at Arms, Forrest Harness, and the former Senate Sergeant at Arms Ed McGinnis. Now the new pledge of allegiance to the Flag authorized by a new law signed only a few minutes ago by the President.

The pledge is spoken by Senator HOMER FERGUSON and Congressman LOUIS RABAUT.

Mr. CRONKITE. "New glory for Old Glory" -- a wonderful idea and maybe if we all remember to display our flags today and every special day -- we will remember more clearly the traditions of freedom on which our country is founded.

Mr. FERGUSON. Mr. President, I think that the American Legion and the Columbia Broadcasting System are to be commended for this inspirational and patriotic ceremony.

In words more eloquent than any of mine, Dr. Harris, the Senate's very Fine Chaplain, has described the scene which took place on the Capital steps on Flag Day just a few minutes after the President's Office had informed me that the President had signed the resolution which added the significant new words to the pledge of allegiance. In his always inspiring column, Spires of the Spirit of last Sunday, Dr. Harris devotes his text to the words "under God", and I ask unanimous consent that this column be placed in the RECORD in its entirety.

There being no objection, the column was ordered to be printed in the RECORD, as follows:

SPIRES OF THE SPIRIT -- UNDER GOD

(By Frederick Brown Harris, minister, Foundry Methodist Church;
Chaplain, U.S. Senate)

No matter how high our starry emblem is lifted, it is "under God". On Flag Day President Eisenhower attached his name to the bill officially inserting those momentous words into the pledge of national allegiance. The Chief Executive must have been aware of a tall form, with sad, seamed face, standing by with approving gaze. Abraham Lincoln was there! For had he not appropriated the phrase in an address that was to be immortal! The words thus solemnly included in his deathless message at Gettysburg did not represent just a hollow, pious gesture tinged with political expedient. "Under God" was the fundamental belief of his life. The credo which these two words proclaim ran like a golden cord through all his conceptions of duty and destiny. He might have been vague, indifferent or incredulous as to some of the theological dogmas of his day which seemed to libel the God in whom he really believed. But no man of his troubled times was more positive that: "There is a divinity that shapes our ends, rough-hew them how we will."

But not only Honest Abe was there when these words went into the Salute to the Flag. Knowing their faith in a guiding and overruling providence, who can doubt that every President from George Washington onward joined the latest occupant of that exalted office in applauding the action and the significance of the congressional resolution which by the presidential pen was turned into law.

To put the words "under God" on millions of lips is like running up the believer's flag as the witness of a great nation's faith. It is also displayed to the gaze of those who deny the sacred sanctities which it symbolizes.

On that June day, within a few minutes after the signature of the President had written "under God" in the Pledge of Allegiance, the bill that legalized it leaped to life in a scene silhouetted against the white dome of the Capital. There stood Senator HOMER FERGUSON, who had sponsored the resolution in the Senate, and with him a group of legislative colleagues from both houses of Congress. As the radio carried their voices to listening thousands, together these lawmakers repeated the pledge which is now the Nation's. Then, appropriately, as the flag was raised a bugle rang out with the familiar strains of "Onward, Christian Soldiers!"

Thus at the White House and at the Capital was "under God" written across the Stars and Stripes, in its homage to deity taking its place with the "In God We Trust" on our coinage and "the power that hath made and preserved us a Nation" in our national anthem. Concerning this meaningful event the White House made this thrilling pronouncement, to which is the sound of a great "Amen" in a mighty host of God-fearing hearts:

"From this day forward the millions of our schoolchildren will daily proclaim in every city and town, every village and rural schoolhouse the dedication of our Nation and our people to the Almighty. ... Over the globe millions have been deadened in mind and soul by a materialistic philosophy of life. ... In this way we are reaffirming the transcendence

of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever shall be our country's most powerful resource in peace or in war."

Of course, this reverential acknowledgment is nothing new. It is but a rededication to the faith in which the Republic was cradled. To be "under God" is to be under an intelligible explanation of the mysterious universe in which we find ourselves. To believe in nothing higher than the flag of one's nation is to thwart the soul's highest instincts, as well as to insult the intellect. To regard will, memory, imagination, thought, love, and the faculties by which men conquer space and time and matter as the reaction of chemical elements, to perceive no mind speaking through the infinite complexities of the cosmos, to be blind to the one final, irreducible and inescapable denominator of the universe.

The results of blasphemous denials of God on a tremendous scale already are being shudderingly shown by the baneful social pattern of atheistic materialism. Suspicion begins to grow that it is not the believer who is irrational, but the cynical denier. Certainly, one who accepts the beliefs of unbelief, with its assumption of a universe that is dead and godless, is called before the bar of reason to explain such undeniable facts as self-sacrifice, nobility, and heroism, which have made the earthen vessels of humanity blaze with a shining glory. The unbeliever has to assert that the grandeur and splendor of life at its best are but the product of blind chance. To deny the implications of "under God" and to point to dust to explain destiny is about as sensible as declaring that you could take a bag containing the letters of the alphabet and, throwing a few handfuls of them into the air, expect them to fall to the ground in the form of a Shakespeare's sonnet or of a Tennyson's *In Memoriam*. The thing is absurd.

There is no liberty anywhere except under God. All history shouts that. What avail all the fair slogans of liberty, equality, and fraternity as the streets of Paris ran red with blood and the guillotine rolled its ghastly heads, if a lewd woman is lifted up as the goddess of reason in Notre Dame's temple to the Most High.

The promising streams of freedom disappeared in the sands of futility when there is nothing higher than the state. With a deified state in a godless realm iron curtains but hide broken strands of rainbows which once arched the sky of those who imagined themselves pioneers of a new freedom. Without God, unkept promises became the fetters of a worse thralldom at the hands of alleged emancipators.

In this dread day the faces of scientists and national leaders who know the stark facts are blanched by fear. For man has achieved the awesome capacity to produce a star as hot as the sun; he has snatched the secret of starting a fire that can incinerate the planet. We are suddenly aghast at the dire possibilities of stupendous power in the hands of men who have no God in their hearts.

William Penn expressed a pertinent principle when he declared: "Man will either choose to be governed by God or condemn himself to be ruled by tyrants." The Quaker was saying, long before Lincoln, that the only freedom there is is under God.

The saving formula for today's crisis is: "This Nation under God must have a new birth of freedom." Any so-called freedom, if it is not under God, is under sentence of death.

Mr. FERGUSON. I likewise ask unanimous consent that the magnificent words of President Eisenhower, on this historic occasion -- the signing of the resolution -- also be placed in the RECORD together with an article on How the Pledge Was Written, by Margarette S. Miller, which appeared in the Sunday supplement, Parade, for June 13, 1954.

There being no objection, the statement and article were ordered to be printed in the RECORD, as follows:

STATEMENT BY THE PRESIDENT

From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our Nation and our people to the Almighty. To anyone who truly loves America, nothing could be more inspiring than to contemplate this rededication of our youth, on each school morning, to our country's true meaning.

Especially is this meaningful as we regard today's world. Over the globe, mankind has been cruelly torn by violence and brutality and, by the millions, deadened in mind and soul by a materialistic philosophy of life. Man everywhere is appalled by the prospect of atomic war. In this somber setting, this law and its effects today have profound meaning. In this way we are reaffirming the transcendence of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource, in peace or in war.

HOW THE PLEDGE OF ALLEGIANCE WAS WRITTEN

(By Margarette S. Miller)

[From Parade of June 13, 1954]

PORTSMOUTH, Va. -- One sticky August night in 1892, the lamps burned late in the Boston office of a magazine named The Youth's Companion. A 36-year former minister stared out at the city and tried to fit together a few words that would sum up an American's love for his flag.

The man was Francis Bellamy, of Rome, N.Y., and the sheet of foolscap in front of him was soon to contain the words we know as the pledge of allegiance.

Those words have come down to us, to be repeated by every schoolboy and treasured by every patriot, but the author's name had been mislaid.

Bellamy probably is the most neglected patriot in American history. Most Americans never have heard of him, although I have campaigned for 15 years to win him rightful recognition. Today's Congress, 45 States, and 5 Territories recognize him as the author.

The Upham family and some others still maintain that James Bailey Upham, Bellamy's boss, wrote the pledge. But from 18 years of research, including a study of Bellamy's private papers and journals, here is my account of how our pledge was written.

When Francis Bellamy joined *The Youth's Companion*, the magazine was leading a great rededication to Americanism.

Part of that program was to raise the flag over all the Nation's schools on Columbus Day, 1892.

Upham had wanted a new flag salute for the occasion. But Bellamy had convinced him that a salute would be far too stiff and formal.

What was needed now, he felt, was a warm, human, simple pledge.

Sitting there, twirling his pen, he quickly hit on the first words: "I pledge allegiance to my flag". And since the flag would symbolize the Nation, he added, "and to the Republic for which it stands".

But then the writing became more difficult. Bellamy skimmed through American history. He reflected on the Civil War. The scars were just healing.

And he tacked on, "one Nation indivisible", for surely the war had proved that. But he still needed some phrase which would sum up America and the American dream. He thought of the slogan of the French Revolution, "Liberty, Equality, Fraternity".

And he knew that "liberty and justice for all" was the simple, yet moving phrase he was groping for. The pledge was done. (Later, it was revised slightly.)

Bellamy left the magazine 4 years later, to enter the advertising field. His writings reveal that until his death in 1931, he regarded the few words of the pledge as the greatest he had ever written. His personal story of the pledge also contains this prediction:

"And Mr. Upham said, 'My boy, I can't help thinking that this thing you have written will last long after you and I are both dead.'"

Tomorrow, on Flag Day, millions of Americans will reaffirm that the pledge does live on. The name of Francis Bellamy, a man fired with pride in his flag and in his country, should live with it.

MR. FERGUSON. I hope, and respectfully suggest, that every newspaper in the country, at least once before the Fourth of July, print on its front page the new Pledge of Allegiance with the words "under God" in bold-face type, so that all the people may know the new pledge of allegiance.

APPENDIX I

THE CURRENT SECTARIAN PLEDGE OF ALLEGIANCE CONTINUES TO FOSTER AND ACCENTUATE THE GOVERNMENTAL ENDORSEMENT OF MONOTHEISM AND DISAPPROVAL OF ATHEISM

The governmental endorsement of Monotheism and disapproval of Atheism that were factors in the passage of the Act of 1954 have continued to be fostered and accentuated by the current sectarian Pledge of Allegiance.

Since the passage of the Act of 1954 – with the government’s endorsement of monotheism, along with its teaching of a half century of public school students that belief in God is somehow equated or related to patriotism¹ – the official view that monotheism is superior to atheism (and that atheism is actually bad) has been perpetuated among the citizenry. This can be seen in myriad ways. For instance, ??? Estes Park, Colorado ... Additionally, there was recently a controversy in Cupertino, California, regarding a teacher’s emphasis on God-belief and Christianity in the public schools. In a *Los Angeles Times* story (in which the local superintendent was careful to point out that “his schools ... do not subscribe to the position that ‘under God’ should be removed from the Pledge of Allegiance”), “Web-fueled attacks labeling the school godless, unpatriotic and communist” were noted. Additionally, the superintendent apparently never thought twice as he assembled together the three descriptors, “communists, stupid, nonbelieving.”² Since 1954, “under God” in the Pledge has led to this mindset, and to the notion that “[r]ecognition of the Supreme Being is the first, most basic expression of Americanism.”³ Would anyone simply accept that “the first, most basic expression of Americanism” is “recognition that Jesus Christ is Lord?” How about “recognition of white racial superiority,”⁴ or “recognition that women belong at home?”⁵

¹ See, e.g., the June 14, 2004 remarks of Senator John Cornyn, discussing “patriotic references to God, such as those contained in the pledge.” 150 Cong Rec S6745.

² Pringle P. Fire, *Brimstone Over Faith*. December 26, 2004. LATimes.com. Accessed on December 27, 2004 at <http://www.latimes.com/features/religion/la-me-teacher26dec26,0,7224317,print.story?coll=la-news-religion>.

³ Wittner, Lawrence S., *Cold War America: From Hiroshima to Watergate* (New York: Praeger, 1974), p. 123.

⁴ Judicial notice can be taken that three of the first four Presidents were slave-owners, and that the Constitution had its infamous “three-fifths” clause. United States Constitution, Article I, Section 2.

Those expressions, of course, are just as “historic” as the former, and would become just as “patriotic” were children led each day to recite that we are “one Nation under Jesus,” “one Nation under white supremacy” or “one Nation under male dominion” while pledging allegiance to the Nation’s flag.

The perpetuation of anti-atheistic bias is perhaps best seen in the political arena, since politicians generally take pains not to offend minority sensitivities. Yet, when it comes to atheists, they feel confident in making the most egregious and derogatory statements. For instance, when then Vice-President George H. W. Bush first announced his plans to become the Republican Party’s nominee for President, he was asked how he intended to gather the support of patriotic atheistic citizens. His response was “I don’t know that atheists should be regarded as citizens, nor should they be regarded as patriotic.”⁶ Similarly, when Miami Mayor Joe Carollo wished to express his displeasure over the Bureau of Immigration and Naturalization Service’s raid to free Elian Gonzales – an incident that had nothing whatsoever to do with anything religious – his insult of choice was, “These are atheists. They don’t believe in God.”⁷ And Congressman John J. LaFalce of New York issued a press release a month later, equating “secular atheism” with “greed, abject poverty [and] selfishness.”⁸

As if to amplify the offensiveness of these insulting and imprudent remarks, no media protest is ever heard when they are uttered.⁹ One can imagine the response were a politician to equate Catholicism with “greed, abject poverty [and] selfishness,” to insult the INS by stating, “They’re Jews. They don’t believe in Jesus,” or to comment at a press briefing that “I don’t know that Muslims should be regarded as citizens, nor should they be regarded as patriotic.”

⁵ “The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.” Bradwell v. State, 83 U.S. 130, 141 (1872) (Bradley, J., concurring). Judicial notice can also be taken that women could not vote or own property under the Framers’ worldview.

⁶ As detailed at <http://www.robsherman.com/information/liberalnews/2002/0303.htm>, accessed on December 26, 2004.

⁷ Salazar C and Garcia M. *Elian Seized Crying Boy Carried Off Amid Guns, Tear Gas*. The Miami Herald, April 23, 2000, page 1A.

⁸ Press release of Congressman John J. LaFalce, 29th District, New York, May 22, 2000.

⁹ This might be contrasted with the media uproar – and subsequent loss of his Senate Majority leader position – over Senator Trent Lott’s somewhat diluted approval of Senator Strom Thurmond’s racial segregationist political past. See, e.g., CNN.com, December 13, 2002, *Lott: Segregation and racism*

But make those statements about atheists, and not a whimper is heard. Nor is it noticed when our leaders completely disregard the very existence of Atheists.¹⁰ No wonder Representative Rabaut was able to garner support for his legislation by placing “An atheistic American ... is a contradiction in terms” into the Congressional Record.¹¹

That this anti-atheism remains at the heart of the Pledge controversy is readily appreciated by considering how political capital has been sought from its religious aspect. To begin with, monotheistic religion, itself, has become a key issue in the nation’s elections.¹² In fact, so significant has the issue of belief in God become that the term “the God gap” was frequently referenced during the just-ended presidential election.¹³ As one commentator summarized the topic, “[t]he wall between church and state is falling fast.”¹⁴

The Republican Party of Texas – only months ago – perpetuated in its platform the arrogant¹⁵ claim “that the United States of America is a Christian nation,”¹⁶ and specifically wrote that, “The Party decries any unconstitutional act of judicial tyranny that would demand removal of the words ‘One Nation Under God’ from the Pledge of Allegiance.”¹⁷ This, of course, is

are immoral, accessed at <http://archives.cnn.com/2002/ALLPOLITICS/12/13/lott.transcript/> on December 27, 2004.

¹⁰ See, e.g., President Bush’s proclamation for Thanksgiving Day 2001 (“**Americans of every belief and heritage** give thanks to God”) or for the National Day of Prayer 2003 (“America welcomes individuals of all backgrounds and religions, and our citizens hold diverse beliefs. In prayer, we share **the universal desire** to speak and listen to our Maker.”)

Accessed at <http://www.whitehouse.gov/news/proclamations/>. (Emphases added). See, also,

¹¹ 100 Cong. Rec. 2, 1700 (Feb. 12, 1954) (Statement of Rep. Louis C. Rabaut).

¹² See, e.g., Kropf S. *Senate GOP race has divine element*. Post and Courier Charleston.net. May 7, 2004, accessed at: http://www.charleston.net/stories/050704/sta_07pledge.shtml.

¹³ See, e.g., Fortt J. “*God gap*” *blocks understanding of “moral values” phenomenon*. Mercury News, November 14, 2004, accessed at

<http://www.mercurynews.com/mld/mercurynews/news/editorial/10179393.htm>; Polman D *Kerry invoked God to appeal to the faithful*. Philadelphia Inquirer, October 17, 2004, accessed at <http://www.philly.com/mld/inquirer/news/nation/9937390.htm?1c>.

¹⁴ Gibson D. *Confession Time: The wall between church and state is falling fast*. November 7, 2004, accessed at <http://nj.com/opinion/ledger/perspective/index.ssf?/base/news-0/109981008744860.xml>.

¹⁵ “[T]he Court takes a long step backwards to the days when Justice Brewer could arrogantly declare for the Court that ‘this is a Christian nation.’ *Church of Holy Trinity v. United States*, 143 U.S. 457, 471 (1892). Those days, I had thought, were forever put behind us.” *Lynch v. Donnelly*, 465 U.S. 668, 717-718 (1984) (Brennan, J., dissenting).

¹⁶ 2004 Republican Party of Texas Platform, accessed on December 26, 2004 at <http://www.texasgop.org/library/platform.php>.

¹⁷ *Id.* Incredibly -- as if to highlight the degree of myopia that stems from religious advocacy -- the Platform also contains a section entitled, “Equality of All Citizens,” which states, “Believing all men

understandable, since a key politician from that state has equated recitation of the Pledge with “humbly seeking the wisdom and blessing of Divine Providence.”¹⁸ The Democrats have predictably responded in kind: “[R]egular caucus meetings have taken on a decidedly more religious tone ... [as] the House Democratic Caucus has produced weekly morality and Bible lessons and brought in clergymen to talk about God and politics.”¹⁹

Other examples of manifest pro-monotheistic (and anti-atheistic) sentiment interspersed within government and politics abound. As it pertains to the Pledge of Allegiance, a Colorado town trustee just lost his job for acting upon his belief that the “under God” religious verbiage is unconstitutional. In the first recall vote in the town’s history,²⁰ David Habecker was voted out of office solely due to his stand on this issue.²¹ Last April, the Atheist Alliance International requested letters of welcome for their annual convention being held in Colorado Springs. Those letters were denied by both Colorado’s governor and the local mayor, who acknowledged this was the only time he’d ever denied such a request.²² That same month, Christian monotheists were granted access to the Alabama State Capitol building for a National Day of Prayer rally. When Atheists requested the very same access for the very same day, they were rebuffed.²³ When an Atheist was invited to give an invocation at the Charleston, South Carolina City Council meeting less than two years ago, members of the council walked out before he uttered his first sentence. In the words of one, “He can worship a

are created equal, let all be reminded that the Republican Party of Texas is the party of Lincoln that **deplores all forms of preferences** and discrimination based upon **religion**, race, color, national origin, gender, age, or physically disabling condition.” (Emphases added.)

¹⁸ “When we pledge allegiance to One Nation under God, our citizens participate in an important American tradition of humbly seeking the wisdom and blessing of Divine Providence.” Letter of George W. Bush, November 13, 2002, addressed to the Hawaii State Federation of Honpa Hongawanji Lay Associations, cited in the *Amicus Curiae* Brief of Americans United for Separation of Church and State et al. in *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004).

¹⁹ Jeffers G. *Beset by GOP, Texas Dems Find God*. Dallas Morning News, April 4, 2005. Accessed at <http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/040405dntexmoraldemsc ont.9b8e5.html> on April 9, 2005.

²⁰ Whaley M. *Stand on the Pledge spurs recall effort*. December 17, 2004. DenverPost.com. Accessed on December 26, 2004 at <http://denverpost.com/Stories/0,1413,36%257E53%257E2585585,00.html>.

²¹ Richardson V. *Voters recall Pledge objector*. March 24, 2005. WashingtonTimes.com. Accessed on March 30, 2005 at <http://www.washingtontimes.com/functions/print.php?StoryID=20050323-110303-1711r>

²² Atheist Conference Shunned by Colorado Governor, Mayor. April 9, 2004. Secular Coalition for America. Accessed on December 27, 2004, at <http://www.secular.org/silverman.html>.

²³ *Alabama Atheists Allege Unfair Treatment*. FoxNews.com, April 23, 2004. Accessed on December 27, 2004 at <http://www.foxnews.com/story/0,2933,118046,00.html>.

chicken if he wants to, but I'm not going to be around when he does it."²⁴ The same thing occurred a year later in Tampa, Florida.²⁵ There, not only was disrespect shown to the Atheist, but the City Council member who invited him "made a host of new enemies" because of that invitation.²⁶ In Biscayne Park, the vice mayor showed little respect for the constitutional rights of Atheists when an attempt was made to introduce prayer at commission meetings. His statement was, "prayers don't offend anybody except the atheists, and I feel bad for the atheists, but we live in a country where the majority rules, and if you don't like it you can go to another country because our country is a religious country."²⁷ Also in Florida, the Department of Highway Safety and Motor Vehicles received a complaint signed by ten people who were offended by an "ATHEIST" vanity license plate. The Department responded by recalling the plate after deeming it "'obscene or objectionable.'"²⁸ After all, as one Florida mayor explained, "If you are a devout person and have a sincere belief in God, you are more likely to be ... ethical and moral."²⁹

The constitutions of eight states still have clauses denying to Atheists the right to hold public office and/or testify in a court of law.³⁰ It seems not one of the combined 1328 state

²⁴ Harden J. *Some on city council snub atheist's invocation*. Charleston Post and Courier, March 27, 2003, accessed at http://www.charleston.net/stories/032703/loc_27atheist2.shtml on December 26, 2004.

²⁵ Carp D. *Council splits on atheist's invocation*. St. Petersburg Times Online. July 30, 2004, page 1.A.

²⁶ Karp D. *Council member, 2 unions on outs*. St. Petersburg Times Online. August 4, 2004. Accessed at http://stpetetimes.com/2004/08/04/news_pf/Hillsborough/Council_member_2_uni.shtml on December 26, 2004.

²⁷ Nahed A. *Prayer Invokes Heated Discussion*. The Miami Herald, July 11, 2004, Page 8N.

²⁸ Wexler K. *'ATHEIST' plate raises a holy ruckus*. St. Petersburg Times Online. March 14, 2002, accessed at http://www.sptimes.com/2002/03/14/State/_ATHEIST_plate_raise.shtml.

²⁹ Statement of Tom Truex, mayor of Davie, Florida, as reported on Monday, March 22, 2004. Accessed at <http://www.miami.com/mld/miamiherald/8245381.htm?1c> on November 27, 2004.

³⁰ Arkansas State Constitution: Article 19, Section 1 ("No person who denies the being of a God shall hold any office in the civil departments of this State, **nor be competent** to testify as a witness in any court."); Maryland State Constitution: Article 37 ("That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God."); Mississippi State Constitution: Article 14, Section 265 ("No person who denies the existence of a Supreme Being shall hold any office in this state."); North Carolina State Constitution: Article 6, Section 8 ("The following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God."); Pennsylvania State Constitution: Article 1, Section 4 ("No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth."); South Carolina State Constitution: Article 17, Section 4 ("No person who denies the existence of a Supreme Being shall hold any office under this

legislators has been willing to risk his or her career to eliminate those extraordinarily offensive constitutional provisions. Although these clauses are now legal nullities, the fact that they remain – unchanged for all the world to see – on the most vital document in each of those states, powerfully demonstrates the extreme political disenfranchisement of Atheists.³¹

In 1958, a Gallup poll asking people if they would vote for various categories of candidates showed that 22% wouldn't vote for a Catholic, 28% wouldn't vote for a Jew, 41% wouldn't vote for a woman, 53% wouldn't vote for a black, and 75% wouldn't vote for an atheist. With the government no longer condoning (much less endorsing) discrimination against Catholics, Jews, women and blacks, those numbers fell dramatically to 4%, 6%, 7% and 4%, respectively, in 1999. With governmental endorsement of the idea that real Americans believe in God, however, the prejudice against Atheists has remained, so that still 48% won't vote for a member of this minority religious persuasion – an order of magnitude greater than the that for those other groups.³² In fact, “voters have a far more favorable impression of every religion tested than they do of Atheists. Just 32% hold a favorable opinion of atheists.”³³ As one commentator wrote, “if one finds himself on what's perceived to be the wrong side of God, he loses.”³⁴

Constitution.”); Tennessee State Constitution: Article 9, Section 2 (“No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.”); Texas State Constitution: Article I, Section 4 (“No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.”)

³¹ If this point needs to more strongly be made, one need only ponder how long phrases such as “No [Jew] shall hold any office under this Constitution” (South Carolina State Constitution, Article XVII, Section 4) or “No [African-American] shall hold any office in the civil department of this state” (Tennessee State Constitution, Article IX, Section 2) would persist in today's society.

³² Polls given July 30 – August 4, 1958, and February 19-21, 1999, respectively. Copyright © 1958, 1999 The Gallup Organization, Princeton, NJ. See, www.gallup.com and www.gallupjournal.com. Phrased alternatively, At least 92% of respondents would vote for a candidate who is “Black,” “Catholic,” “Baptist,” “a woman,” or “Jewish.” For atheists, the figure is 49%.

³³ *Religion and Politics: the Ambivalent Majority*, The Pew Research Center for the People and the Press in association with The Pew Forum on Religion and Public Life, September 20, 2000 (accessed at <http://people-press.org/reports/print.php3?PageID=177>). Additionally, that same number (32%) held “Very Unfavorable” opinions of Atheists. This can be contrasted with 3% for Evangelical Christians, 3% for Jews and 3% for Catholics and 8% for Muslim Americans.

³⁴ Smith J. *Democrats need an improved image*. The Battalion, November 17, 2004. Accessed on December 26, 2004, at <http://www.thebatt.com/news/2004/11/17/Opinion/Democrats.Need.An.Improved.Image-807486.shtml>.

APPENDIX J

THE WORDS, “UNDER GOD,” IN THE CURRENT PLEDGE OF ALLEGIANCE ARE NOT MERELY “CEREMONIAL.” NOR IS THEIR RELIGIOUS CONTENT OR EFFECT “*DE MINIMIS*.” ON THE CONTRARY, THEY ARE UNQUESTIONABLY AND MEANINGFULLY RELIGIOUS

In various attempts to legitimize the phrase “under God” in the Pledge of Allegiance, the unquestionably religious nature of those two words has been denied. Instead, the phrase has been alleged to be “ceremonial,” with any religious content and/or effect being “*de minimis*.”

The following facts belie those contentions:

- (1) The June 26, 2002 ruling of the Ninth Circuit in Newdow v. United States Cong., 292 F.3d 597 (9th Cir. 2002)¹ “created a firestorm across most of the nation.”² National firestorms of controversy are not created by the loss of merely “ceremonial” items with “*de minimis*” content or effects.
- (2) Both houses of Congress stopped their important work to spend significant amounts of time decrying the ruling in Newdow v. U.S. Congress.³ Congress doesn’t stop its work due to merely “ceremonial” items with “*de minimis*” content or effects.
- (3) The Senate almost immediately considered and unanimously passed a resolution condemning the decision in Newdow v. U.S. Congress.⁴ Such Senate activity doesn’t stem from merely “ceremonial” items with “*de minimis*” content or effects.
- (4) By a vote of 416-3, the House of Representatives almost immediately considered and passed a resolution condemning the decision in Newdow v. U.S. Congress.⁵ Such House activity doesn’t stem from merely “ceremonial” items with “*de minimis*” content or effects.
- (5) The Plaintiff in Newdow v. U.S. Congress was named *Time Magazine*’s “Person of the Week.”⁶ People aren’t accorded such recognition over matters that are merely “ceremonial” items with “*de minimis*” content or effects.⁷
- (6) President Bush’s Press Secretary – on June 26, 2002 – stated that the reaction of the President of the United States “was that this ruling is ridiculous.”⁸ The President,

¹ Newdow v. U.S. Congress was the initial Ninth Circuit case subsequently reversed by the Supreme Court in Elk Grove Unified Sch. Dist. v. Newdow, 159 L. Ed. 2d 98, 124 S. Ct. 2301 (2004).

² *Gov’t to ask rehearing of Pledge ruling*, June 27, 2002. CNN.com.

<http://archives.cnn.com/2002/LAW/06/27/pledge.allegiance/>

³ 148 Cong. Rec. S6105-S6112 (daily ed. 6/27/02); 148 Cong. Rec. H4125-H4136 (daily ed. 6/28/02).

⁴ S. Res. 292, 107th Cong., 148 Cong. Rec. S6105 (2002).

⁵ H.R. Res. 459, 107th Cong., 148 Cong. Rec. H4135 (2002).

⁶ H.R. Res. 459, 107th Cong., 148 Cong. Rec. H4135 (2002).

⁷ <http://www.time.com/time/pow/article/0,8599,266658,00.html>.

himself, commented on the ruling. In fact, it was the first item addressed by him at his news conference on June 27, 2002 ... following a meeting with Russian President Vladimir Putin, no less.⁹ Presidents and their press secretaries don't address matters that are merely "ceremonial" and with "*de minimis*" content or effects.

- (7) At that June 27, 2002 news conference, the President referred to Newdow v. U.S. Congress by noting this nation's "relationship with an Almighty," that the Pledge is "a confirmation of the fact that we received our rights from God, as proclaimed in our Declaration of Independence, and that "our rights were derived from God."¹⁰ Such comments by the nation's Chief Executive – a deeply religious man – are not made over matters that are merely "ceremonial" and with "*de minimis*" content or effects.
- (8) In response to the Ninth Circuit Court of Appeals' decision in Newdow v. U.S. Congress, Robert C. Byrd – a United States Senator – placed the following into the Congressional Record:

Let that judge's name ever come before this Senate while I am a Member, and he will be blackballed ... fast. ... I hope the Senate will waste no time in throwing this back in the face of this stupid judge.¹¹

These are not the words a United States Senator – referencing an appellate-level Federal judge, no less – uses in response to matters that are merely "ceremonial" items with "*de minimis*" content or effects.

- (9) After the Ninth Circuit's Newdow v. U.S. Congress decision was announced, its author – Judge Alfred Goodwin – had an "e-mail system [that] was literally jammed, frozen with public opinion. Ten boxes of mail piled up at his office, 'all scolding me for being un-American.'"¹² The litigation was "easily the most publicized and hotly debated case in Goodwin's fifty-three-year legal career."¹³ This is not a reaction that stems from a decision affecting something merely "ceremonial" with "*de minimis*" content or effects.
- (10) As chosen by the Religion Newswriters Association, the story about the Pledge litigation was among the top 10 religion stories for 2002, 2003 and 2004.¹⁴ Such a ranking – as a "religion story," three years in a row – is not consistent with something merely "ceremonial" with "*de minimis*" content or effects.
- (11) The Pew Research Center for the People & the Press reviewed the top news stories from 1986-2004 in terms of the maximum degree they were followed by the public.¹⁵

⁸ <http://www.whitehouse.gov/news/releases/2002/06/20020626-8.html>.

⁹ <http://www.whitehouse.gov/news/releases/2002/06/20020627-3.html>.

¹⁰ Id.

¹¹ 148 Cong. Rec. S6103 (daily ed. June 26, 2002).

¹² Williams K. *Allegiance to the Law*. Oregon Quarterly. Autumn, 2004, page 22.

¹³ Id.

¹⁴ <http://www.rna.org/>

¹⁵ <http://people-press.org/nii/>.

Out of 1103 stories listed, the Pledge was #57 – ahead of, for instance, the O.J. Simpson trial (#89), the breakup of the Soviet Union (#91), and the Space Shuttle Columbia disaster (#111). Public interest to that extraordinary degree is not garnered by something merely “ceremonial” and with “*de minimis*” content or effects.

- (12) The United States – in its Writ Petition to the Supreme Court in Newdow v. U.S. Congress – claimed that “[t]he question presented is one of great importance.”¹⁶ It makes little sense to claim that something the United States itself believes to be “of great importance” is merely “ceremonial” and with “*de minimis*” content or effects.
- (13) Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2326 (2004) was referenced as “one of the most intensely watched church-state cases in recent memory.”¹⁷ Such a description hardly fits a case involving a merely “ceremonial” matter with “*de minimis*” content or effects.
- (14) Pages and pages of the Congressional Record are dedicated to debate about Newdow v. U.S. Congress and the subsequent Supreme Court litigation. Members of Congress don’t spend extensive amounts of time posturing over an issue that is merely “ceremonial” and has “*de minimis*” content or effects.¹⁸
- (15) On September 23, 2004, the House of Representatives actually passed the “Pledge Protection Act of 2004,” which would deny the federal judiciary any jurisdiction to hear any challenge to the constitutionality of the Pledge of Allegiance.¹⁹ Such an unprecedented statute – so breathtaking in its nature – surely would not be created to deal with a merely “ceremonial” matter with “*de minimis*” content or effects.
- (16) Fifty-five separate *amicus* briefs were filed in the Newdow case. Additionally, the case was covered in countless media reports, symposia, webchats, and commentaries. (Included among these were works by religious scholars and theologians,²⁰ Christian and Jewish clergy,²¹ historians,²² and respected commentators – legal²³ and

¹⁶ *Petition for a Writ of Certiorari* for Petitioner United State of America, United States of America v. Newdow, April, 2003, at 25.

¹⁷ Lane C. *Justices Keep ‘Under God’ in Pledge*. The Washington Post, Tuesday, June 15, 2004; A01.

¹⁸ Plaintiffs do not rely too strongly upon this assertion.

¹⁹ 150 Cong. Rec. H7478 (daily ed. September 23, 2004).

²⁰ Nineteen Religious Scholars and Theologians wrote an *amicus* brief in support of the plaintiff in the Elk Grove case. *See, Brief amicus curiae of Religious Scholars and Theologians, Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004).

²¹ Thirty-two respected Christian and Jewish clergy members wrote an *amicus* brief in support of the plaintiff in the Elk Grove case. *Brief amicus curiae of Rev. Dr. Betty Jane Bailey, et al., Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004).

²² In Newdow, the only *amicus* brief written by historians was in support of the Plaintiff’s position. Twenty-two esteemed experts from academic institutions across the nation agreed that the school district policy in that case, “would have been opposed by the Framers of the Constitution.” *See, Brief amici curiae of Historians and Law Scholars, Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004), at 1.

²³ *See, e.g.,* Thompson JE. *What’s the Big Deal? The Unconstitutionality of God in the Pledge of Allegiance*. 38 Harv. C.R.-C.L. L. Rev. 563, 586 (2003) (“From their cognitive birth Americans

otherwise²⁴ – who agreed with the Plaintiff in the Newdow case.) Such a level of participation by *amici* does not occur over matters that are merely “ceremonial” and that have “*de minimis*” content or effects.

- (17) In the presidential election that just took place, the danger of “political outsiders” based on religious belief was accentuated more than ever before. In fact, the Pledge litigation played a role. For instance, in Allentown, PA, a billboard stating “Bush Cheney 04 – One Nation Under God” was utilized.²⁵ People don’t take out billboards to sway their fellow citizens votes in presidential election campaigns and plaster them with a matter that is merely “ceremonial” and has “*de minimis*” content or effects
- (18) Rev. Brenda Bartella Peterson – appointed director of religious outreach for the Democratic Party – was forced to resign merely because she had joined thirty-one other clergy members to support the Plaintiff in Elk Grove Unified Sch. Dist. v. Newdow.²⁶ Political pressure sufficient to cause a key appointment to be reversed during an extremely close presidential election doesn’t arise from merely joining more than thirty other esteemed individuals in signing a legal brief over a matter that is a matter that is merely “ceremonial” and has “*de minimis*” content or effects.
- (19) In the 2000 presidential election, potential candidates were interviewed by the Committee to Restore American Values. This arm of the so-called “religious right” specifically asked, “Would you support a removal of the words ‘under God’ from the Pledge of Allegiance?”²⁷ Joined by the executive director of the Christian Coalition, there can be no doubt as to the religious agenda the commission had in posing that question. This further demonstrates the illusory notion behind any “ceremonial deism” or “*de minimis*” claims.

receive the message: ‘You can be almost anything, but not an atheist.’ We are prejudiced, biased from the outset. This anti-atheist sentiment is so pervasive that many fail to recognize its manifestations. ... To reject God means overcoming ... monumental social barriers sponsored by the government. Of course, the religious do not understand this message of disrespect for nontheism as a harm.”); Hamilton M. *Why the Court Should Reject This Pledge, and Why the Department of Justice Is Wrong To Support It*, Findlaw.com, March 25, 2004, accessed at <http://writ.news.findlaw.com/hamilton/20040325.html> (“[I]t is not only the right thing for the Court to find in favor of Mr. Newdow and the principle of neutrality toward religion in the First Amendment’s Free Exercise and Establishment Clauses. It is also in the national interest to do so.”)

²⁴ See, e.g., William Safire, New York Times, March 24, 2004, *Of God and the Flag*, Section A, Page 21, Column 1 (“The only thing this time-wasting pest Newdow has going for him is that he’s right.”); Ellen Goodman, Boston Globe, March 28, 2004, accessed at http://www.boston.com/news/globe/editorial_opinion/oped/articles/2004/03/28/why_make_such_a_big_deal_of_two_little_words/ (“Here’s the problem. ... Newdow is right.”)

²⁵ Kirkpatrick D. *Battle Cry of Faithful Pits Believers Against the Rest*. New York Times, October 31, 2004. Section 1, Page 24.

²⁶ Duin J. *Furor over Pledge stance prompts Democrat to quit*. The Washington Times, August 6, 2004, accessed at: <http://www.washingtontimes.com/functions/print.php?StoryID=20040805-113248-2858r>.

²⁷ *Religious Right Queries GOP Rivals*, Washington Post, Thursday, February 4, 1999; page A4.

- (20) On August 3, 2004, President Bush spoke at the 122nd Knights of Columbus Convention in Dallas, Texas. He stated:

The Knights of Columbus are transferring lives with works of compassion, and, just as importantly, you're defending the values of faith and family that bind us as a nation. I appreciate your fight to protect children from obscenity. I appreciate your working to protect the Pledge of Allegiance, to keep us "one nation under God."²⁸

The President of the United States does not commend a religious organization for its work in matters that are "ceremonial" and of "*de minimis*" religious character.

- (21) President George W. Bush invited Rev. Dr. Luis Leon to provide a prayer to God at his January 20, 2005 inauguration. Dr. Leon chose to include the words, "one nation under God, indivisible, with liberty and justice for all" in that obviously extra special religious invocation, and immediately followed those words with, "All this we ask in Your most holy name. Amen."²⁹ A clergyman giving a religious prayer at the inauguration of the President of the United States doesn't include verbiage in that prayer that is merely "ceremonial" or of "*de minimis*" religious character.

²⁸ Accessed at <http://www.whitehouse.gov/news/releases/2004/08/20040803-11.html> on January 22, 2005.

²⁹ 151 Cong. Rec. S102 (January 20, 2005).

APPENDIX K

THE WORDS, “UNDER GOD,” IN THE CURRENT PLEDGE OF ALLEGIANCE ARE NOT “ACKNOWLEDGEMENTS” OF THE ROLE RELIGION HAS PLAYED IN OUR NATION’S HISTORY. THEY ENDORSE THE PARTICULAR RELIGIOUS BELIEF THAT THERE EXISTS A GOD.

Anticipating the Defendants will allege that the words, “under God,” are merely “acknowledgements” of the religious history of our country, Plaintiffs will initially note that the only *amicus* brief in Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004) in which historians formally participated stated unequivocally that “the policy ... of having schoolchildren recite the [now-religious] Pledge of Allegiance ... would have been opposed by the Framers of the Constitution,”¹ and that “[t]he Pledge now requires a speaker to make an affirmation of religious belief.”² For the insertion of “under God” into the Pledge to be an acknowledgement of the role religion played in our Nation’s history would be rather paradoxical, since – as these noted scholars pointed out – our history was one where the alleged “acknowledgement,” itself, was something to which the Framers were “firmly opposed.” This was evidenced by the inclusion of the Religious Test Clause in Article VI of the Constitution, which “has become an enduring symbol of freedom of conscience and equality of belief in this nation.”³ Thus, the inclusion of “under God” was not an acknowledgement of the role religion has played in our Nation’s history. Rather, “[i]t cannot be gainsaid that the overriding purpose of the 1954 amendment was to incorporate a religious affirmation into the Pledge.”⁴

That “under God” is religious – rather than historical – is also seen in the actions of the Republican National Committee, which sent “mailings, which included images of a Bible labeled ‘banned’” to the voters during the 2004 Presidential campaign. According to RNC spokesman Christine Iverson, the mailings were triggered at least in part by “activist judges

¹ Brief *amicus curiae* of Historians and Law School Scholars in Support of Respondent, page 1, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004). Among the twenty-two esteemed academicians who signed onto this brief were five History professors.

² Id. at 22.

³ Id. at 15 (footnote omitted).

⁴ Id. at 21.

also want to remove the words ‘under God’ from the Pledge of Allegiance.”⁵ Such a mailing was clearly intended to play on the purely religious – and not historical – sentiments of the voters. In fact, as noted by nineteen religious scholars and theologians, “[I]t would be hard to imagine, outside the sanctuary of a Christian church, a more sectarian religious ceremony”⁶ than that which occurred on June 14, 1954, when the newly amended Pledge was introduced to the American people. The revision of the Pledge, “not only favors religion over non-religion; it also favors some religions over others.”⁷ Additionally, “[t]hirty-two named Christian and Jewish clergy, together with the Unitarian Universalist Association” wrote that, “[t]o recite that the nation is ‘under God’ is inherently and unavoidably a religious affirmation. Indeed, it is a succinct religious creed, less detailed and less specific than many creeds, but stating a surprising amount and implying more.”⁸ To these esteemed ecclesiastics:

If the religious language in the Pledge is *not* intended to sincerely affirm the succinct creed entailed in its plain meaning ... then it is a vain and ineffectual form of words. The numerically predominant religious faiths in the United States have a teaching about such vain references to God: “Thou shalt not take the name of the Lord thy God in vain.” Exodus 20:7. If the [arguments that “under God” is not religious] are to be taken seriously, then every day they ask school children to violate this commandment.⁹

⁵ Roff P. *GOP admits to mailers suggesting Bible ban*. New York, Sept. 24, 2004 (UPI) accessed at <http://committee-forjustice.org/cgi-data/blog/files/22.shtml>.

⁶ Brief *amicus curiae* of Religious Scholars and Theologians in Support of Respondent, page 4, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

⁷ Id.

⁸ Brief *amicus curiae* of Rev. Dr. Betty Jane Bailey, et al. in Support of Respondent, page 4, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004).

⁹ Id. at 8 (emphasis in original).

APPENDIX L

THE PLEDGE IS FAR MORE COERCIVE THAN THE GRADUATION PRAYER RULED UNCONSTITUTIONAL IN LEE V. WEISMAN

ACTOR	GRADUATION: Individual who is clearly not a governmental official PLEDGE: Teacher who is clearly a governmental official
STUDENT AGE	GRADUATION: 16-18 year olds, on the brink of adulthood PLEDGE: Impressionable children, as young as age 5
FREQUENCY	GRADUATION: Once a year for the school. Once per lifetime for the student. PLEDGE: Every day for the school. Approximately 2000 times per lifetime for the student.
SUBJECT MATTER	GRADUATION: Religious belief accorded to individual speaker PLEDGE: Religious status accorded to government (i.e., we are "one Nation under God")
STUDENT PARTICIPATION	GRADUATION: Passive listening PLEDGE: Active affirmation of belief
MINIMUM ACTION REQUIRED FOR NON-PARTICIPATION	GRADUATION: Diversion of thoughts. Does not reveal outsider status to peers PLEDGE: Silence, at least for the words "under God." Reveals outsider status to peers.
ATTENDANCE	GRADUATION: Voluntary under the law PLEDGE: Mandatory under the law

APPENDIX M

DECLARATION OF MICHAEL NEWDOW

I, Michael Newdow, declare as follows:

- (1) I am competent to testify to the matters stated herein.
- (2) I was the plaintiff in Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004), in which the words, “under God,” in the Pledge of Allegiance were challenged.
- (3) As a result of that case, I repeatedly received letters, e-mails and phone calls where the individuals communicating to me made it clear that they thought the words, “under God,” were unquestionably religious.
- (4) In fact, the vast majority of those persons expressed this view.
- (5) Many of those persons indicated that I would suffer in the afterlife due to my atheistic beliefs.
- (6) I was repeatedly told that I should leave the country because of the litigation. A typical statement was, “If you don’t like it here, move.”
- (7) I received a host of far more vitriolic messages as well.
- (8) Strangers left messages on my answering machine, calling me, among other things, an “atheist piece of shit,” a “sick son of a bitch,” “the idiest most stupidest man,” an “imbicilic bastard,” “a traitor,” “an idiot,” “a horrible person,” “a stupid whore,” “a sick man,” a “fucking unpatriotic fuckface,” and “one giant asshole.”
- (9) Additionally, individuals suggested that I “should fucking go to hell,” that “you have a wild hair up your ass,” that “There is a hell, and you will be in it,” that “you’re disgusting and vile,” that “you’re just disgusting,” and that “You better change your goddamn view.”
- (10) Strangers also at times identified me in public. I was referred to as “the freak” in public, when I was with my child.
- (11) I was invited to speak at multiple venues. At one – on March 26, 2004, two days after the Supreme Court oral argument in the case – I gave a talk at the University of Toledo Law School. (Justice O’Connor gave a speech at that same locale less than two weeks later.) My presentation was delayed by a bomb threat.
- (12) I also received many communications from individuals who were supportive of my efforts, and who thanked me for bringing this case.

- (13) Many of the supporters stated that they were not atheists, but simply agreed with my work to uphold the principles underlying the Religious Clauses of the First Amendment
- (14) Other supporters – comprising the vast majority – were atheists and other “freethinkers” who had long felt discriminated against and/or suffered adverse consequences due to their inability to recite the pledge consistent with their religious ideals. A recurring theme from those individuals is that they wanted to do what I had done, but that they either thought it was futile, or they feared the consequences.
- (15) The Elk Grove case hinged on a family law matter. Myriad individuals believe that the family laws of this nation are egregiously abusive, and have for years been seeking ways to attract media attention in order to detail the destruction and waste caused by the family law system.
- (16) Accordingly, I contacted many of the groups these people have formed to ask if they would be interested in writing amicus briefs in the Elk Grove case. Although those groups frequently complain that their voices are not heard, none of the major organizations would agree to participate in the case.¹ The reason I was given over and over was that it would be too politically dangerous to be aligned with an Atheist.
- (17) Since my involvement in the aforementioned case, I have been sent numerous correspondences from individuals who suffered significant harms in the public schools as a result of their desire to not participate in pledging allegiance “under God.”
- (18) Many of these individuals suffered these harms even though they were aware that they were not obligated to participate in the Pledge ceremony.
- (19) I, personally, feel like a political outsider every time I hear the words, “under God,” recited in the Pledge of Allegiance.
- (20) As a result of the reactions to my involvement in the previous case – where I did nothing but attempt to uphold the Constitution – I am continually wondering if I’m being treated differently (especially negatively). For instance, I am involved in a family court proceeding where the judge is an individual who has made no secret about his staunch Catholicism. Does his knowledge of my atheism affect the rulings he makes? I was recently treated inappropriately when I made an inquiry at a local municipality. Was that because the workers there knew of my religious beliefs?
- (21) When the Elk Grove case was heading to the Supreme Court, I attempted to add parties to eliminate any standing concerns. The first family I contacted was comprised of friends who had been supportive since the case first broke. They were initially very willing to participate. Nonetheless, even though I told them I would attempt to add them anonymously, they subsequently declined to join the case. The reason given was that they feared the social consequences, especially loss of employment.

¹ One small group – the United Fathers of America – did write an *amicus* brief. That organization, however, has a strong association with atheists.

- (22) With my standing having been denied by the Supreme Court, numerous families have contacted me regarding their willingness to be plaintiffs in new challenges. Most have been atheists, and virtually all of them have expressed significant concerns as to their safety. Many have opted not to proceed due to the potential adverse ramifications of their being identified either as atheists, or as individuals supporting this cause.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 10, 2005

/s/ - Michael Newdow

Michael Newdow

APPENDIX N

DATA ON RELIGION

No. 79. Self-Described Religious Identification of Adult Population: 1990 and 2001

In thousands (175,440 represents 175,440,000). The American Religious Identification Survey (ARIS) 2001 was based on a random digit-dialed telephone survey of 50,281 American residential households in the continental U.S.A (48 states). Respondents were asked to describe themselves in terms of religion with an open-ended question. Interviewers did not prompt or offer a suggested list of potential answers. Moreover, this self-description of respondents was not based on whether established religious bodies, institutions, churches, mosques or synagogues considered them to be members. Quite the contrary, the survey sought to determine whether the respondents themselves regarded themselves as adherents of a religious community. Subjective rather than objective standards of religious identification were tapped by the surveys.

Religious group	1990	2001	Religious group	1990	2001
Adult population, total ¹	175,440	207,980	Fundamentalist	27	61
Total Christian	151,496	158,506	Salvation Army	27	25
Catholic	46,084	50,873	Independent Christian Church	25	71
Baptist	33,904	33,830	Total other religions	5,061	7,740
Protestant - no denomination specified	17,214	4,547	Jewish	3,137	2,831
Methodist/Wesleyan	14,174	14,160	Muslim/Islamic	527	1,104
Lutheran	9,110	9,540	Buddhist	401	1,082
Christian - no denomination specified	8,073	14,160	Unitarian/Universalist	622	629
Presbyterian	4,985	5,596	Hindu	227	766
Postcolonial/Charismatic	3,191	4,407	Native American	47	105
Episcopalian/Anglican	3,042	3,451	Scientologist	45	15
Mormon/Latter Day Saints	2,487	2,787	Bahai	28	84
Churches of Christ	1,709	2,583	Tantrik	20	40
Jehovah's Witnesses	1,381	1,331	New Age	10	66
Seventh-Day Adventist	868	724	Eckankar	19	26
Assemblies of God	660	1,100	Rastafarian	14	11
House of Holy	610	569	Sikh	13	17
Congregational/United Church of Christ	599	1,378	Wiccan	5	134
Church of the Nazarene	549	544	Orly	5	43
Church of God	531	544	Druid	(NA)	43
Orthodox (Eastern)	502	545	Sorcerer	(NA)	32
Evangelical ²	242	1,032	Pagan	(NA)	140
Mennonite	235	346	Spiritualist	(NA)	116
Christian Science	214	194	Ethical Culture	(NA)	4
Church of the Brethren	206	358	Other unclassified	817	346
Born Again	204	56	No religion specified, total	14,331	29,481
Nondenominational ²	195	2,489	Atheist	(NA)	502
Disciples of Christ	144	492	Agnostic	1,186	911
Reformed/Dutch Reform	181	282	Humanist	29	48
Apostolic/New Apostolic	117	254	Secular	(NA)	33
Quaker	67	217	No religion	13,116	27,436
Full Gospel	51	168	Refused to reply to question	4,811	11,246
Christian Reform	40	70			
Four-square Gospel	28	70			

NA Not available. ¹ Refers to the total number of adults in all 50 states. All other figures are based on projections from surveys conducted in the continental United States (48 states). ² Because of the subjective nature of replies to open-ended question, these categories are the most unstable as they do not refer to clearly identifiable denominations as much as underlying beliefs about religion. Thus they may be the most subject to fluctuation over time.

Source: 1992, Barry A. Kosmin and Seymour P. Lachman, "One Nation Under God: Religion in Contemporary American Society," 1993, 2001, data, The Graduate Center of the City University of New York, New York, NY; Barry A. Kosmin, Egon Mayer and Aneta Krysia, American Religious Identification Survey, 2001 (copyright).

U.S. Census Bureau, Statistical Abstract of the United States: 2003, Page 67

No. 81. Religious Bodies—Selected Data

[Membership data: 2,500 represents 2,500,000. Includes the self-reported membership of religious bodies with 650,000 or more as reported to the Yearbook of American and Canadian Churches. Groups may be excluded if they do not supply information. The data are not standardized so comparisons between groups are difficult. The definition of "church member" is determined by the religious body.]

Religious body	Year reported	Churches reported	Membership (1,000)	Pastors serving parishes
African Methodist Episcopal Church	1999	(NA)	2,500	7,741
African Methodist Episcopal Zion Church	2001	3,226	1,448	1,208
American Baptist Churches in the U.S.A.	2001	5,786	1,443	4,963
Baptist Bible Fellowship International	2002	4,500	1,200	(NA)
Christian Church (Disciples of Christ) in the United States and Canada	2001	3,717	905	7,385
Christian Churches and Churches of Christ	1998	5,579	1,372	5,525
Christian Methodist Episcopal Church	2001	3,250	850	2,980
Church Of God In Christ, The	1991	15,300	1,500	28,988
Church of God (Cleveland), Tennessee	2001	6,006	932	1,564
Church of Jesus Christ of Latter-day Saints, The	2001	11,731	5,311	55,193
Churches of Christ	1999	15,000	1,500	14,500
Episcopal Church	2002	7,364	2,333	6,062
Evangelical Lutheran Church in America	2001	10,765	5,100	2,379
Greek Orthodox Archdiocese of America	(NA)	510	1,500	599
Jehovah's Witnesses	2001	11,708	889	(NA)
Lutheran Church—Missouri Synod (LCMS), The	2001	6,167	2,540	5,204
National Baptist Convention of America, Inc.	2003	(NA)	3,500	(NA)
National Baptist Convention, U.S.A., Inc.	(NA)	9,000	1,000	(NA)
National Missionary Baptist Convention of America	1992	(NA)	2,500	(NA)
Orthodox Church in America, The	2000	721	1,000	700
Portequest Assemblies of the World, Inc.	1998	1,750	1,600	1,900
Presbyterian Church (U.S.A.)	2001	11,142	3,456	9,115
Progressive National Baptist Convention, Inc.	1995	2,000	2,500	(NA)
Roman Catholic Church, The	2001	19,492	65,270	(NA)
Seventh-Day Adventist Church	2001	4,584	661	3,572
Southern Baptist Convention	2001	42,334	16,053	62,315
United Church of Christ	2001	5,868	1,359	4,304
United Methodist Church, The	2001	35,275	6,280	24,102

NA Not available. * Does not include retired clergy or clergy not working with congregations.
Source: National Council of Churches, New York, NY, 2003 Yearbook of American and Canadian Churches, annual (copyright). (For more info visit www.nccusa.org or call 800 870 9325.)

TABLE 1
BELIEF IN GOD AND CERTAINTY OF BELIEF

"Are you . . . ?"

Base: All Adults

	RELIGIOUS AFFILIATION				
	Total		Catholic	Protestant	Jewish
	%	%	%	%	%
Believe in God (NET)	79	79	90	48	15
Absolutely certain that there is a God	66	63	81	24	4
Somewhat certain that there is a God	12	16	9	24	11
Believe there is no God (NET)	9	8	4	19	52
Somewhat certain that there is no God	5	4	2	13	28
Absolutely certain that there is no God	4	4	2	5	23
Not sure whether or not there is a God	12	13	6	33	33

The Harris Poll #59, October 15, 2003

Survey by Harris Interactive® based on a nationwide sample of 2,306 adults surveyed online between September 16 and 23, 2003.

(Accessed on December 25, 2004
at http://www.harrisinteractive.com/harris_poll/index.asp?PID=408)

**SUPPORT FOR CHANGES IN PUBLIC POLICY,
ACCORDING TO SEVEN KEY FAITH GROUPS**

	All Adults	Evangelicals	Non- evangelical born again	Notional	Non-Christian faith	Atheist/ Agnostic	Protestant	Catholic
Remove 10 Commandments	18%	< 0.5%	6%	16%	32%	55%	6%	18%
Remove "In God We Trust"	13%	1%	4%	12%	28%	37%	4%	15%
Remove "One nation under God"	15%	4%	6%	13%	24%	40%	7%	13%
Teach creationism	59%	86%	70%	60%	42%	29%	69%	59%
Allow the "F-word" on broadcast TV	15%	6%	8%	17%	21%	35%	9%	19%
Make Christianity the official religion of the U.S.	32%	66%	44%	25%	21%	8%	43%	24%

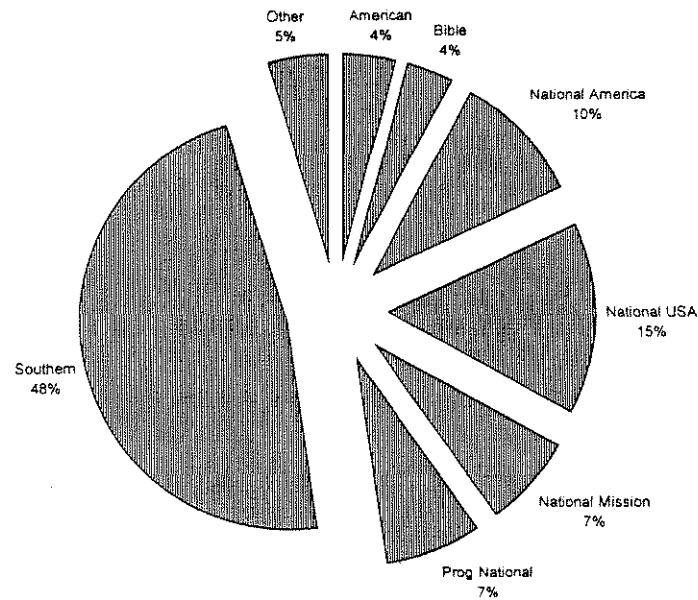
Base: 1024 adults.

From poll reported on July 26, 2004 by The Barna Group, Ltd., 1957 Eastman Ave. Ste B, Ventura, California 93003.
(Accessed at <http://www.barna.org/FlexPage.aspx?Page=BarnaUpdate&BarnaUpdateID=168> on December 21, 2004)

APPENDIX O

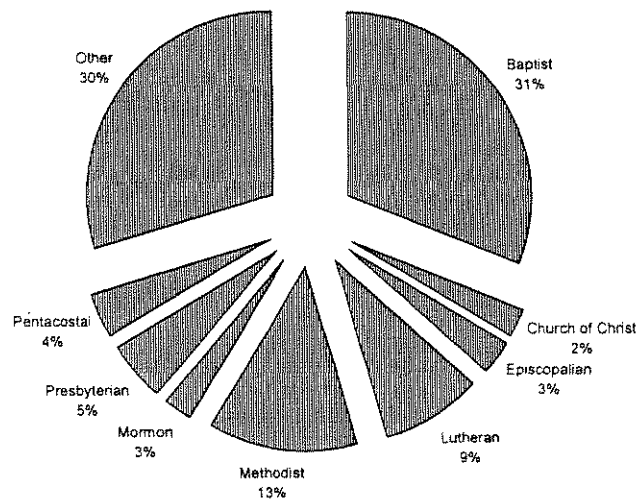
CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION

ALL BAPTISTS



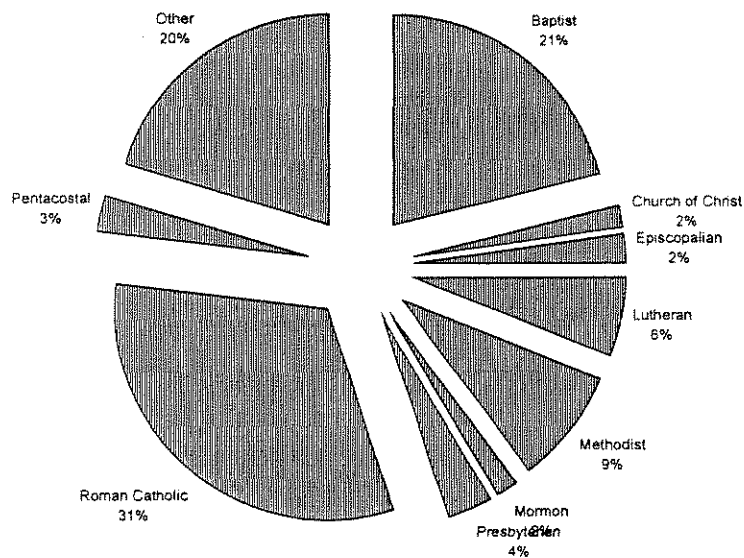
CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION

ALL PROTESTANTS



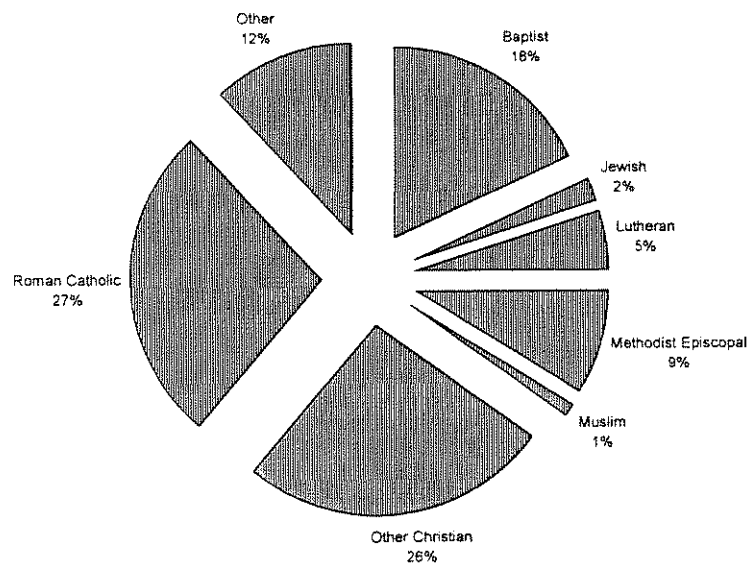
CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION

ALL CHRISTIANS



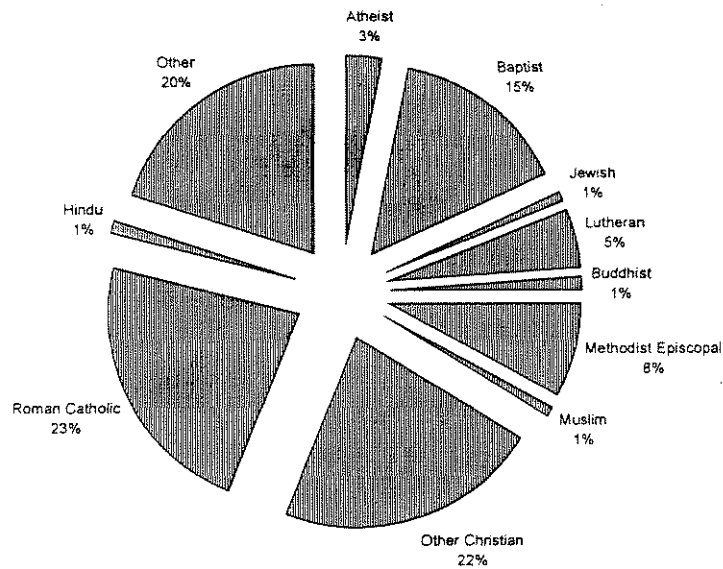
CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION

ALL MONOTHEISTS



CONSTITUTIONALLY, MONOTHEISM IS JUST AS SECTARIAN
AS IS ANY OTHER DENOMINATION

ALL AMERICANS



APPENDIX P

FIVE JUSTICES OF THE SUPREME COURT HAVE ALREADY STATED THAT THE PLEDGE FAILS THE COURT'S ESTABLISHMENT CLAUSE TESTS

The four times the Pledge has been referenced in dissent – plus Justice Thomas's "concurrence" in Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301 (2004) – are especially instructive, inasmuch as they show that Supreme Court justices have, themselves, repeatedly recognized that the Court's Establishment Clause jurisprudence requires invalidating the Act of 1954.¹ For instance, in Wallace v. Jaffree, 472 U.S. 38 (1985), "the established principle that the government must pursue a course of complete neutrality toward religion" was reiterated. *Id.* at 60. Chief Justice Burger appropriately queried, "Do the several opinions in support of the judgment today render the Pledge unconstitutional? That would be the consequence of their method."² *Id.* at 88 (Burger, C.J., dissenting). Dissenting in Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989), Justice Scalia provided a list of practices (including the Pledge of Allegiance) which he indicated conflict with the plurality's "assertion ... that government may not 'convey a message of endorsement of religion'" *Id.* at 29-30 (Scalia, J., dissenting).

The "outsider" test, as utilized in Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989), was the third test noted to be unworkable in relation to the Pledge. There, Justice Kennedy noted what is irrefutable: "[I]t borders on sophistry to suggest that the "'reasonable'" atheist would not feel less than a "'full membe[r] of the political community'" every time his fellow Americans recited, as part of their expression of patriotism and love for country, a phrase he believed to be false." *Id.* at 672-673 (Kennedy, J., dissenting). He continued, "Thanksgiving Proclamations, the reference to God in the Pledge of Allegiance, and invocations to God in sessions of Congress and of this Court ... constitute practices that the Court will not proscribe, but that the Court's reasoning today does not explain." *Id.* at 674 n.10 (Kennedy, J., dissenting).

¹ The dissenting justices clearly did not want the Pledge ruled unconstitutional. Nonetheless, they correctly assessed that the given majority analysis required such a conclusion.

² Incidentally, the Chief Justice's analysis showed that "under God" is religious, and that Congress inserted the words "under God" to endorse a religious view: "The House Report on the legislation amending the Pledge states that the purpose of the amendment was to affirm the principle that 'our people and our Government [are dependent] upon the moral directions of the Creator.'" 472 U.S. 38 (Burger, C.J., dissenting) (n. 3) (citation omitted).

Justice Kennedy brought to the fore the very real issue of “coercion” in Lee v. Weisman, 505 U.S. 577 (1992). There is no question that small children have essentially no choice but to join their fellow students when led by their teachers in a daily ritual, or that the rare young person with sufficient fortitude to display her disbelief in God would not be ostracized in today’s society by exempting herself from such a routine. Justice Scalia, in his *Lee* dissent, argued that “[i]f students were psychologically coerced to remain standing during the invocation, they must also have been psychologically coerced, moments before, to stand for (and thereby, in the Court’s view, take part in or appear to take part in) the Pledge.” *Id.* at 639 (Scalia, J., dissenting).

Believing that the Establishment Clause should never have been “incorporated” by the Fourteenth Amendment, Justice Thomas wrote that he disagreed with this key precedential factor in applying the Clause to the States. Nonetheless, he minced no words in Elk Grove, writing that the coercion test from Lee “would require us to strike down the Pledge policy, which, in most respects, poses more serious difficulties than the prayer at issue in Lee.” Elk Grove, 124 S. Ct. 2301, 2328 (2004) (Thomas, J., concurring). It might be noted that this incorporation argument does not apply to the federal defendants in this case. Thus, as to how Congress’s alteration of the Pledge impacts upon those who recite its now-religious words, the lack of “incorporation” would prove to be no barrier under Justice Thomas’s analysis.

In conclusion, justices of the Supreme Court have acknowledged that the neutrality, endorsement, outsider and coercion tests all demand removal of “under God” from the Pledge. They may not have liked the result of those Establishment Clause methodologies, and they assuredly knew that the majority of citizens would also be displeased. Nonetheless, “[d]edication to the rule of law requires judges to rise above the political moment in making judicial decisions.” Republican Party v. White, 536 U.S. 765, 803 (2002) (Stevens, J., dissenting). See, also, Texas v. Johnson, 491 U.S. 397, 420-421 (1989) (Kennedy, J., concurring):

The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result. And so great is our commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision.

APPENDIX Q

TWENTY NINE OF THIRTY SUPREME COURT JUSTICES HAVE WRITTEN OPINIONS CONTAINING PRINCIPLED STATEMENTS THAT ARE INCONSISTENT WITH A PLEDGE OF ALLEGIANCE CONTAINING THE WORDS, "UNDER GOD"

A Lexis search of United States Supreme Court cases has been performed. For every justice appointed since 1925, opinions in cases involving the Establishment Clause were sought. Of the thirty-nine justices, nine were excluded because they authored no such opinions. Twenty-nine of the remaining thirty – including all nine of the currently sitting justices – provided dicta supporting Plaintiff's case. Taken together, these citations leave no doubt as to the manifest unconstitutionality of the Act of 1954.

Justice Black:

"[N]either a State nor the Federal Government ... can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." Torcaso v. Watkins, 367 U.S. 488, 495 (1961)

Justice Blackmun:

"[T]he Constitution mandates that the government remain secular, rather than affiliate itself with religious beliefs or institutions, precisely in order to avoid discriminating among citizens on the basis of their religious faiths." Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 610 (1989)

Justice Brennan:

"[A]n important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices. The inquiry into this kind of effect must be conducted with particular care when many of the citizens perceiving the governmental message are children in their formative years." Grand Rapids School District v. Ball, 473 U.S. 373, 390 (1985)

Justice Breyer:

"In a society as religiously diverse as ours, the Court has recognized that we must rely on the Religion Clauses of the First Amendment to protect against religious strife, particularly when what is at issue is an area as central to religious belief as the shaping, through primary education, of the next generation's minds and spirits. Zelman v. Simmons-Harris, 536 U.S. 639, 725 (2002) (dissenting opinion)

Chief Justice Burger:

"The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice" Lemon v. Kurtzman, 403 U.S. 602, 625 (1971)

Justice Clark:

"[The Court] has consistently held that the [Establishment] clause withdrew all legislative power respecting religious belief or the expression thereof." Abington School District v. Schempp, 374 U.S. 203, 222 (1963)

Justice Douglas:

"Our individual preferences, however, are not the constitutional standard. The constitutional standard is the separation of Church and State." Zorach v. Clausen, 343 U.S. 306, 314 (1952)

Justice Fortas:

"Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, [104] and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion and between religion and nonreligion." Epperson v. Arkansas, 393 U.S. 97, 103-104 (1968)

Justice Frankfurter:

"Certainly the affirmative pursuit of one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law. Government may not interfere with organized or individual expression of belief or disbelief." Minersville School District v. Gobitis, 310 U.S. 586, 593 (1940)

Justice Ginsberg:

"A prime part of the history of our Constitution ... is the story of the extension of constitutional rights and protections to people once ignored or excluded." United States v. Virginia, 518 U.S. 515, 557 (1996)

Justice Goldberg:

"The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief." Abington School District v. Schempp, 374 U.S. 203, 305 (1963) (concurring opinion)

Justice Harlan:

"[T]he State cannot 'constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can [it] aid those religions based on a belief in the

existence of God as against those religions founded on different beliefs.' ... Neutrality and voluntarism stand as barriers against the most egregious and hence divisive kinds of state involvement in religious matters." Walz v. Tax Commission, 397 U.S. 664, 695 (1970) (separate opinion)

Justice Jackson:

"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 ... If there are any circumstances which permit an exception, they do not now occur to us." West Virginia Board of Education v. Barnette, 319 U.S. 624, 642 (1943)

Justice Kennedy:

"The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State." Lee v. Weisman, 505 U.S. 577, 589 (1992).

Justice Marshall:

"It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." Hernandez v. Commissioner, 490 U.S. 680, 699 (1989)

Justice Murphy:

"[T]he protection of the Constitution must be extended to all, not only to those whose views accord with prevailing thought but also to dissident minorities who energetically spread their beliefs." Jones v. City of Opelika, 316 U.S. 584, 611-12 (1942) (dissenting opinion)

Justice O'Connor:

"[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." Westside Community Bd. of Ed. V. Mergens, 496 U.S. 226, 250 (1990)

Justice Powell:

"A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion." Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756, 792-93 (1973)

Chief Justice Rehnquist:

"The Establishment Clause of the First Amendment, applied to the States through the Fourteenth Amendment, prevents a State from enacting laws that have the "purpose" or "effect" of advancing or inhibiting religion." Zelman v. Simmons-Harris, 536 U.S. 639, 648-49 (2002)

Justice Roberts:

“In the realm of religious faith, ... sharp differences arise. [There] the tenets of one man may seem the rankest error to his neighbor.” Cantwell v. Connecticut, 310 U.S. 296, 310 (1940)

Justice Rutledge:

“The [First] Amendment’s purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.” Everson v. Board of Education, 330 U.S. 1, 31-32 (1947 (dissenting opinion))

Justice Scalia:

“The government may not compel affirmation of religious belief ... or lend its power to one or the other side in controversies over religious authority or dogma.” Employment Div. v. Smith, 494 U.S. 872, 877 (1990)

Justice Souter:

“The general principle that civil power must be exercised in a manner neutral to religion” Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 704 (1994)

Justice Stevens:

“The importance of that principle does not permit us to treat this as an inconsequential case involving nothing more than a few words of symbolic speech on behalf of the political majority. For whenever the State itself speaks on a religious subject, one of the questions that we must ask is ‘whether the government intends to convey a message of endorsement or disapproval of religion.’” Wallace v. Jaffree, 472 U.S. 38, 60-61 (1985)

Justice Stewart

“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” Shelton v. Tucker, 364 U.S. 479, 487 (1960)

Justice Stone:

“[C]areful scrutiny of legislative efforts to secure conformity of belief and opinion by a compulsory affirmation of the desired belief, is especially needful if civil rights are to receive any protection.” Minersville School District v. Gobitis, 310 U.S. 586, 606 (1940) (dissenting opinion)

Justice Thomas

“[T]he question ... is ultimately a question whether any religious indoctrination that occurs

in those schools could reasonably be attributed to governmental action.” Mitchell v. Helms, 530 U.S. 793, 809 (2000)

Chief Justice Warren:

“If the purpose or effect of a law is ... to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.” Braunfeld v. Brown, 366 U.S. 599, 607 (1961)

Justice White:

“Lemon’s ‘purpose’ requirement aims at preventing the relevant governmental decisionmaker - in this case, Congress - from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters.” Corporation of Presiding Bishop v. Amos, 483 U.S. 327, 335 (1986)

APPENDIX R

THE SUPREME COURT HAS ISSUED AN OVERWHELMING NUMBER OF PRINCIPLED STATEMENTS THAT DEMONSTRATE THAT “UNDER GOD” IN THE PLEDGE IS UNCONSTITUTIONAL

The following is a sampling of 200 instances of dicta, which – when applied to “under God” in the Pledge – support Plaintiffs’ contention that the Act of 1954 was and is unconstitutional. They should be kept in mind when considering the rare, unprincipled dictum suggesting the Pledge might comport with the Constitution’s mandates. It also should be noted that there are many, many more instances – Plaintiffs hope that this listing suffices to make his point here.

In order to keep the focus on the words, the authors and the cases are not included. Plaintiffs can readily provide these missing items if so desired by the Court.

“[A]s the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private. It cannot be made a public one by legislative act. This was the very heart of Madison’s Remonstrance, as it is of the Amendment itself.”

“[A]s with the freedom of thought and speech of which Mr. Justice Cordozo spoke in Palko v. Connecticut, 302 U.S. 319 - it is accurate to say concerning the principle that a government must neither establish nor suppress religious belief.”

“[E]ven under a law containing an excusal provision, if the exercises were held during the school day, and no equally desirable alternative were provided by the school authorities, the likelihood that children might be under at least some psychological compulsion to participate would be great.”

“[I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought - not free thought for those who agree with us but freedom for the thought that we hate.”

“[I]t is only by wholly isolating the state from the religious sphere and compelling it to be completely neutral, that the freedom of each and every denomination and of all nonbelievers can be maintained.”

“[N]o American should at any point feel alienated from his government because that government has declared or acted upon some ‘official’ or ‘authorized’ point of view on a matter of religion.”

“[N]o particular religious sect or society ought to be favored or established, by law, in preference to others” (quoting Rhode Island’s State Constitution)

“[N]o preference shall ever be given by law to any religious establishments or modes of worship.” (quoting Pennsylvania’s State Constitution)

“[O]rdering an instrumentality of the State to support religious evangelism with direct funding ... is a flat violation of the Establishment Clause.”

“[O]ur cases have prohibited government endorsement of religion, its sponsorship, and active involvement in religion, whether or not citizens were coerced to conform.”

“[O]ur judicial opinions have refrained from drawing invidious distinctions between those who believe in no religion and those who do believe. The First Amendment has lost much if the religious follower and the atheist are no longer to be judicially regarded as entitled to equal justice under law.”

“[R]eligions supported by government are compromised just as surely as the religious freedom of dissenters is burdened when the government supports religion.”

“[R]eligious exercises are not constitutionally invalid if they simply reflect differences which exist in the society from which the school draws its pupils. They become constitutionally invalid only if their administration places the sanction of secular authority behind one or more particular religious or irreligious beliefs.”

“[T]he attitude of government toward religion must be one of neutrality.”

“[T]he central meaning of the Religion Clauses of the First Amendment ... is that all creeds must be tolerated, and none favored. The suggestion that government may establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that cannot be accepted.”

“[T]he concept of neutrality ... does not permit a State to require a religious exercise even with the consent of the majority of those affected.”

“[T]he Constitution ... demands that the State not take action that has the primary effect of advancing religion.”

“[T]he Constitution mandates that the government remain secular, rather than affiliate itself with religious beliefs or institutions, precisely in order to avoid discriminating among citizens on the basis of their religious faiths.”

“[T]he Constitution’s authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion’s intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.”

“[T]he core rationale underlying the Establishment Clause is preventing ‘a fusion of governmental and religious functions.’”

“[T]he dogma, creed, scruples or practices of no religious group or sect are to be preferred over those of any others.”

“[T]he Establishment Clause ... forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. Thus, the present regimes must fall under that clause for the additional reason that public funds, though small in amount, are being used to promote a religious exercise. Through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others.”

“[T]he Establishment Clause ... is violated by the enactment of laws which establish an official religion: whether those laws operate directly to coerce non-observing individuals or not.”

“[T]he First Amendment’s purpose of requiring on the part of all organs of government a strict neutrality toward theological questions”

“[T]he government’s use of religious symbols is unconstitutional if it effectively endorses sectarian religious belief.”

“[T]he great purposes of the Constitution do not depend on the approval or convenience of those they restrain.”

“[T]he individual’s freedom of conscience [is] the central liberty that unifies the various Clauses in the First Amendment.”

“[T]he mere appearance of a joint exercise of legislative authority by Church and State provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred.”

“[T]he State may not espouse a religious message.”

“[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”

“[T]his Court ... has found that the First and Fourteenth Amendments afford protection against religious establishments far more extensive than merely to forbid a national or state church.”

“[T]hough the First Amendment does not allow the government to stifle prayers which aspire to these ends, neither does it permit the government to undertake that task for itself.”

“[The Court] has consistently held that the [Establishment] clause withdrew all legislative power respecting religious belief or the expression thereof.”

"[The] essence [of the constitutional protections of religious freedom] is freedom from conformity to religious dogma."

"[V]iewpoint discrimination occurs when government allows one message while prohibiting the messages of those who can reasonably be expected to respond."

"[W]e have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion."

"[W]e must not confuse the issue of governmental power to regulate or prohibit conduct motivated by religious beliefs with the quite different problem of governmental authority to compel behavior offensive to religious principles."

"A central lesson of our decisions is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion."

"absolute equality before the law, of all religious opinions and sects ... The government is neutral, and, while protecting all, it prefers none, and it disparages none."

"Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies."

"Any use of such coercive power by the state to help or hinder some religious sects or to prefer all religious sects over nonbelievers or vice versa is just what I think the First Amendment forbids. In considering whether a state has entered this forbidden field the question is not whether it has entered too far but whether it has entered at all."

"As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. These are consequences not amenable to statistics."

"As we have repeatedly recognized, government inculcation of religious beliefs has the impermissible effect of advancing religion."

"At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs"

"Certainly the affirmative pursuit of one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law. Government may not interfere with organized or individual expression of belief or disbelief."

"Courts above all must be neutral, for '[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.'"

“Even as to children, however, the duty laid upon government in connection with religious exercises in the public schools is that of refraining from so structuring the school environment as to put any kind of pressure on a child to participate in those exercises”

“evenhanded treatment to all who believe, doubt, or disbelieve”

“For just as religion throughout history has provided spiritual comfort, guidance, and inspiration to many, it can also serve powerfully to divide societies and to exclude those whose beliefs are not in accord with particular religions or sects that have from time to time achieved dominance. The solution to this problem adopted by the Framers and consistently recognized by this Court is jealously to guard the right of every individual to worship according to the dictates of conscience while requiring the government to maintain a course of neutrality among religions, and between religion and non-religion.”

“Government [may not] foster the creation of political constituencies defined along religious lines.”

“Governmental approval of religion tends to reinforce the religious message ... and, by the same token, to carry a message of exclusion to those of less favored views.”

“Here we have such a small minority entertaining in good faith a religious belief, which is such a departure from the usual course of human conduct, that most persons are disposed to regard it with little toleration or concern. In such circumstances careful scrutiny of legislative efforts to secure conformity of belief and opinion by a compulsory affirmation of the desired belief, is especially needful if civil rights are to receive any protection.”

“History teaches us that there have been but few infringements of personal liberty by the state which have not been justified ... in the name of righteousness and the public good, and few which have not been directed ... at politically helpless minorities.”

“I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State.”

“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 or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”

“In sum, the history which our prior decisions have summoned to aid interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which would tend to foster or discourage religious worship or belief.”

“In the words of Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between Church and State.’”

"It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'"

"It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends [of compulsory unification of opinion] by avoiding these beginnings."

"Madison and his coworkers made no exceptions or abridgements to the complete separation they created. Their objection was not to small tithes. It was to any tithes whatsoever."

"Neither the National Government nor, under the Due Process Clause of the Fourteenth Amendment, a State may, by any device, support belief or the expression of belief for its own sake, whether from conviction of the truth of that belief, or from conviction that by the propagation of that belief the civil welfare of the State is served, or because a majority of its citizens, holding that belief, are offended when all do not hold it."

"No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

"Not simply an established church, but any law respecting an establishment of religion is forbidden."

"Of course, giving sectarian religious speech preferential access to a forum close to the seat of government (or anywhere else for that matter) would violate the Establishment Clause ..."

"Official compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship ..."

"One of our basic rights is to be free of taxation to support a transgression of the constitutional command that the authorities 'shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'"

"Our country has become strikingly multireligious as well as multiracial and multiethnic. This fact, perhaps more than anything one could write, demonstrates the wisdom of including the Establishment Clause in the First Amendment."

"'Primary among those evils' against which the Establishment Clause guards 'have been sponsorship, financial support, and active involvement of the sovereign in religious activity'"

"Public funds may not be used to endorse the religious message."

"reflects nothing more than the governmental obligation of neutrality in the face of religious differences"

"Should government choose to incorporate some arguably religious element into its public ceremonies, that acknowledgment must be impartial; it must not tend to promote one faith or handicap another; and it should not sponsor religion generally over nonreligion. Thus, in a

series of decisions concerned with such acknowledgments, we have repeatedly held that any active form of public acknowledgment of religion indicating sponsorship or endorsement is forbidden.”

“Th[e First] Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers ...”

“The basic purpose of the religion clause of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope for attainment of that end.”

“The cause of the conflict is the State’s apparent approval of a religious or anti-religious message. Our Constitution wisely seeks to minimize such strife by forbidding state-endorsed religious activity.”

“the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.”

“The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion.”

“The Court today does only what courts must do in many Establishment Clause cases - focus on specific features of a particular government action to ensure that it does not violate the Constitution.”

“The day that this country ceases to be free for irreligion it will cease to be free for religion - except for the sect that can win political power.”

“The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission.”

“The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state’s support or incur its hostility. Religion is outside the sphere of political government.”

“The essential inquiry in each case, as expressed in our prior decisions, is whether the challenged state aid has the primary purpose or effect of advancing religion or religious education or whether it leads to excessive entanglement by the State in the affairs of the religious institution.”

“The Establishment Clause withdrew from the sphere of legislative concern and competence a specific, but comprehensive, area of human conduct: man’s belief or disbelief in the verity of some transcendental idea and man’s expression in action of that belief or disbelief. Congress

may not make these matters, as such, the subject of legislation, nor, now, may any legislature in this country."

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government ... can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can ... force him to profess a belief or disbelief in any religion."

"The First Amendment ... was one of twelve proposed on September 25, 1789, to the States by the First Congress after the adoption of our Constitution. Ten were ratified. They were intended to be and have become our Bill of Rights. By their terms our people have a guarantee that so long as law as we know it shall prevail, they shall live protected from the tyranny of the despot or the mob. None of the provision of our Constitution is more venerated by the people or respected by legislatures and the courts than those which proclaim for our country the freedom of religion and expression."

"The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State."

"The Free Exercise Clause protects against governmental hostility which is masked as well as overt."

"The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion, and that it work deterrence of no religious belief."

"The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory."

"The great condition of religious liberty is that it be maintained free from sustenance, as also from other interferences, by the state. For when it comes to rest upon that secular foundation it vanishes with the resting."

"The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs"

"The idea, as I understand it, was to limit the power of government to act in religious matters, not to limit the freedom of religious men to act religiously nor to restrict the freedom of atheists or agnostics."

"The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

"the protection of the Constitution must be extended to all, not only to those whose views accord with prevailing thought but also to dissident minorities who energetically spread their beliefs."

“The Religion Clauses prohibit the government from favoring religion”

“The spiritual mind of man has thus been free to believe, disbelieve, or doubt, without repression, great or small, by the heavy hand of government.”

“the State is constitutionally compelled to assure that the state-sponsored activity is not being used for religious indoctrination.”

“The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.”

“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.”

“There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the ‘free exercise’ of religion and an ‘establishment’ of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception: the prohibition is absolute.”

“There is an ‘establishment’ of religion in the constitutional sense if any practice of any religious group has the sanction of law behind it.”

“These same precedents caution us to measure the idea of a civic religion against the central meaning of the Religion Clauses of the First Amendment, which is that all creeds must be tolerated, and none favored. The suggestion that government may establish an official or civic religion as a means of avoiding the establishment of religion with more specific creeds strikes us as a contradiction that cannot be accepted.”

“This case, rather, involves the noncontroversial principle, repeated in *Smith*, that formal neutrality and general applicability are necessary conditions for free exercise constitutionality.”

“to bar not only prohibitions of religious exercise fueled by the hostility of the majority, but prohibitions flowing from the indifference or ignorance of the majority as well.”

“We are here concerned with a vital question involving the very foundation of our civilization. Centuries ago our forefathers fought and died for the principles now contained in the Bill of Rights of the Federal and New Jersey Constitutions. It is our solemn duty to preserve these rights and to prohibit any encroachment upon them.”

“we have repeatedly held that any active form of public acknowledgment of religion indicating sponsorship or endorsement is forbidden.”

“We have time and again held that the government generally may not treat people differently based on the God or gods they worship, or don’t worship.”

“We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.”

“We think that by using its public school system to encourage recitation of the Regents’ prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause.”

“What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government.”

“When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and degrade religion.”

“Where the government’s operation of a public forum has the effect of endorsing religion, even if the governmental actor neither intends nor actively encourages that result, ... the Establishment Clause is violated.”

“Where we have tested for endorsement of religion, the subject of the test was either expression by the government itself, ... or else government action alleged to discriminate in favor of private religious expression or activity.”

“While our institutions reflect a firm conviction that we are a religious people, those institutions by solemn constitutional injunction may not officially involve religion in such a way as to prefer, discriminate against, or oppress, a particular sect or religion.”

“While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs.”

“[A]n important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices. The inquiry into this kind of effect must be conducted with particular care when many of the citizens perceiving the governmental message are children in their formative years.”

“[D]isplays of this kind inevitably have a greater tendency to emphasize sincere and deeply felt differences among individuals than to achieve an ecumenical goal. The Establishment Clause does not allow public bodies to foment such disagreement.”

“[I]f government is to remain scrupulously neutral in matters of religious conscience, as our Constitution requires, then it must avoid those overly broad acknowledgments of religious practices that may imply governmental favoritism toward one set of religious beliefs.”

“[T]he effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers’ expense. That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation, a difference which goes to the very root of religious freedom.”

“[T]he endorsement test captures the essential command of the Establishment Clause, namely, that government must not make a person’s religious beliefs relevant to his or her standing in the political community by conveying a message “that religion or a particular religious belief is favored or preferred.”

“[T]he government’s sponsorship of prayer at the graduation ceremony is most reasonably understood as an official endorsement of religion and, in this instance, of theistic religion.”

“[T]he judgment of the Establishment Clause is that neutrality by the organs of government on questions of religion is both possible and imperative.”

“[T]he longstanding constitutional principle [is] that government may not engage in a practice that has the effect of promoting or endorsing religious beliefs.”

“[T]he religious liberty so precious to the citizens who make up our diverse country is protected, not impeded, when government avoids endorsing religion or favoring particular beliefs over others.”

“[T]he State cannot ‘constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can (it) aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.’ In the vast majority of cases the inquiry, albeit an elusive one, can end at this point. Neutrality and voluntarism stand as barriers against the most egregious and hence divisive kinds of state involvement in religious matters.”

“[U]nder the Religion Clauses government is generally prohibited from seeking to advance or inhibit religion.”

“[W]hen [government] acts it should do so without endorsing a particular religious belief or practice that all citizens do not share.”

“a principle at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion.”

“[W]hen ... officials participate in or appear to endorse the distinctively religious elements of this otherwise secular event, they encroach upon First Amendment freedoms. For it is at that point that the government brings to the forefront the theological content of the holiday, and places the prestige, power, and financial support of a civil authority in the service of a particular faith.”

“A secular state, it must be remembered, is not the same as an atheistic or antireligious state. A secular state establishes neither atheism nor religion as its official creed.”

“Allegheny County ... has conveyed a message of governmental endorsement of Christian beliefs. This the Establishment Clause does not permit.”

“Although a distinct jurisprudence has enveloped each of these Clauses, their common purpose is to secure religious liberty. See Engel v. Vitale, 370 U.S. 421, 430 (1962). On these principles the Court has been and remains unanimous.”

“Although Establishment Clause jurisprudence is characterized by few absolutes, the Clause does absolutely prohibit government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.”

“But it is not enough that the government restrain from compelling religious practices: It must not engage in them either.”

“An Establishment Clause standard that prohibits only “coercive” practices or overt efforts at government proselytization, but fails to take account of the numerous more subtle ways that government can show favoritism to particular beliefs or convey a message of disapproval to others, would not, in my view, adequately protect the religious liberty or respect the religious diversity of the members of our pluralistic political community. Thus, this Court has never relied on coercion alone as the touchstone of Establishment Clause analysis.”

“But, the First Amendment, in its final form, did not simply bar a congressional enactment establishing a church; it forbade all laws respecting an establishment of religion. Thus, this Court has given the Amendment a ‘broad interpretation ... in the light of its history and the evils it was designed forever to suppress. ...’ Everson v. Board of Education, supra, at pp. 14-15. It has found that the First and Fourteenth Amendments afford protection against religious establishment far more extensive than merely to forbid a national or state church.”

“candor requires us to admit that this Alabama statute was intended to convey a message of state encouragement and endorsement of religion.”

“Clearly freedom of belief protected by the Free Exercise Clause embraces freedom to profess or practice that belief”

“Compulsory attendance upon religious exercises went out early in the process of separating church and state, together with forced observance of religious forms and ceremonies.”

“Each value judgment under the Religion Clauses must therefore turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so.”

“First and foremost, [Justice O’Connor’s Lynch] concurrence squarely rejects any notion that this Court will tolerate some government endorsement of religion. Rather, the concurrence recognizes any endorsement of religion as “invalid,” *id.*, at 690, because it “sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community,”

“I know of no principle under the Establishment Clause, however, that permits us to conclude that governmental promotion of religion is acceptable so long as one religion is not favored. We have, on the contrary, interpreted that Clause to require neutrality, not just among religions, but between religion and nonreligion.”

“If government is to be neutral in matters of religion, rather than showing either favoritism or disapproval towards citizens based on their personal religious choices, government cannot endorse the religious practices and beliefs of some citizens without sending a clear message to nonadherents that they are outsiders or less than full members of the political community.”

“If the primary end achieved by a form of regulation is the affirmation or promotion of religious doctrine - primary, in the sense that all secular ends which it purportedly serves are derivative from, not wholly independent of, the advancement of religion - the regulation is beyond the power of the state.”

“In barring the State from sponsoring generically theistic prayers where it could not sponsor sectarian ones, we hold true to a line of precedent from which there is no adequate historical case to depart.”

“In my opinion the Establishment Clause should be construed to create a strong presumption against the display of religious symbols on public property.⁷ There is always a risk that such symbols will offend nonmembers of the faith being advertised as well as adherents who consider the particular advertisement disrespectful.”

“In New York the teacher who leads in prayer is on the public payroll; and the time she takes seems minuscule as compared with the salaries appropriated by state legislatures and Congress for chaplains to conduct prayers in the legislative halls. Only a bare fraction of the teacher’s time is given to reciting this short 22-word prayer, about the same amount of time that our Crier spends announcing the opening of our sessions and offering a prayer for this Court. Yet for me the principle is the same, no matter how briefly the prayer is said, for in each of the instances given the person praying is a public official on the public payroll, performing a religious exercise in a governmental institution.”

“It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State.” (quoting Elihu Root, *Addresses on Government and Citizenship*, 137, 140)

“It is indeed true that there are certain tensions inherent in the First Amendment itself, or inherent in the role of religion and religious belief in any free society, that have shaped the doctrine of the Establishment Clause, and required us to deviate from an absolute adherence to separation and neutrality. Nevertheless, these considerations, although very important, are also quite specific, and where none of them is present, the Establishment Clause gives us no warrant simply to look the other way and treat an unconstitutional practice as if it were constitutional.”

“it seems dangerous to validate what appears to me a clear religious preference.”

“Nearly half a century of review and refinement of Establishment Clause jurisprudence has distilled one clear understanding: Government may neither promote nor affiliate itself with any religious doctrine or organization, nor may it obtrude itself in the internal affairs of any religious institution. The application of these principles to the present case mandates the decision reached today by the Court.”

“Our cases disclose two limiting principles: government may not coerce anyone to support or participate in any religion or its exercise; and it may not, in the guise of avoiding hostility or callous indifference, give direct benefits to religion in such a degree that it in fact “establishes a [state] religion or religious faith, or tends to do so.”

“our cases do not require a plaintiff to demonstrate that a government action necessarily promotes religion, but simply that it creates such a substantial risk.”

“Our decisions under the Establishment Clause prevent government from supporting or involving itself in religion.”

“Our task is, as always, to decide only whether the challenged provisions of a law comport with the United States Constitution.”

“People who share a common religious belief or lifestyle may live together without sacrificing the basic rights of self-governance that all American citizens enjoy, so long as they do not use those rights to establish their religious faith. Religion flourishes in community, and the Establishment Clause must not be construed as some sort of homogenizing solvent that forces unconventional religious groups to choose between assimilating to mainstream American culture or losing their political rights.”

“Resolve that neither the state nor the nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the church and state forever separated.” (quoting President Grant’s ‘The President’s Speech at Des Moines,’ 22 Catholic World 433, 434-35 (1876))

“secular and religious authorities must not interfere with each other’s respective spheres of choice and influence.”

“Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally.”

“Separation means separation, not something less. Jefferson’s metaphor in describing the relation between Church and State speaks of a ‘wall of separation,’ not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. ‘The great American principle of eternal separation’ – Elihu Root’s phrase bears repetition-is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court’s duty to enforce this principle in its full integrity. We renew our conviction that ‘we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.’”

“Should government choose to incorporate some arguably religious element into its public ceremonies, that acknowledgment must be impartial; it must not tend to promote one faith or handicap another; and it should not sponsor religion generally over nonreligion. Thus, in a series of decisions concerned with such acknowledgments, we have repeatedly held that any active form of public acknowledgment of religion indicating sponsorship or endorsement is forbidden.”

“State governments, like the Federal Government, have been required to refrain from favoring the tenets or adherents of any religion or of religion over nonreligion, ... and from establishing programs which unnecessarily or excessively entangle government with religion.”

“The [First] Amendment’s purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.”

“the bedrock Establishment Clause principle that, regardless of history, government may not demonstrate a preference for a particular faith”

“the challenged public school programs operating in the religious schools may impermissibly advance religion in three different ways. First, the teachers participating in the programs may become involved in intentionally or inadvertently inculcating particular religious tenets or beliefs. Second, the programs may provide a crucial symbolic link between government and religion, thereby enlisting - at least in the eyes of impressionable youngsters - the powers of government to the support of the religious denomination operating the school.”

“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”

“The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice”

“The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.”

“The endorsement test does not preclude government from acknowledging religion or from taking religion into account in making law and policy. It does preclude government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred. Such an endorsement infringes the religious liberty of the nonadherent, for “[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion in plain.”

“the established principle that the government must pursue a course of complete neutrality toward religion.”

“The First Amendment put an end to placing any one church in a preferred position. It ended support of any church or all churches by taxation. It went further and prevented secular sanction to any religious ceremony, dogma, or rite.”

“The First Amendment requires that a statute must be invalidated if it is entirely motivated by a purpose to advance religion.”

“Those in office must be resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The laws here in question were enacted contrary to these constitutional principles, and they are void.”

“The freedom to worship as one pleases without government interference or oppression is the great object of both the Establishment and the Free Exercise Clauses.”

“The fundamental source of constitutional concern here is that the legislature itself may fail to exercise governmental authority in a religiously neutral way.”

“The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion.”

“The general principle that civil power must be exercised in a manner neutral to religion”

“The Government’s argument gives insufficient recognition to the real conflict of conscience faced by the young student. The essence of the Government’s position is that, with regard

to a civic, social occasion of this importance, it is the objector, not the majority, who must take unilateral and private action to avoid compromising religious scruples, hereby electing to miss the graduation exercise. This turns conventional First Amendment analysis on its head. It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”

“The imperatives of separation and neutrality are not limited to the relationship of government to religious institutions or denominations, but extend as well to the relationship of government to religious beliefs and practices.”

“The importance of that principle does not permit us to treat this as an inconsequential case involving nothing more than a few words of symbolic speech on behalf of the political majority. For whenever the State itself speaks on a religious subject, one of the questions that we must ask is “whether the government intends to convey a message of endorsement or disapproval of religion.”

“The lessons of the First Amendment are as urgent in the modern world as in the 18th century, when it was written. One timeless lesson is that, if citizens are subjected to state-sponsored religious exercises, the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people. To compromise that principle today would be to deny our own tradition and forfeit our standing to urge others to secure the protections of that tradition for themselves.”

“the potential for conflict ‘inheres in the situation,’ and because of that the State is constitutionally compelled to assure that the state-supported activity is not being used for religious indoctrination.”

“The matter is not one of quantity, to be measured by the amount of money expended. Now as in Madison’s day it is one of principle, to keep separate the separate spheres as the First Amendment drew them; to prevent the first experiment upon our liberties; and to keep the question from becoming entangled in corrosive precedents. We should not be less strict to keep strong and untarnished the one side of the shield of religious freedom than we have been of the other.”

“the principles of separation and neutrality help assure that essentially religious issues, precisely because of their importance and sensitivity, not become the occasion for battle in the political arena.”

“the respect for religious diversity that the Constitution requires.”

“The simultaneous endorsement of Judaism and Christianity is no less constitutionally infirm than the endorsement of Christianity alone.”

“There are, of course, many ways of demonstrating that the object or purpose of a law is the suppression of religion or religious conduct. To determine the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its

face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.”

“This Court’s decisions have recognized a distinction when government-sponsored religious exercises are directed at impressionable children who are required to attend school, for then government endorsement is much more likely to result in coerced religious beliefs.”

“This principle against favoritism and endorsement has become the foundation of Establishment Clause jurisprudence, ensuring that religious belief is irrelevant to every citizen’s standing in the political community.”

“We do not hold that Sunday legislation may not be a violation of the ‘Establishment’ Clause if it can be demonstrated that its purpose - evidenced either on the face of the legislation, in conjunction with its legislative history, or in its operative effect - is to use the State’s coercive power to aid religion.”

“We repeat and again affirm that neither a State nor the Federal Government can constitutionally force a person ‘to profess a belief or disbelief in any religion.’ Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.”

“When a statute is challenged as impinging on freedom of speech, freedom of the press, or freedom of worship, those historic privileges which are so essential to our political welfare and spiritual progress, it is the duty of this Court to subject such legislation to examination, in the light of the evidence adduced, to determine whether it is so drawn as not to impair the substance of those cherished freedoms in reaching its objective.”

“When public school officials, armed with the State’s authority, convey an endorsement of religion to their students, they strike near the core of the Establishment Clause. However “ceremonial” their messages may be, they are flatly unconstitutional.”

“When the government arrogates to itself a role in religious affairs, it abandons its obligation as guarantor of democracy.”

“When the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs.”

“While in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school encountered the resistance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups.”

“[T]he State may not favor or endorse either religion generally over nonreligion or one religion over others.”

APPENDIX S

THE SUPREME COURT'S STATEMENTS IN ITS LAST TWO CASES INVOLVING RELIGION IN THE PUBLIC SCHOOLS MANDATE REMOVAL OF "UNDER GOD" FROM THE PLEDGE

Lee v. Weisman, 505 U.S. 577 (1992)

Justice Kennedy – Majority Opinion

"The lessons of the First Amendment are as urgent in the modern world as in the 18th century, when it was written. One timeless lesson is that, if citizens are subjected to state-sponsored religious exercises, the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people. To compromise that principle today would be to deny our own tradition and forfeit our standing to urge others to secure the protections of that tradition for themselves." (At 592.)

"The Government's argument gives insufficient recognition to the real conflict of conscience faced by the young student. The essence of the Government's position is that, with regard to a civic, social occasion of this importance, it is the objector, not the majority, who must take unilateral and private action to avoid compromising religious scruples, hereby electing to miss the graduation exercise. This turns conventional First Amendment analysis on its head. It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice." (At 596.)

"[T]hough the First Amendment does not allow the government to stifle prayers which aspire to these ends, neither does it permit the government to undertake that task for itself." (At 589.)

"The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State." (At 589.)

"The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission." (At 590.)

"These same precedents caution us to measure the idea of a civic religion against the central meaning of the Religion Clauses of the First Amendment, which is that all creeds must be tolerated, and none favored. The suggestion that government may establish an official or civic religion as a means of avoiding the establishment of religion with more specific creeds strikes us as a contradiction that cannot be accepted." (At 590.)

“We need not look beyond the circumstances of this case to see the phenomenon at work. The undeniable fact is that the school district’s supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction. This pressure, though subtle and indirect, can be as real as any overt compulsion.” (At 593.)

“[T]o say a teenage student has a real choice not to attend her high school graduation is formalistic in the extreme.” (At 595.)

“[W]hat for many of Deborah’s classmates and their parents was a spiritual imperative was, for Daniel and Deborah Weisman, religious conformance compelled by the State. While in some societies the wishes of the majority might prevail, the Establishment Clause of the First Amendment is addressed to this contingency, and rejects the balance urged upon us. The Constitution forbids the State to exact religious conformity from a student as the price of attending her own high school graduation. This is the calculus the Constitution commands.” (At 595-596.)

“If common ground can be defined which permits once conflicting faiths to express the shared conviction that there is an ethic and a morality which transcend human invention, the sense of community and purpose sought by all decent societies might be advanced. But though the First Amendment does not allow the government to stifle prayers which aspire to these ends, neither does it permit the government to undertake that task for itself.” (At 589.)

“The question is not the good faith of the school in attempting to make the prayer acceptable to most persons, but the legitimacy of its undertaking that enterprise at all when the object is to produce a prayer to be used in a formal religious exercise which students, for all practical purposes are obliged to attend.” (At 588-589.)

“The injury caused by the government’s action, and the reason why Daniel and Deborah Weisman object to it, is that the State, in a school setting, in effect required participation in a religious exercise. It is, we concede, a brief exercise during which the individual can concentrate on joining its message, meditate on her own religion, or let her mind wander. But the embarrassment and the intrusion of the religious exercise cannot be refuted by arguing that these prayers, and similar ones to be said in the future, are of a de minimis character.” (At 594.)

“Divisiveness, of course, can attend any state decision respecting religions, and neither its existence nor its potential necessarily invalidates the State’s attempts to accommodate religion in all cases. The potential for divisiveness is of particular relevance here, though, because it centers around an overt religious exercise in a secondary school environment where ... subtle coercive pressures exist, and where the student had no real alternative which would have allowed her to avoid the fact or appearance of participation.” (At 587-588.)

“The government involvement with religious activity in this case is pervasive, to the point of creating a state-sponsored, and state-directed religious exercise in a public school. Conducting this formal religious observance conflicts with the settled rules pertaining to prayer exercises for students, and that suffices to determine the question before us.” (At 587.)

“The parties stipulate that attendance at graduation ceremonies is voluntary.” (At 583.)

“It is a cornerstone principle of our Establishment Clause jurisprudence that it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.” (At 588.)

“The First Amendment protects speech and religion by quite different mechanisms. ... The Free Exercise Clause embraces a freedom of conscience and worship that has close parallels in the speech provisions of the First Amendment, but the Establishment Clause is a specific prohibition on forms of state intervention in religious affairs, with no precise counterpart in the speech provisions. *Buckley v. Valeo*, 424 U.S. 1, 92-93, and n. 127 (1976) (per curiam). The explanation lies in the lesson of history that was and is the inspiration for the Establishment Clause, the lesson that, in the hands of government, what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce. A state-created orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed.” (At 591-592.)

“That the intrusion was in the course of promulgating religion that sought to be civic or nonsectarian, rather than pertaining to one sect, does not lessen the offense or isolation to the objectors. At best it narrows their number, at worst, increases their sense of isolation and affront.” (At 594.)

“These concerns have particular application in the case of school officials, whose effort to monitor prayer will be perceived by the students as inducing a participation they might otherwise reject.” (At 590.)

“As we have observed before, there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools. See, e.g., *School Dist. of Abington v. Schempp*, 374 U.S. 203, 307 (1963) (Goldberg, J., concurring); *Edward v. Aguillard*, 482 U.S. 578, 584 (1987); *Board of Ed. of Westside Community v. Mergens*, 496 U.S. 226, 261-262 (1990) (KENNEDY, J., concurring). Our decisions in *Engel v. Vitale*, 370 U.S. 421 (1962), and *School Dist. of Abington*, supra, recognize, among other things, that prayer exercises in public schools carry a particular risk of indirect coercion. The concern may not be limited to the context of schools, but it is most pronounced there. See *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S., at 661 (KENNEDY, J., concurring in judgment in part and dissenting in part). What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.” (At 592.)

“Finding no violation under these circumstances would place objectors in the dilemma of participating, with all that implies, or protesting. We do not address whether that choice is acceptable if the affected citizens are mature adults, but we think the State may not, consistent with the Establishment Clause, place primary and secondary school children in this position. Research in psychology supports the common assumption that adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention. To recognize that the choice imposed by the State

constitutes an unacceptable constraint only acknowledges that the government may no more use social pressure to enforce orthodoxy than it may use more direct means.” (At 593-594.) (citations omitted)

“[F]or the dissenter of high school age, who has a reasonable perception that she is being forced by the State to pray in a manner her conscience will not allow, the injury is no less real.” (At 593.)

“What matters is that, given our social conventions, a reasonable dissenter in this milieu could believe that the group exercise signified her own participation or approval of it.” (At 593.)

“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith, or tends to do so.’” (At 587 (citation omitted).)

Lee v. Weisman, 505 U.S. 577 (1992)

Justice Blackmun – Concurring opinion

“Nearly half a century of review and refinement of Establishment Clause jurisprudence has distilled one clear understanding: Government may neither promote nor affiliate itself with any religious doctrine or organization, nor may it obtrude itself in the internal affairs of any religious institution. The application of these principles to the present case mandates the decision reached today by the Court.” (At 599.)

“But it is not enough that the government restrain from compelling religious practices: It must not engage in them either.” (At 604.)

The Establishment Clause proscribes public schools from “conveying or attempting convey a message that religion or a particular religious belief is favored or preferred,” *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 593 (1989) (internal quotation marks omitted; emphasis in original), even if the schools do not actually “impos[e] pressure upon a student to participate in a religious activity.” *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 261 (1990) (KENNEDY, J., concurring in part and concurring in judgment).” (At 604-605 (footnote omitted).)

“When the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs.” (At 606 (footnote omitted).)

“When the government arrogates to itself a role in religious affairs, it abandons its obligation as guarantor of democracy.” (At 607.)

“It is these understandings and fears that underlie our Establishment Clause jurisprudence. We have believed that religious freedom cannot exist in the absence of a free democratic government, and that such a government cannot endure when there is fusion between religion and the political regime. We have believed that religious freedom cannot thrive in the absence of a vibrant religious community, and that such a community cannot prosper when it is bound to the secular. And we have believed that these were the animating principles behind the adoption of the Establishment Clause. To that end, our cases have prohibited government endorsement of religion, its sponsorship, and active involvement in religion, whether or not citizens were coerced to conform.” (At 609.)

“[S]ecular and religious authorities must not interfere with each other’s respective spheres of choice and influence.” (At note 3.)

“Although our precedents make clear that proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient. Government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion.” (At 604.)

“Even subtle pressure diminishes the right of each individual to choose voluntarily what to believe.” (At 605.)

“Madison warned that government officials who would use religious authority to pursue secular ends “exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.” Memorial and Remonstrance against Religious Assessments (1785), in *The Complete Madison* 300 (S. Padover ed. 1953). Democratic government will not last long when proclamation replaces persuasion as the medium of political exchange.” (At 608.)

“Application of these principles to the facts of this case is straightforward. There can be “no doubt” that the “invocation of God’s blessings” delivered at Nathan Bishop Middle School “is a religious activity.” *Engel*, 370 U.S., at 424. In the words of *Engel*, the rabbi’s prayer “is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious.” *Id.*, at 424-425. The question then is whether the government has “plac[ed] its official stamp of approval” on the prayer. *Id.*, at 429. As the Court ably demonstrates, when the government “compose[s] official prayers,” *id.*, at 425, selects the member of the clergy to deliver the prayer, has the prayer delivered at a public school event that is planned, supervised, and given by school officials, and pressures students to attend and participate in the prayer, there can be no doubt that the government is advancing and promoting religion. As our prior decisions teach us, it is this that the Constitution prohibits.” (At 603-604 (footnote omitted).)

“To “make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary,” *Zorach v. Clauson*, 343 U.S. 306, 313 (1952), the government must not align itself with any one of them.” (At 608.)

“When the government favors a particular religion or sect, the disadvantage to all others is obvious, but even the favored religion may fear being ‘taint[ed] ... with corrosive secularism.’ The favored religion may be compromised as political figures reshape the religion’s beliefs for their own purposes; it may be reformed as government largesse brings government regulation.” (At 608.)

Lee v. Weisman, 505 U.S. 577 (1992)

Justice Souter – Concurring opinion

“In barring the State from sponsoring generically theistic prayers where it could not sponsor sectarian ones, we hold true to a line of precedent from which there is no adequate historical case to depart.” (At 610.)

“This principle against favoritism and endorsement has become the foundation of Establishment Clause jurisprudence, ensuring that religious belief is irrelevant to every citizen’s standing in the political community.” (At 627.)

“Many Americans who consider themselves religious are not theistic; some, like several of the Framers, are deists who would question Rabbi Gutterman’s plea for divine advancement of the country’s political and moral good. Thus, a nonpreferentialist who would condemn subjecting public school graduates to, say, the Anglican liturgy would still need to explain why the government’s preference for theistic over nontheistic religion is constitutional.” (At 617.)

“While the Establishment Clause’s concept of neutrality is not self-revealing, our recent cases have invested it with specific content: the State may not favor or endorse either religion generally over nonreligion or one religion over others.” (At 627.)

“Concern for the position of religious individuals in the modern regulatory State cannot justify official solicitude for a religious practice unburdened by general rules; such gratuitous largesse would effectively favor religion over disbelief.” (At 629.)

“[T]he government’s sponsorship of prayer at the graduation ceremony is most reasonably understood as an official endorsement of religion and, in this instance, of theistic religion.” (At 629-630.)

“Over the years, this Court has declared the invalidity of many noncoercive state laws and practices conveying a message of religious endorsement.” (At 618.)

“When public school officials, armed with the State’s authority, convey an endorsement of religion to their students, they strike near the core of the Establishment Clause. However “ceremonial” their messages may be, they are flatly unconstitutional.” (At 631.)

“What is remarkable is that, unlike the earliest House drafts or the final Senate proposal, the prevailing language is not limited to laws respecting an establishment of “a religion,” “a national religion,” “one religious sect,” or specific “articles of faith.” The Framers repeatedly considered and deliberately rejected such narrow language, and instead extended their prohibition to state support for “religion” in general.” (At 614-615 (footnote omitted).)

“As Madison observed in criticizing religious presidential proclamations, the practice of sponsoring religious messages tends, over time, “to narrow the recommendation to the standard of the predominant sect.” Madison’s “Detached Memoranda,” 3 Wm. & Mary Q. 534, 561 (E. Fleet ed. 1946) (hereinafter Madison’s “Detached Memoranda”). We have not changed much since the days of Madison, and the judiciary should not willingly enter the political arena to battle the centripetal force leading from religious pluralism to official preference for the faith with the most votes.” (At 617-618.)

“To be sure, the leaders of the young Republic engaged in some of the practices that separationists like Jefferson and Madison criticized. The First Congress did hire institutional chaplains, see *Marsh v. Chambers*, supra, at 788, and Presidents Washington and Adams unapologetically marked days of “public thanksgiving and prayer,” see R. Cord, *Separation of Church and State* 53 (1988). Yet in the face of the separationist dissent, those practices prove, at best, that the Framers simply did not share a common understanding of the Establishment Clause, and, at worst, that they, like other politicians, could raise constitutional ideals one day and turn their backs on them the next.” (At 626.)

“Ten years after proposing the First Amendment, Congress passed the Alien and Sedition Acts, measures patently unconstitutional by modern standards. If the early Congress’s political actions were determinative, and not merely relevant, evidence of constitutional meaning, we would have to gut our current First Amendment doctrine to make room for political censorship.” (At 626.)

“[T]he indefinite article before the word “establishment” is better seen as evidence that the Clause forbids any kind of establishment, including a nonpreferential one.” (At note 1.)

“Simply by requiring the enquiry, nonpreferentialists invite the courts to engage in comparative theology. I can hardly imagine a subject less amenable to the competence of the federal judiciary, or more deliberately to be avoided where possible.” (At 616-617.)

“In his dissent in *Wallace v. Jaffree*, 472 U.S. 38 (1985), the Chief Justice rested his nonpreferentialist interpretation partly on the post-ratification actions of the early National Government. Aside from the willingness of some (but not all) early Presidents to issue ceremonial religious proclamations, which were, at worst, trivial breaches of the Establishment Clause, see *infra*, at 22-23, he cited such seemingly preferential aid as a treaty provision, signed by Jefferson, authorizing federal subsidization of a Roman Catholic priest and church for the Kaskaskia Indians. 472 U.S., at 103. But this proves too much, for if the Establishment Clause permits a special appropriation of tax money for the religious activities of a particular sect, it forbids virtually nothing. See Laycock, “Nonpreferential” Aid 915. Although evidence of historical practice can indeed furnish valuable aid in the interpretation of contemporary language, acts like the one in question prove only that public officials, no matter when they serve, can turn a blind eye to constitutional principle.” (At note 3.)

“[W]e have consistently held the Clause applicable no less to governmental acts favoring religion generally than to acts favoring one religion over others.” (At 610 (footnote omitted).)

“the settled principle that the Establishment Clause forbids support for religion in general no less than support for one religion or some.” (At 616.)

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000)

Justice Stevens – Majority Opinion

“[G]overnment speech endorsing religion ... the Establishment Clause forbids.” (At 302.)

“[I]t does nothing to protect the minority; indeed, it likely serves to intensify their offense.” (At 305.)

“The mechanism encourages divisiveness along religious lines ..., a result at odds with the Establishment Clause.” (At 311.)

“[Governmental] sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’” (At 309-310 (citation omitted).)