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

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

Plaintiffs,

v.

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

Defendants;

and

JOHN CAREY, *et al.*

Defendant-Intervenors.

2:05-cv-00017-LKK-DAD

ANSWER OF DEFENDANT-INTERVENORS JOHN CAREY, *et al.*
TO FIRST AMENDED COMPLAINT

1 For their Answer to Plaintiffs' First Amended Complaint ("Complaint") filed on April 11, 2005
2 in the case before the Court, Brenden Carey, Brenden Magnino, Adam Araiza, Michaela Bishop, Teresa
3 Declines, Darien Declines, Ryanna Declines, Anthony Doerr, Sean Forschler, Tiffany Forschler, and
4 Mary McKay ("Student-Intervenors"), and John and Adrienne Carey, Dave and Lynette Magnino,
5 Albert and Anita Araiza, Craig and Marie Bishop, Rommel and Janice Declines, Dan and Karen Doerr,
6 Fred and Esterlita Forschler, and Robert and Sharon McKay ("Parent-Intervenors"), and the Knights of
7 Columbus ("Knight-Intervenors"), deny any allegations in the First Amended Complaint not specifically
8 admitted herein, and state the following (collectively as "Defendant-Intervenors" or "Intervenors"):

9 **FIRST DEFENSE**

10 Answering specifically the allegations contained in the numbered paragraphs of Plaintiffs'
11 First Amended Complaint:

12 1. Intervenors state that paragraph 1 contains descriptive material and conclusions of law to
13 which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny the
14 allegations in paragraph 1 for lack of knowledge or information sufficient to form a belief as to the truth
15 thereof.

16 2. Intervenors state that paragraph 2 contains descriptive material and conclusions of law to
17 which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny the
18 allegations in paragraph 2 for lack of knowledge or information sufficient to form a belief as to the truth
19 thereof.

20 3. Intervenors state that paragraph 3 contains descriptive material and conclusions of law to
21 which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny the
22 allegations in paragraph 3 for lack of knowledge or information sufficient to form a belief as to the truth
23 thereof.

24 4. Intervenors state that paragraph 4 contains descriptive material and conclusions of law to
25 which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny the
26 allegations in paragraph 4 for lack of knowledge or information sufficient to form a belief as to the truth
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1 sufficient to form a belief as to the truth thereof.

2 14. Intervenor deny the allegations in paragraph 14 for lack of knowledge or information
3 sufficient to form a belief as to the truth thereof.

4 15. Intervenor state that paragraph 15 contains conclusions of law to which Intervenor are
5 not required to plead. To the extent an answer is deemed required, Intervenor admit that Congress is a
6 branch of government of the United States of America and that some of Congress' legislative powers
7 are granted by Article I, Section 1 of the United States Constitution.

8 16. Intervenor state that paragraph 16 contains conclusions of law to which Intervenor are
9 not required to plead. To the extent an answer is deemed required, Intervenor admit that Peter LeFevre
10 is the Law Revision Counsel and, as such, is responsible, at least in part, pursuant to 2 U.S.C. § 285b,
11 for the preparation and publication of the United States Code; and deny the remaining allegations in
12 paragraph 16.

13 17. Intervenor state that paragraph 17 contains conclusions of law to which Intervenor are
14 not required to plead. To the extent an answer is deemed required, Intervenor admit that United States
15 of America is the constitutionally established government of the United States of America.

16 18. Intervenor state that paragraph 18 contains conclusions of law to which Intervenor are
17 not required to plead. To the extent an answer is deemed required, Intervenor admit that Arnold
18 Schwarzenegger is the Governor of the state of California; and deny the remaining allegations in
19 paragraph 18 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

20 19. Intervenor state that paragraph 19 contains conclusions of law to which Intervenor are
21 not required to plead. To the extent an answer is deemed required, Intervenor admit that Richard J.
22 Riordan is the Secretary of Education of the state of California; and deny the remaining allegations in
23 paragraph 19 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

24 20. Intervenor state that paragraph 20 contains conclusions of law to which Intervenor are
25 not required to plead. To the extent an answer is deemed required, Intervenor admit that the Elk Grove
26 Unified School District is oversees public schools in Elk Grove, California; and deny the remaining
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1 allegations in paragraph 20 for lack of knowledge or information sufficient to form a belief as to the
2 truth thereof.

3 21. Intervenor state that paragraph 21 contains conclusions of law to which Intervenor are
4 not required to plead. To the extent an answer is deemed required, Intervenor admit that Dr. Steven
5 Ladd is Superintendent of Schools for the Elk Grove Unified School District; and, deny the remaining
6 allegations in paragraph 21 for lack of knowledge or information sufficient to form a belief as to the
7 truth thereof.

8 22. Intervenor state that paragraph 22 contains conclusions of law to which Intervenor are
9 not required to plead. To the extent an answer is deemed required, Intervenor deny the allegations in
10 paragraph 22 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

11 23. Intervenor state that paragraph 23 contains conclusions of law to which Intervenor are
12 not required to plead. To the extent an answer is deemed required, Intervenor deny the allegations in
13 paragraph 23 for lack of knowledge or information sufficient to form a belief as to the truth thereof

14 24. Intervenor state that paragraph 24 contains conclusions of law to which Intervenor are
15 not required to plead. To the extent an answer is deemed required, Intervenor deny the allegations in
16 paragraph 24 for lack of knowledge or information sufficient to form a belief as to the truth thereof

17 25. Intervenor state that paragraph 25 contains conclusions of law to which Intervenor are
18 not required to plead. To the extent an answer is deemed required, Intervenor deny the allegations in
19 paragraph 25 for lack of knowledge or information sufficient to form a belief as to the truth thereof

20 26. Intervenor state that paragraph 26 contains conclusions of law to which Intervenor are
21 not required to plead. To the extent an answer is deemed required, Intervenor deny the allegations in
22 paragraph 26 for lack of knowledge or information sufficient to form a belief as to the truth thereof

23 27. Intervenor state that paragraph 27 contains conclusions of law to which Intervenor are
24 not required to plead. To the extent an answer is deemed required, Intervenor deny the allegations in
25 paragraph 27 for lack of knowledge or information sufficient to form a belief as to the truth thereof

26 28. Intervenor state that paragraph 28 contains descriptive material and conclusions of law
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1 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
2 the allegations in paragraph 28.

3 29. Intervenor deny the allegations in paragraph 29 for lack of knowledge or information
4 sufficient to form a belief as to the truth thereof.

5 30. Intervenor deny the allegations in paragraph 30 for lack of knowledge or information
6 sufficient to form a belief as to the truth thereof.

7 31. Intervenor deny the allegations in paragraph 31 for lack of knowledge or information
8 sufficient to form a belief as to the truth thereof.

9 32. Intervenor deny the allegations in paragraph 32 for lack of knowledge or information
10 sufficient to form a belief as to the truth thereof.

11 33. Intervenor state that paragraph 33 contains descriptive material and conclusions of law
12 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
13 that Plaintiffs' citation in paragraph 33, Pub. L. No. 622, 56 Stat. 380, is accurate, and therefore
14 Intervenor deny, in entirety, the allegations in paragraph 33.

15 34. Intervenor state that paragraph 34 contains descriptive material and conclusions of law
16 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
17 that Plaintiffs' citation in paragraph 34, Section (7) of Pub. L. No. 622, 56 Stat. 380, is accurate, and
18 therefore Intervenor deny, in entirety, the allegations in paragraph 34.

19 35. Intervenor state that paragraph 35 contains descriptive material and conclusions of law
20 to which Intervenor are not required to plead. To the extent that an Answer is deemed required,
21 Intervenor state that Plaintiffs' use of the term "religious" is undefined and vague and Intervenor
22 therefore lack knowledge or information sufficient to form a belief as to the allegations using that term
23 in paragraph 35.

24 36. Intervenor admit that the First Amendment of the United States Constitution states, in
25 part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free
26 exercise thereof"

1 37. Intervenors state that paragraph 37 contains descriptive material and conclusions of law
2 to which Intervenors are not required to plead. To the extent an answer is deemed to be required,
3 Intervenors admit that Congress passed an Act on June 14, 1954, Pub. L. No. 396, 68 Stat. 249, that
4 amended the Pledge to include the phrase "under God," and that 4 U.S.C. § 4 codifies the Pledge to read
5 as follows: "I pledge allegiance to the flag of the United States of America, and to the Republic for
6 which it stands, one Nation under God, indivisible, with liberty and justice for all"; and deny the
7 remaining allegations of paragraph 37.

8 38. Intervenors state that paragraph 38 contains descriptive material to which Intervenors are
9 not required to plead. If an answer is deemed to be required, Intervenors deny the allegations in
10 paragraph 38 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

11 39. Intervenors state that paragraph 39 contains descriptive material to which Intervenors are
12 not required to plead. If an answer is deemed to be required, Intervenors deny the allegations in
13 paragraph 39 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

14 40. Intervenors admit that the Pledge was amended in 1954 to include the phrase "under
15 God" and deny the remaining allegations in paragraph 40.

16 41. Intervenors state that paragraph 41 contains descriptive material and conclusions of law
17 to which Intervenors are not required to plead. To the extent an answer is deemed to be required,
18 Intervenors deny the allegations in paragraph 41.

19 42. Intervenors state that paragraph 42 contains descriptive material to which Intervenors are
20 not required to plead. To the extent an answer is deemed to be required, Intervenors deny the
21 allegations in paragraph 42.

22 43. Intervenors state that paragraph 43 contains descriptive material to which Intervenors are
23 not required to plead. If an answer is deemed to be required, Intervenors deny the allegations in
24 paragraph 43.

25 44. Intervenors state that paragraph 44 contains descriptive material and conclusions of law
26 to which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny
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1 the allegations in paragraph 44.

2 45. Intervenor state that paragraph 45 contains descriptive material and conclusions of law
3 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
4 the allegations in paragraph 45.

5 46. Intervenor admit that the First Amendment of the United States Constitution states, in
6 part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free
7 exercise thereof”

8 47. Intervenor state that paragraph 47 contains conclusions of law to which Intervenor are
9 not required to plead. If an answer is deemed to be required, Intervenor admit that the Fifth
10 Amendment of the United States Constitution states, in part, that “No person shall be . . . deprived of
11 life, liberty, or property, without due process of law.”

12 48. Intervenor state that paragraph 48 contains conclusions of law to which Intervenor are
13 not required to plead. If an answer is deemed to be required, Intervenor admit that the Religious
14 Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.*, states, in part, the following:

15 § 2000bb(a)(3): “The Congress finds that governments should not substantially
16 burden religious exercise without compelling justification.”

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18 § 2000bb(b)(1) and (b)(2): “The purposes of this chapter are to restore the compelling
19 interest test . . . and to guarantee its application in all cases where free exercise of
20 religion is substantially burdened; and to provide a claim or defense to persons whose
21 religious exercise is substantially burdened by government.”

22
23 § 2000bb-1(b)(1) and (b)(2): “Government may substantially burden a person’s
24 exercise of religion only if it demonstrates that application of the burden to the person
25 is in furtherance of a compelling governmental interest; and is the least restrictive
26 means of furthering that compelling governmental interest.”

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

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7 § 2000bb-3(a): “This chapter applies to all Federal law, and the implementation of
8 that law, whether statutory or otherwise, and whether adopted before or after
9 November 16, 1993.”

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11 § 2000bb-3(c): “Nothing in this chapter shall be construed to authorize any
12 government to burden any religious belief.”
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14 49. Intervenor state that paragraph 49 contains conclusions of law to which Intervenor
15 are not required to plead. If an answer is deemed to be required, Intervenor admit that the
16 Fourteenth Amendment of the United States Constitution states, in part, that “No State shall make or
17 enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor
18 shall any State deprive any person of life, liberty, or property, without due process of law; nor deny
19 to any person within its jurisdiction the equal protection of the laws.”

20 50. Intervenor state that paragraph 50 contains conclusions of law to which Intervenor
21 are not required to plead. If an answer is deemed to be required, Intervenor admit that the states are
22 subject to the First Amendment by and through the Due Process Clause of the Fourteenth
23 Amendment.

24 51. Intervenor state that paragraph 51 contains conclusions of law to which Intervenor
25 are not required to plead. If an answer is deemed to be required, Intervenor admit that Article I,
26 Section 4 of the California State Constitution states, in part, that “Free exercise and enjoyment of
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1 religion without discrimination or preference are guaranteed The Legislature shall make no law
2 respecting an establishment of religion.”

3 52. Intervenor state that paragraph 52 contains conclusions of law to which Intervenor
4 are not required to plead. If an answer is deemed to be required, Intervenor admit that Article I,
5 Section 7 of the California State Constitution states, in part, that “A person may not be deprived of
6 life, liberty, or property without due process of law or denied equal protection of the laws.”

7 53. Intervenor state that paragraph 53 contains conclusions of law to which Intervenor
8 are not required to plead. If an answer is deemed to be required, Intervenor admit that Article IX,
9 Section 8 of the California State Constitution states, in part, that “No . . . sectarian or denominational
10 doctrine [shall] be taught, or instruction be permitted, directly or indirectly, in any of the common
11 schools of this State.”

12 54. Intervenor state that paragraph 54 contains conclusions of law to which Intervenor
13 are not required to plead. If an answer is deemed to be required, Intervenor admit that Section
14 52720 of the California State Education Code states the following:

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

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

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55. Intervenor's state that paragraph 55 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 55 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

56. Intervenor's state that paragraph 56 contains conclusions of law to which Intervenor's are not required to plead. To the extent an answer is deemed to be required, Intervenor's admit that none of the plaintiffs have been compelled to say the words "under God" in the Pledge of Allegiance and deny the remaining allegations in paragraph 56.

57. Intervenor's deny the allegations in paragraph 57 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

58. Intervenor's state that paragraph 58 contains conclusions of law to which Intervenor's are not required to plead. To the extent an answer is deemed to be required, Intervenor's deny the allegations in paragraph 58 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

59. Intervenor's state that paragraph 59 contains conclusions of law to which Intervenor's are not required to plead. To the extent an answer is deemed to be required, Intervenor's deny the allegations in paragraph 59 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

60. Intervenor's state that paragraph 60 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. To the extent an answer is deemed to be required, Intervenor's deny the allegations in paragraph 60 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

61. Intervenor's deny the allegations in paragraph 61 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

62. Intervenor's deny the allegations in paragraph 62 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1 76. Intervenors deny the allegations in paragraph 76 for lack of knowledge or information
2 sufficient to form a belief as to the truth thereof.

3 77. Intervenors deny the allegations in paragraph 77 for lack of knowledge or information
4 sufficient to form a belief as to the truth thereof.

5 78. Intervenors deny the allegations in paragraph 78 for lack of knowledge or information
6 sufficient to form a belief as to the truth thereof.

7 79. Intervenors deny the allegations in paragraph 79 for lack of knowledge or information
8 sufficient to form a belief as to the truth thereof.

9 80. Intervenors deny the allegations in paragraph 80 for lack of knowledge or information
10 sufficient to form a belief as to the truth thereof.

11 81. Intervenors deny the allegations in paragraph 81 for lack of knowledge or information
12 sufficient to form a belief as to the truth thereof.

13 82. Intervenors deny the allegations in paragraph 82 for lack of knowledge or information
14 sufficient to form a belief as to the truth thereof.

15 83. Intervenors deny the allegations in paragraph 83 for lack of knowledge or information
16 sufficient to form a belief as to the truth thereof.

17 84. Intervenors deny the allegations in paragraph 84 for lack of knowledge or information
18 sufficient to form a belief as to the truth thereof.

19 85. Intervenors deny the allegations in paragraph 85 for lack of knowledge or information
20 sufficient to form a belief as to the truth thereof.

21 86. Intervenors deny the allegations in paragraph 86 for lack of knowledge or information
22 sufficient to form a belief as to the truth thereof.

23 87. Intervenors deny the allegations in paragraph 87 for lack of knowledge or information
24 sufficient to form a belief as to the truth thereof.

25 88. Intervenors deny the allegations in paragraph 88 for lack of knowledge or information
26 sufficient to form a belief as to the truth thereof.

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1 truth thereof.

2 96. Intervenor state that paragraph 96 contains descriptive material and conclusions of law
3 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
4 the allegations in paragraph 96 for lack of knowledge or information sufficient to form a belief as to the
5 truth thereof.

6 97. Intervenor state that paragraph 97 contains descriptive material and conclusions of law
7 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
8 the allegations in paragraph 97 for lack of knowledge or information sufficient to form a belief as to the
9 truth thereof.

10 98. Intervenor state that paragraph 98 contains descriptive material and conclusions of law
11 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
12 the allegations in paragraph 98 for lack of knowledge or information sufficient to form a belief as to the
13 truth thereof.

14 99. Intervenor state that paragraph 99 contains descriptive material and conclusions of law
15 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
16 the allegations in paragraph 99 for lack of knowledge or information sufficient to form a belief as to the
17 truth thereof.

18 100. Intervenor state that paragraph 100 contains descriptive material and conclusions of law
19 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
20 the allegations in paragraph 100 for lack of knowledge or information sufficient to form a belief as to the
21 truth thereof.

22 101. Intervenor state that paragraph 101 contains descriptive material and conclusions of law
23 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
24 the allegations in paragraph 101 for lack of knowledge or information sufficient to form a belief as to the
25 truth thereof.

26 102. Intervenor state that paragraph 102 contains descriptive material and conclusions of law
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1 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
2 the allegations in paragraph 102 for lack of knowledge or information sufficient to form a belief as to the
3 truth thereof.

4 103. Intervenor state that paragraph 103 contains descriptive material and conclusions of law
5 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
6 the allegations in paragraph 103 for lack of knowledge or information sufficient to form a belief as to the
7 truth thereof.

8 104. Intervenor state that paragraph 104 contains descriptive material and conclusions of law
9 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
10 the allegations in paragraph 104 for lack of knowledge or information sufficient to form a belief as to the
11 truth thereof.

12 105. Intervenor state that paragraph 105 contains descriptive material to which Intervenor
13 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
14 paragraph 105 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

15 106. Intervenor state that paragraph 106 contains conclusions of law to which Intervenor are
16 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
17 paragraph 106 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

18 107. Intervenor state that paragraph 107 contains conclusions of law to which Intervenor are
19 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
20 paragraph 107 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

21 108. Intervenor state that paragraph 108 contains descriptive material to which Intervenor
22 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
23 paragraph 108 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

24 109. Intervenor state that paragraph 109 contains descriptive material to which Intervenor
25 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
26 paragraph 109 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

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110. Intervenor's state that paragraph 110 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 110 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

111. Intervenor's state that paragraph 111 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 111 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

112. Intervenor's state that paragraph 112 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 112 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

113. Intervenor's state that paragraph 113 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 113 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

114. Intervenor's state that paragraph 114 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 114 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

115. Intervenor's state that paragraph 115 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 115 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

116. Intervenor's state that paragraph 116 contains descriptive material to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in

1 paragraph 116 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

2 117. Intervenor state that paragraph 117 contains descriptive material and conclusions of law
3 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
4 the allegations in paragraph 117 for lack of knowledge or information sufficient to form a belief as to the
5 truth thereof.

6 118. Intervenor state that paragraph 118 contains descriptive material and conclusions of law
7 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
8 the allegations in paragraph 118 for lack of knowledge or information sufficient to form a belief as to the
9 truth thereof.

10 119. Intervenor state that paragraph 119 contains descriptive material and conclusions of law
11 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
12 the allegations in paragraph 119 for lack of knowledge or information sufficient to form a belief as to the
13 truth thereof.

14 120. Intervenor state that paragraph 120 contains descriptive material and conclusions of law
15 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
16 the allegations in paragraph 120 for lack of knowledge or information sufficient to form a belief as to the
17 truth thereof.

18 121. Intervenor state that paragraph 121 contains descriptive material and conclusions of law
19 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
20 the allegations in paragraph 121 for lack of knowledge or information sufficient to form a belief as to the
21 truth thereof.

22 122. Intervenor state that paragraph 122 contains descriptive material and conclusions of law
23 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
24 the allegations in paragraph 122 for lack of knowledge or information sufficient to form a belief as to the
25 truth thereof.

26 123. Intervenor state that paragraph 123 contains descriptive material and conclusions of law
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1 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
2 the allegations in paragraph 123 for lack of knowledge or information sufficient to form a belief as to the
3 truth thereof.

4 124. Intervenor state that paragraph 124 contains descriptive material and conclusions of law
5 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
6 the allegations in paragraph 124.

7 125. Intervenor state that paragraph 125 contains descriptive material and conclusions of law
8 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
9 the allegations in paragraph 125.

10 126. Intervenor admit that Article XVI, Section 5 of the California State Constitution states,
11 in part, that "... the Legislature ... shall [never] make an appropriation, or pay from any public fund
12 whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, ...
13 nor shall any grant or donation of personal property or real estate ever be made by the State ... for any
14 religious creed, church, or sectarian purpose whatever."

15 127. Intervenor state that paragraph 127 contains descriptive material and conclusions of law
16 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
17 the allegations in paragraph 127.

18 128. Intervenor state that paragraph 128 contains descriptive material and conclusions of law
19 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
20 the allegations in paragraph 128.

21 129. Intervenor state that paragraph 129 contains descriptive material and conclusions of law
22 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
23 the allegations in paragraph 129.

24 130. Intervenor state that paragraph 130 contains descriptive material and conclusions of law
25 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
26 the allegations in paragraph 130.

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131. Intervenor's state that paragraph 131 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 131.

132. Intervenor's state that paragraph 132 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 132.

133. Intervenor's state that paragraph 133 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 133.

134. Intervenor's state that paragraph 134 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 134 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

135. Intervenor's state that paragraph 135 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 135 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

136. Intervenor's state that paragraph 136 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 136.

137. Intervenor's state that paragraph 137 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny the allegations in paragraph 137 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

138. Intervenor's state that paragraph 138 contains descriptive material and conclusions of law to which Intervenor's are not required to plead. If an answer is deemed to be required, Intervenor's deny

1 the allegations in paragraph 138 for lack of knowledge or information sufficient to form a belief as to the
2 truth thereof.

3 139. Intervenor state that paragraph 139 contains conclusions of law to which Intervenor are
4 not required to plead.

5 140. Intervenor state that paragraph 140 contains descriptive material and conclusions of law
6 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
7 the allegations in paragraph 140.

8 141. Intervenor state that paragraph 141 contains descriptive material and conclusions of law
9 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
10 the allegations in paragraph 141 for lack of knowledge or information sufficient to form a belief as to the
11 truth thereof.

12 142. Intervenor state that paragraph 142 contains descriptive material to which Intervenor
13 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
14 paragraph 142 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

15 143. Intervenor state that paragraph 143 contains descriptive material and conclusions of law
16 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
17 the allegations in paragraph 143 for lack of knowledge or information sufficient to form a belief as to the
18 truth thereof.

19 144. Intervenor state that paragraph 144 contains descriptive material and conclusions of law
20 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
21 the allegations in paragraph 144.

22 145. Intervenor state that paragraph 145 contains descriptive material and conclusions of law
23 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
24 the allegations in paragraph 145 for lack of knowledge or information sufficient to form a belief as to the
25 truth thereof.

26 146. Intervenor state that paragraph 146 contains descriptive material to which Intervenor
27

1 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
2 paragraph 146 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3 147. Intervenor state that paragraph 147 contains descriptive material and conclusions of law
4 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
5 the allegations in paragraph 147.

6 148. Intervenor state that paragraph 148 contains descriptive material to which Intervenor
7 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
8 paragraph 148.

9 149. Intervenor state that paragraph 149 contains descriptive material and conclusions of law
10 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
11 the allegations in paragraph 149.

12 150. Intervenor state that paragraph 150 contains descriptive material to which Intervenor
13 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
14 paragraph 150.

15 151. Intervenor state that paragraph 151 contains descriptive material and conclusions of law
16 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
17 the allegations in paragraph 151.

18 152. Intervenor state that paragraph 152 contains descriptive material and conclusions of law
19 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
20 the allegations in paragraph 152 for lack of knowledge or information sufficient to form a belief as to the
21 truth thereof.

22 153. Intervenor state that paragraph 153 contains descriptive material and conclusions of law
23 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
24 the allegations in paragraph 153 for lack of knowledge or information sufficient to form a belief as to the
25 truth thereof.

26 154. Intervenor state that paragraph 154 contains conclusions of law to which Intervenor are
27

1 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
2 paragraph 154.

3 155. Intervenor state that paragraph 155 contains descriptive material and conclusions of law
4 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
5 the allegations in paragraph 155 for lack of knowledge or information sufficient to form a belief as to the
6 truth thereof.

7 156. Intervenor state that paragraph 156 contains conclusions of law to which Intervenor are
8 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
9 paragraph 156.

10 157. Intervenor state that paragraph 157 contains descriptive material and conclusions of law
11 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
12 the allegations in paragraph 157.

13 158. Intervenor state that paragraph 158 contains conclusions of law to which Intervenor are
14 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
15 paragraph 158.

16 159. Intervenor state that paragraph 159 contains conclusions of law to which Intervenor are
17 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
18 paragraph 159.

19 160. Intervenor state that paragraph 160 contains conclusions of law to which Intervenor are
20 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
21 paragraph 160 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

22 161. Intervenor state that paragraph 161 contains descriptive material and conclusions of law
23 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
24 the allegations in paragraph 161 for lack of knowledge or information sufficient to form a belief as to the
25 truth thereof.

26 162. Intervenor state that paragraph 162 contains conclusions of law to which Intervenor are
27

1 not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in
2 paragraph 162.

3 163. Intervenor state that paragraph 163 contains descriptive material and conclusions of law
4 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor admit
5 that none of the plaintiffs have been compelled to say the Pledge, and deny the remaining allegations in
6 paragraph 163 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

7 164. Intervenor state that paragraph 164 contains descriptive material and conclusions of law
8 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
9 the allegations in paragraph 164 for lack of knowledge or information sufficient to form a belief as to the
10 truth thereof.

11 165. Intervenor state that paragraph 165 contains descriptive material and conclusions of law
12 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
13 the allegations in paragraph 165 for lack of knowledge or information sufficient to form a belief as to the
14 truth thereof.

15 166. Intervenor state that paragraph 166 contains descriptive material and conclusions of law
16 to which Intervenor are not required to plead. If an answer is deemed to be required, Intervenor deny
17 the allegations in paragraph 166 for lack of knowledge or information sufficient to form a belief as to the
18 truth thereof.

19 167. Intervenor state that paragraph 167 contains descriptive material to which Intervenor
20 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in the
21 second sentence of paragraph 167.

22 168. Intervenor state that paragraph 168 contains descriptive material to which Intervenor
23 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in the
24 second sentence of paragraph 168.

25 169. Intervenor state that paragraph 169 contains descriptive material to which Intervenor
26 are not required to plead. If an answer is deemed to be required, Intervenor deny the allegations in the
27

1 second sentence of paragraph 169.

2 170. Intervenors state that paragraph 170 contains descriptive material and conclusions of law
3 to which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny
4 the allegations in paragraph 170.

5 171. Intervenors state that paragraph 171 contains descriptive material and conclusions of law
6 to which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny
7 the allegations in paragraph 171 for lack of knowledge or information sufficient to form a belief as to the
8 truth thereof.

9 172. Intervenors state that paragraph 172 contains descriptive material and conclusions of law
10 to which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny
11 the allegations in paragraph 172 for lack of knowledge or information sufficient to form a belief as to the
12 truth thereof.

13 173. Intervenors state that paragraph 173 contains descriptive material and conclusions of law
14 to which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny
15 the allegations in paragraph 173 for lack of knowledge or information sufficient to form a belief as to the
16 truth thereof.

17 174. Intervenors state that paragraph 174 contains descriptive material and conclusions of law
18 to which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny
19 the allegations in paragraph 174 for lack of knowledge or information sufficient to form a belief as to the
20 truth thereof.

21 175. Intervenors state that paragraph 175 contains descriptive material and conclusions of law
22 to which Intervenors are not required to plead. If an answer is deemed to be required, Intervenors deny
23 the allegations in paragraph 175.

24 176. Intervenors state that the WHEREFORE clause contains conclusions of law and requests
25 for relief to which Intervenors are not required to plead. If an answer is deemed to be required,
26 Intervenors deny that Plaintiffs are entitled to any relief, including the declarations, sums, expenses,

27

28

1 damages, fees, costs, disbursements, and all other relief, equitable or otherwise, requested.

2 SECOND DEFENSE

3 177. Plaintiffs have or may have failed to state, in whole or in part, a claim upon which relief
4 can be granted, and so the First Amended Complaint should be dismissed pursuant to Federal Rule of
5 Civil Procedure 12(b)(6).

6
7 Respectfully submitted,

8
9 The Becket Fund for Religious Liberty
10 Derek L. Gaubatz, Esq.* (C.B.N. 208405)
11 Anthony R. Picarello, Jr., Esq.
12 Jared N. Leland, Esq.
13 1350 Connecticut Avenue NW
14 Suite 605
15 Washington, DC 20036-1735
16 Telephone: (202) 955-0095
17 Facsimile: (202) 955-0090

18
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20
21
22
23
24
25
26
27
28 Date: May 9, 2005

Counsel for Defendant-Intervenors
**Counsel of Record*

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10 Attorneys for Defendants ELK GROVE UNIFIED SCHOOL DISTRICT, DR. STEVEN LADD,
11 SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, DR. M. MAGDALENA CARRILLO
12 MEJIA, ELVERTA JOINT ELEMENTARY SCHOOL DISTRICT, DR. DIANNA MANGERICH,
13 RIO LINDA UNION SCHOOL DISTRICT and FRANK S. PORTER

14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
17

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

Case No.: CIV 05-0017 LKK DAD

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE**

23 Plaintiffs,

24 vs.

25 THE CONGRESS OF THE UNITED STATES
26 OF AMERICA; THE UNITED STATES OF
27 AMERICA; THE STATE OF CALIFORNIA;
28 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;

DATE: JULY 18, 2005
TIME: 10:00 a.m.
CTRM: 4

Defendants.

///

///

Attorneys for Defendants ELK GROVE UNIFIED SCHOOL DISTRICT, DR. STEVEN LADD, SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, DR. M. MAGDALENA CARRILLO MEJIA, ELVERTA JOINT ELEMENTARY SCHOOL DISTRICT, DR. DIANNA MANGERICH, RIO LINDA UNION SCHOOL DISTRICT and FRANK S. PORTER respectfully request that the Court take judicial notice pursuant to Federal Rules of Evidence, Rule 201 and relevant case law of the following items:

1. The Original Complaint in Newdow v. Congress of the United States, et. al., CIV.S-00-0495 MLS PAN PS. A true and correct copy of the Original Complaint is attached hereto as Exhibit A.

2. The History-Social Science Academic Content Standards for California Public Schools, kindergarten through grade twelve adopted by the California State Board of Education which set out the knowledge, concepts and skills that students should acquire at each grade level regarding History-Social Sciences, specifically, the History-Social Science Content Standards §§ K.1, 3.4, 5.7, 8.3, 11.1, 11.3. A true and correct copy of the website home page and pertinent portions of the referenced sections are attached hereto at Exhibit B.

Under FRE 201, a court may properly take judicial notice of "records and reports of administrative bodies." Interstate Natural Gas Co. v. Southern California Gas Co., 209 F.2d 380, 385 (1953). The content standards adopted by the California State Board of Education, as one such administrative body, are therefore among the documents that a court may properly take judicial notice of.

Dated: May 16, 2005

Respectfully submitted,

PORTER, SCOTT, WEIBERG & DELEHANT
A Professional Corporation

By /s/ Terence J. Cassidy
Terence J. Cassidy
Attorney for Defendants
EGUSD, Dr. Steven Ladd, SCUSD, Dr. M.
Magdalena Carrillo Mejia, EJESD, Dr. Dianna
Mangerich, RLUSD and Frank S. Porter

Exhibit A

Omitted for Purposes of Appeal

EXHIBIT B
TO REQUEST FOR JUDICIAL NOTICE

CASE NO. CIV 05-0017


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History-Social Science

Academic content standards for kindergarten through grade twelve, adopted by the California State Board of Education

[A Message from the State Board of Education and the State Superintendent of Public Instruction](#)

[Introduction](#)

Kindergarten Through Grade Five

Historical and Social Sciences Analysis Skills

Kindergarten: Learning and Working Now and Long Ago

Grade One: A Child's Place in Time and Space

Grade Two: People Who Make Difference

Grade Three: Continuity and Change

Grade Four: California: A Changing State

Grade Five: United States History and Geography: Making a New Nation

Grades Six Through Eight

Historical and Social Sciences Analysis Skills

Grade Six: World History and Geography: Ancient Civilizations

Grade Seven: World History and Geography: Medieval and Early Modern Times

Grade Eight: United States History and Geography: Growth and Conflict

Grades Nine Through Twelve

Historical and Social Sciences Analysis Skills

The California State Board of Education has established grade nine history-social science as an elective year. There are no standards for grade nine. Districts are urged to offer a suitable range of electives as outlined in the *Social Science Framework*, pp. 118-124.

Grade Ten: World History, Culture, and Geography: The Modern World

Grade Eleven: United States History and Geography: Continuity and Change in the Twentieth Century

Grade Twelve: Principles of American Democracy and Economics

Questions: [State Board of Education](#) | [9](#)

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California State Board of Education
1430 N Street, Suite #5111
Sacramento, CA 95814

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Last Modified: Monday, March 28, 2005

K.1 Students understand that being a good citizen involves acting in certain ways.

1. Follow rules, such as sharing and taking turns, and know the consequences of breaking them.
2. Learn examples of honesty, courage, determination, individual responsibility, and patriotism in American and world history stories and folklore.
3. Know beliefs and related behaviors of characters in stories from times past and understand the consequences of the characters' actions.

3.4 Students understand the role of rules and laws in our daily lives and the basic structure of the U government.

1. Determine the reasons for rules, laws, and the U.S. Constitution; the role of citizenship in the promotion of rules and la consequences for people who violate rules and laws.
2. Discuss the importance of public virtue and the role of citizens, including how to participate in a classroom, in the comr in civic life.
3. Know the histories of important local and national landmarks, symbols, and essential documents that create a sense of among citizens and exemplify cherished ideals (e.g., the U.S. flag, the bald eagle, the Statue of Liberty, the U.S. Const Declaration of Independence, the U.S. Capitol).
4. Understand the three branches of government, with an emphasis on local government.
5. Describe the ways in which California, the other states, and sovereign American Indian tribes contribute to the making nation and participate in the federal system of government.
6. Describe the lives of American heroes who took risks to secure our freedoms (e.g., Anne Hutchinson, Benjamin Frankl Jefferson, Abraham Lincoln, Frederick Douglass, Harriet Tubman, Martin Luther King, Jr.).

5.7 Students describe the people and events associated with the development of the U.S. Constitution, analyze the Constitution's significance as the foundation of the American republic.

1. List the shortcomings of the Articles of Confederation as set forth by their critics.
2. Explain the significance of the new Constitution of 1787, including the struggles over its ratification and the reasons for of the Bill of Rights.
3. Understand the fundamental principles of American constitutional democracy, including how the government derives its from the people and the primacy of individual liberty.
4. Understand how the Constitution is designed to secure our liberty by both empowering and limiting central government; compare the powers granted to citizens, Congress, the president, and the Supreme Court with those reserved to the states.
5. Discuss the meaning of the American creed that calls on citizens to safeguard the liberty of individual Americans within the nation, to respect the rule of law, and to preserve the Constitution.
6. Know the songs that express American ideals (e.g., "America the Beautiful," "The Star Spangled Banner").

8.3 Students understand the foundation of the American political system and the ways in which citizens participate in it.

1. Analyze the principles and concepts codified in state constitutions between 1777 and 1781 that created the context out of which American political institutions and ideas developed.
2. Explain how the ordinances of 1785 and 1787 privatized national resources and transferred federally owned lands into holdings, townships, and states.
3. Enumerate the advantages of a common market among the states as foreseen in and protected by the Constitution's clauses on interstate commerce, common coinage, and full-faith and credit.
4. Understand how the conflicts between Thomas Jefferson and Alexander Hamilton resulted in the emergence of two political parties (e.g., view of foreign policy, Alien and Sedition Acts, economic policy, National Bank, funding and assumption of revolutionary debt).
5. Know the significance of domestic resistance movements and ways in which the central government responded to such movements (e.g., Shays' Rebellion, the Whiskey Rebellion).
6. Describe the basic law-making process and how the Constitution provides numerous opportunities for citizens to participate in the political process and to monitor and influence government (e.g., function of elections, political parties, interest groups).
7. Understand the functions and responsibilities of a free press.

11.1 Students analyze the significant events in the founding of the nation and its attempts to realize philosophy of government described in the Declaration of Independence.

1. Describe the Enlightenment and the rise of democratic ideas as the context in which the nation was founded.
2. Analyze the ideological origins of the American Revolution, the Founding Fathers' philosophy of divinely bestowed natural rights, the debates on the drafting and ratification of the Constitution, and the addition of the Bill of Rights.
3. Understand the history of the Constitution after 1787 with emphasis on federal versus state authority and growing democracy.
4. Examine the effects of the Civil War and Reconstruction and of the industrial revolution, including demographic shifts and emergence in the late nineteenth century of the United States as a world power.

11.3 Students analyze the role religion played in the founding of America, its lasting moral, social, and political impacts, and issues regarding religious liberty.

1. Describe the contributions of various religious groups to American civic principles and social reform movements (e.g., human rights, individual responsibility and the work ethic, antimonarchy and self-rule, worker protection, family-centered communities).
2. Analyze the great religious revivals and the leaders involved in them, including the First Great Awakening, the Second Awakening, the Civil War revivals, the Social Gospel Movement, the rise of Christian liberal theology in the nineteenth century, the impact of the Second Vatican Council, and the rise of Christian fundamentalism in current times.
3. Cite incidences of religious intolerance in the United States (e.g., persecution of Mormons, anti-Catholic sentiment, anti-Semitism, etc.).
4. Discuss the expanding religious pluralism in the United States and California that resulted from large-scale immigration in the twentieth century.
5. Describe the principles of religious liberty found in the Establishment and Free Exercise clauses of the First Amendment and the debate on the issue of separation of church and state.

Motion Related Documents

2:05-cv-00017-LKK-DAD Newdow et al v. Congress of the United States of America et al

U.S. District Court**Eastern District of California - Live System**

Notice of Electronic Filing

The following transaction was received from Pott, Michael William entered on 5/16/2005 at 6:01 PM PDT and filed on 5/16/2005

Case Name: Newdow et al v. Congress of the United States of America et al

Case Number: 2:05-cv-17

Filer: Sacramento City Unified School District
Elk Grove School District
Elverta Joint Elementary School District
Rio Linda Unified School District
Steven Ladd
M Magdalena Carrillo Mejia
Dianna Mangerich
Frank S Porter

Document Number: 51

Docket Text:

REQUEST for JUDICIAL NOTICE by Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District. (Attachments: # (1) Exhibit A Volume I# (2) Exhibit A Volume II# (3) Exhibit B)(Pott, Michael)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=5/16/2005] [FileNumber=421453-0]
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Document description:Exhibit A Volume I

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=5/16/2005] [FileNumber=421453-1]
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Document description:Exhibit A Volume II

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=5/16/2005] [FileNumber=421453-2]
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Document description:Exhibit B

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1064943537 [Date=5/16/2005] [FileNumber=421453-3]
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f335eb534e19fb2031298cafcc0567ebea0bf690da731eb56812b0e0878e]]

2:05-cv-17 Notice will be electronically mailed to:

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2:05-cv-17 Notice will be delivered by other means to:

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12 MEJIA, ELVERTA JOINT ELEMENTARY SCHOOL DISTRICT, DR. DIANNA MANGERICH,
13 RIO LINDA UNION SCHOOL DISTRICT and FRANK S. PORTER

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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

21 Plaintiffs,

22 vs.

23 THE CONGRESS OF THE UNITED STATES
24 OF AMERICA; THE UNITED STATES OF
25 AMERICA; THE STATE OF CALIFORNIA;
26 THE ELK GROVE UNIFIED SCHOOL
27 DISTRICT ("EGUSD"); DR. STEVEN LADD,
28 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.

Case No.: CIV 05-0017 LKK DAD

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
THEIR REPLY TO MOTION TO
DISMISS**

DATE: JULY 18, 2005
TIME: 10:00 a.m.
CTRM: 4

///

1 Attorneys for Defendants ELK GROVE UNIFIED SCHOOL DISTRICT, DR. STEVEN
2 LADD, SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, DR. M. MAGDALENA
3 CARRILLO MEJIA, ELVERTA JOINT ELEMENTARY SCHOOL DISTRICT, DR. DIANNA
4 MANGERICH, RIO LINDA UNION SCHOOL DISTRICT and FRANK S. PORTER respectfully
5 request that the Court take judicial notice pursuant to Federal Rules of Evidence, Rule 201 and
6 relevant case law of the following item:

7 1. The policies of the Defendant School Districts challenged by Plaintiffs relating to
8 voluntary recitation of the Pledge. A true and correct copy of the Defendant School Districts'
9 policies are attached hereto as Exhibits A, B, C and D. Pursuant to Federal Rule of Evidence 201,
10 these policies are "capable of accurate and ready determination by resort to sources whose accuracy
11 cannot reasonably be questioned."

12 Dated: July 8, 2005

Respectfully submitted,

13 PORTER, SCOTT, WEIBERG & DELEHANT
14 A Professional Corporation

15 By /s/ Terence J. Cassidy
16 Terence J. Cassidy
17 Attorney for Defendants
18 EGUSD, Dr. Steven Ladd, SCUSD, Dr. M.
19 Magdalena Carrillo Mejia, EJESD, Dr. Dianna
20 Mangerich, RLUSD and Frank S. Porter
21
22
23
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26
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Exhibit A

CEREMONIES AND OBSERVANCES

Patriotic Observances Elementary Schools

Each elementary school class recite the pledge of allegiance to the flag once each day.

Secondary Schools

At some period during the day, a suitable patriotic observance shall be observed in every classroom. The observance for the day shall be uniform throughout the school and shall be selected by a committee appointed by the principal. Examples of suitable observances:

1. A pledge of allegiance to the flag.
2. The reading of a passage from one of our great American historical documents.
3. The reading of a quotation from one of our great American figures.
4. Appropriate remarks commemorating an important event in our history.
5. Appropriate remarks along with the observance of the birthdate of great American historical figures.

Special Days and Events

Commemoration of special days and events shall be arranged to the end that the effective observation of these occasions is a definite and valuable part of the school program.

Declaration of holiday(s) may be made by the governing board when good reason exists. (Education Code 37222)

Legal Reference: EDUCATION CODE
 37220-37232 Saturdays and holidays
 37227.6 Day of the Teacher
 045203 Paid holidays
 52720 -Daily performance of patriotic
 exercises in public schools

Regulation
Approved: October 29, 1984

ELK GROVE UNIFIED SCHOOL DISTRICT
Elk Grove, California

Exhibit B

Holidays

District schools shall be closed in observance of the following holidays:

New Year's Day January 1

Dr. Martin Luther Third Monday in January or the

King, Jr. Day Monday or Friday of the week in

which January 15 occurs

Lincoln Day The Monday or Friday of the week

in which February 12 occurs

Washington Day Third Monday in February

Memorial Day Last Monday in May

Independence Day July 4

Labor Day First Monday in September

Veteran's Day November 11

Thanksgiving Day That Thursday in November

designated by the President

Christmas Day December 25

(cf. 6141.2 - Recognition of Religious Beliefs and Customs)

Holidays which fall on a Sunday shall be observed the following Monday. Holidays which fall on a Saturday shall be observed the preceding Friday. If any of the above holidays occurs under federal law on a date different from that indicated above, the Board may close the schools on the date recognized by federal law instead of on the date above. (Education Code 37220)

(cf. 6111 - School Calendar)

Commemorative Exercises

District schools shall hold exercises to commemorate the following special days:

U.S. Constitution Day On or near September 17

Dr. Martin Luther King Jr. Day The Friday before the day schools are closed for this holiday

Lincoln's Birthday The school day before the day

schools are closed for this

holiday

Susan B. Anthony Day February 15

George Washington's Birthday The Friday preceding the

third Monday in February

Black American Day March 5

Conservation, Bird and Arbor Day March 7

Classified Employee Week Third Week in May

Cesar Chavez Day March 31

California Poppy Day April 6

John Muir Day April 21

Day of the Teacher Second Wednesday in May

Patriotic Exercises

Each school shall conduct patriotic exercises daily. At elementary schools, such exercises shall be conducted at the beginning of each school day. The Pledge of Allegiance to the flag will fulfill this requirement. (Education Code 52720)

Individuals may choose not to participate in the flag salute for personal reasons.

(cf. 5145.2 - Freedom of Speech/Expression: Publications Code)

Display of Flag

The flag of the United States and the flag of California shall be displayed during school days at the entrance or on the grounds of every school. At all times, the national flag shall be placed in the position of first honor. (Government Code 431, 436; 36 USC 174)

Upon order of the President, the national flag shall be flown at half-mast upon the death of principal figures of the United States government and the Governor of the state, as a mark of respect to their memory. When so flown, the flag shall be hoisted to the top of the staff for an instant before being lowered to half-mast. It should be hoisted to the peak again before being lowered for the night. (36 USC 175)

The national flag shall fly at half mast: (36 USC 175)

1. For 30 days from the death of the President or a former President.
2. For 10 days from the death of the Vice President, the Chief Justice or a retired Chief Justice, or the Speaker of the House of Representatives.
3. From the day of death until burial of an Associate Justice of the Supreme Court, a former Vice President, a member of the Cabinet, a Secretary of the Army, Navy or Air Force, and the Governor of the state.
4. On the day of death and the following day for a Member of Congress.

Regulation SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

approved: November 16, 1998 Sacramento, California

reviewed: June 11, 2002

Exhibit C

Holidays

District schools shall be closed in observance of the following holidays:

New Year's Day January 1

Dr. Martin Luther Third Monday in January or the

King, Jr. Day Monday or Friday of the week in

which January 15 occurs

Lincoln Day The Monday or Friday of the week

in which February 12 occurs

Washington Day Third Monday in February

Memorial Day Last Monday in May

Independence Day July 4

Labor Day First Monday in September

Veterans Day November 11

Thanksgiving Day That Thursday in November

designated by the President

Christmas Day December 25

(cf. 6141.2 - Recognition of Religious Beliefs and Customs)

Holidays which fall on a Sunday shall be observed the following Monday. Holidays which fall on a Saturday shall be observed the preceding Friday. If any of the above holidays occurs under federal law on a date different from that indicated above, the Board may close the schools on the date recognized by federal law instead of on the date above. (Education Code 37220)

Commemorative Exercises

The District schools shall observe special days with suitable exercises.

Patriotic Exercises

Each school shall conduct patriotic exercises daily. At elementary schools, such exercises shall be conducted at the beginning of each school day. The Pledge of Allegiance to the flag will fulfill this requirement. (Education Code 52720)

Individuals may choose not to participate in the flag salute for personal reasons.

(cf. 5145.2 - Freedom of Speech/Expression: Publications Code)

Display of Flag

The flag of the United States and the flag of California shall be displayed during school days at the entrance or on the grounds of every school. At all times, the national flag shall be placed in the position of first honor. (Government Code 431, 436; 36 U.S.C. 174)

Regulation RIO LINDA UNION SCHOOL DISTRICT

reviewed: February 10, 1998 Rio Linda, California

Exhibit D

Holidays

District schools shall be closed in observance of the following holidays and additional days as specified in the Collective Bargaining Agreement.

New Year's Day January 1

Dr. Martin Luther Third Monday in January or the

King, Jr. Day Monday or Friday of the week in which January 15 occurs

Lincoln Day The Monday or Friday of the week in which February 12 occurs

Washington Day The Monday or Friday of the week in which February 22 occurs.

Memorial Day Last Monday in May

Independence Day July 4

Labor Day First Monday in September

Veteran's Day November 11

Thanksgiving Day That Thursday in November designated by the President

Christmas Day December 25

(cf. 6141.2 - Recognition of Religious Beliefs and Customs)

Holidays which fall on a Sunday shall be observed the following Monday. Holidays which fall on a Saturday shall be observed the preceding Friday. If any of the above holidays occurs under federal law on a date different from that indicated above, the Board may close the schools on the date recognized by federal law instead of on the date above. (Education Code 37220)

(cf. 6111 - School Calendar)

Commemorative Exercises

District schools shall hold exercises to commemorate the following special days:

U.S. Constitution Day On or near September 17

Dr. Martin Luther King Jr., Day The Friday before the day schools are closed for this holiday

Lincoln's Birthday The school day before the day schools are closed for this holiday

Susan B. Anthony Day February 15

George Washington's Birthday The Friday preceding the third Monday in February

Black American Day March 5

Conservation, Bird and Arbor Day March 7

Classified Employee Week Third Week in May

In addition, the Board has authorized schools to hold commemorative exercises for the following additional special days:

School Board Recognition Month January

Week of the School Administrator First full week of March

Cesar Chavez Day March 31

California Poppy Day April 6

John Muir Day April 21

Day of the Teacher Second Wednesday in May

Native American Day Fourth Friday in September

Bill of Rights Day December 15

Patriotic Exercises

Each school shall conduct patriotic exercises daily. At elementary schools, such exercises shall be conducted at the beginning of each school day. The Pledge of Allegiance to the flag will fulfill this requirement. (Education Code 52720)

Individuals may choose not to participate in the flag salute for personal reasons.

Display of Flag

The flag of the United States and the flag of California shall be displayed during school days at the entrance or on the grounds of every school. At all times, the national flag shall be placed in the position of first honor. (Government Code 431, 436; 36 USC 174)

Upon order of the President, the national flag shall be flown at half-staff upon the death of principal figures of the United States government and the Governor of a state, as a mark of respect to their memory. In the event of death of other officials or foreign dignitaries, the flag shall be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any state, the Governor may proclaim that the flag be flown at half-staff. (36 USC 175)

In addition, the national flag shall fly at half-staff: (36 USC 175)

1. For 30 days from the death of the President or a former President

2. For 10 days from the death of the Vice President, the Chief Justice or a retired Chief Justice, or the Speaker of the House of Representatives
3. From the day of death until internment of an Associate Justice of the Supreme Court, a secretary of executive or military department, former Vice President, and the Governor of a state
4. On the day of death and the following day for a Member of Congress

Regulation ELVERTA ELEMENTARY SCHOOL DISTRICT

approved: February 11, 2002 Elverta, California

Motion Related Documents

2:05-cv-00017-LKK-DAD Newdow et al v. Congress of the United States of America et al

U.S. District Court**Eastern District of California - Live System**

Notice of Electronic Filing

The following transaction was received from Pott, Michael William entered on 7/8/2005 at 6:15 PM PDT and filed on 7/8/2005

Case Name: Newdow et al v. Congress of the United States of America et al**Case Number:** 2:05-cv-17**Filer:** Sacramento City Unified School District
Elk Grove School District
Elverta Joint Elementary School District
Rio Linda Unified School District
Steven Ladd
M Magdalena Carrillo Mejia
Dianna Mangerich
Frank S Porter**Document Number:** 70**Docket Text:**

REQUEST for JUDICIAL NOTICE by Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District *in Support of Reply*. (Pott, Michael)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1064943537 [Date=7/8/2005] [FileNumber=510451-0]
[258018b235406115257e9ae2096b9531585a00584f29b641e822ac3454e7076921a13
fa43923a841544cb6e968c40c59d7ba13594c6fe2df9268a403a339f6de]]

2:05-cv-17 Notice will be electronically mailed to:

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2:05-cv-17 Notice will be delivered by other means to:

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

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

Plaintiffs,

v.

O R D E R

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

TO BE PUBLISHED

Defendants.

_____ /

Pending before the court are motions to dismiss in what is something of a cause celebre in the ongoing struggle as to the role of religion in the civil life of this nation. Below, I conclude that binding precedent requires a narrow resolution of the motions, one which will satisfy no one involved in that debate, but which accords with my duty as a judge of a subordinate court.

As is known by most everyone, plaintiff, Michael Newdow ("Newdow"), is an atheist whose daughter attends school in the Elk Grove Unified School District ("EGUSD"). He and two other sets of

1 parents and their minor children¹ bring suit to challenge the
2 constitutionality of 4 U.S.C. § 4, which codifies the wording of
3 the Pledge of Allegiance, and the practices of four California
4 public school districts requiring students to recite the Pledge.²
5 Plaintiffs bring suit against the United States of America, the
6 United States Congress, and Peter LeFebre, a congressional officer
7 (collectively "federal defendants"). The complaint also names as
8 defendants the State of California, the Governor of California,
9 California's Education Secretary (collectively "state defendants"),
10 and four local California public school districts and their
11 superintendents (collectively "school districts").³ The school
12 districts sued are the Elk Grove Unified School District ("EGUSD"),
13 Sacramento City Unified School District ("SCUSD"), Elverta Joint
14 Elementary School District ("EJESD"), and the Rio Linda School
15 District ("RLUSD").⁴ The immediate causes of this order are the

16
17 ¹ These plaintiffs are identified as Jan Doe and Pat Doe
18 (parents) and Doe Child (minor child), and Jan Roe (parent) and
Roechild-1 and Roechild-2 (minor children).

19 ² Plaintiffs bring claims under the Establishment Clause, the
20 Free Exercise Clause, the Equal Protection Clause, and Due Process
21 Clause of the United States Constitution. Pls.' First Amended
22 Compl. at 14-16. They also bring claims under Article XVI, Section
23 5, Article I, Section 4, and Article IX, Section 8 of the
24 California State Constitution. Id. at 19-20.

25 ³ Plaintiffs bring suit against the school districts'
26 superintendents, but in their opposition, they concede that the
superintendents should be dismissed. Opp'n at 27:4-6.

⁴ Plaintiffs request the following relief:

a. A declaration that Congress, in passing the Act of
1954, violated the Establishment and Free Exercise
Clauses;

1 motions to dismiss filed by the federal and state defendants, as
2 well as the school districts.

3 I.

4 BACKGROUND

5 A. STATUTES AT ISSUE

6 1. Federal Statute

7 The Pledge of Allegiance was initially conceived as part of
8 the commemoration of the 400th anniversary of Christopher Columbus'
9 arrival in America. See Elk Grove School Dist. v. Newdow, 124
10 S.Ct. 2301, 2306 (citation omitted) (hereinafter referred to as
11 "Elk Grove" to avoid confusion with the various other Newdow
12 decisions issued along the way to the Supreme Court). In 1942, as
13 part of an effort "to codify and emphasize the existing rules and
14 customs pertaining to the display and use of the flag of the United
15 States of America," Congress enacted a Pledge of Allegiance to the
16 flag. H.R. Rep. No. 2047, 77th Cong., 2d Sess. 1 (1942); S. Rep.
17 No. 1477, 77th Cong., 2d Sess. 1 (1942). It read: "I pledge

18
19 b. A declaration that by including "under God" in the
Pledge, 4 U.S.C. § 4 violates the Establishment and Free
Exercise Clauses;

20 c. That Congress immediately remove the words "under
21 God" from the Pledge of Allegiance, as written in 4
U.S.C. § 4;

22 d. To demand that defendant Peter LeFevre, Law Revision
Counsel, immediately act to remove the words "under God"
23 from the Pledge of Allegiance as written in 4 U.S.C. §
4;

24 e. To demand defendant Schwarzenegger and Richard J.
Riordan immediately repeal Education Code § 52720 or end
its enforcement;

25 f. To demand that the School Districts forbid the use
of the now-sectarian Pledge of Allegiance; and

26 e. Costs, expert witness fees, attorney fees.

1 allegiance to the flag of the United States of America and to the
2 Republic for which it stands, one Nation indivisible, with liberty
3 and justice for all." Act of June 22, 1942, ch. 435, § 7, 56 Stat.
4 380.

5 Twelve years later, Congress amended the Pledge of Allegiance
6 by adding the words "under God" after the word "Nation." Act of
7 June 14, 1954, ch. 297, § 7, 68 Stat. 249. The Pledge of
8 Allegiance now reads: "I pledge allegiance to the Flag of the
9 United States of America, and to the Republic for which it stands,
10 one Nation under God, indivisible, with liberty and justice for
11 all." 4 U.S.C. § 4. The House Report that accompanied that
12 legislation observed that, "[f]rom the time of our earliest history
13 our peoples and our institutions have reflected the traditional
14 concept that our Nation was founded on a fundamental belief in
15 God." H.R. Rep. No. 1693, 83d Cong., 2d Sess., p. 2 (1954).

16 **2. California Statute and School Districts' Policy**

17 California law requires that each public elementary school in
18 the State "conduct[] appropriate patriotic exercises" at the
19 beginning of the school day, and that "[t]he giving of the Pledge
20 of Allegiance to the Flag of the United States of America shall
21 satisfy the requirements of this section." Cal. Educ. Code
22 § 52720.

23 ////

24 ////

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1 Plaintiffs allege that the EGUSD has adopted Rule AR 6115,
2 which provides in pertinent part:

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

7 Pl.'s Compl. at 8.⁵

8 The EGUSD allowed students who object on religious grounds to
9 abstain from the recitation. Elk Grove, 124 S.Ct at 2306.

10 B. PRIOR LITIGATION

11 In March 2000, Newdow filed an almost identical suit in this
12 district. At the time of filing, Newdow's daughter was enrolled
13 in kindergarten in the EGUSD and participated in daily recitation
14 of the Pledge. The complaint alleged that Newdow had standing to
15 sue on his own behalf and on behalf of his daughter as a "next

16 ⁵ It appears that plaintiffs are confused as to what the
17 District requires, since plaintiffs also allege that EGUSD requires
18 that "[e]ach elementary school class [shall] recite the pledge of
19 allegiance to the flag once each day." Plaintiff Newdow states
20 that he has been unable to confirm that EJESD has implemented a
21 similar requirement but that RoeChild-1 is being led in such a
22 daily recitation. Pls.' Compl. at 8, n. 4. Defendants, however,
23 have submitted the AR 6115 for each of the school districts. As
24 plaintiffs allege, EGUSD's policy states that "[e]ach elementary
25 school class [shall] recite the pledge of allegiance to the flag
26 once each day." Ex. A, Defs.' Req. for Jud. Ntc. (filed July 8,
2005). AR 6115 of SCUSD, RLUSD, and EESJD states:

Each school shall conduct patriotic exercises daily. At
elementary schools, such exercises shall be conducted at
the beginning of each school day. The pledge of
allegiance will fulfill this requirement
Individuals may choose not to participate in the flag
salute for personal reasons.

Exs. B, C, D, Defs.' Req. for Jud. Ntc.

1 friend."

2 The original case was referred to Magistrate Judge Nowinski,
3 who recommended dismissal of the suit, concluding that the Pledge
4 does not violate the Establishment Clause. Judge Schwartz adopted
5 the findings and recommendations and dismissed Newdow's complaint
6 on July 21, 2000. In the course of appeal, the Ninth Circuit
7 issued three separate decisions which are briefly reviewed below.

8 **1. Ninth Circuit Cases**

9 **a. "Newdow I"**

10 In its first opinion, the Circuit held that Newdow had
11 standing as a parent to challenge practices that interfere with his
12 right to direct the religious education of his daughter. Newdow
13 v. U.S. Congress, 292 F.3d 597, 602 (9th Cir. 2002) ("Newdow I").
14 The Appellate Court found that both the 1954 Act and the School
15 District's policy violated the Establishment Clause.

16 **b. "Newdow II"**

17 After the Court of Appeals rendered its initial opinion,
18 Sandra Banning, the mother of Newdow's daughter, filed a motion for
19 leave to intervene, or alternatively to dismiss the complaint. She
20 declared that she and Newdow shared "physical custody" of their
21 daughter. She asserted that her daughter is a Christian who
22 believes in God and has no objection to the recitation of the
23 Pledge or to hearing others recite the Pledge. On September 25,
24 2002, the California Superior Court entered an order enjoining
25 Newdow from including his daughter in the lawsuit.

26 ////

1 The Ninth Circuit reconsidered Newdow's standing and held that
2 the "grant of sole legal custody to Banning" did not deprive
3 Newdow, as a noncustodial parent, of Article III standing to object
4 to unconstitutional government action affecting his child. Newdow
5 v. U.S. Congress, 313 F.3d 500, 502-03 ("Newdow II"). The court
6 concluded that under California law Newdow retained the right to
7 expose his child to his religious views even if such views differed
8 from the mother's, and that he retained his own right to seek
9 redress for alleged injuries to his parental interests. Id. at
10 504-5.

11 c. "Newdow III"

12 On February 28, 2003, the Ninth Circuit issued an order
13 amending its first opinion and denying rehearing en banc. Newdow
14 v. U.S. Congress, 328 F.3d 466, 468 (9th Cir. 2003).⁶ The amended
15 opinion omitted Newdow I's discussion of Newdow's standing to
16 challenge the 1954 Act and also declined to determine whether
17 Newdow was entitled to declaratory relief regarding the Act's
18 constitutionality, explaining that because the district court did
19 not discuss whether to grant declaratory relief it would also
20 decline to reach that issue. Id. at 490. The court, however,
21 continued to hold that the school district's policy violated the
22 Establishment Clause.

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26 ⁶ Nine judges dissented from the denial of en banc review.

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1 enrolled in one of EGUSD's schools. Compl. at 2.

2 Plaintiff Newdow alleges that he is an atheist who denies the
3 existence of any god. Compl. at 9, 13. He claims that he would
4 like to run for public office but he objects to governmental use
5 of sectarian religious dogma. Id. at 10. He has the joint legal
6 custody of his child, who lives with him approximately 30% of the
7 time. He concedes that the mother of his child currently has final
8 decision-making authority. Id. He alleges, however, that the
9 mother of his child is required to fully consult him prior to
10 making any significant decision regarding the care of their child.

11 Newdow avers that his child is forced to experience teacher-
12 led recitation of the Pledge of Allegiance every morning, even
13 though he has requested the principal of his child's school and the
14 EGUSD that the practice be discontinued. Newdow volunteers in his
15 child's classroom, and on some of those occasions, the teacher has
16 led the students in reciting the Pledge of Allegiance. He also
17 alleges that he has attended the EGUSD and SCUSD school board
18 meetings, where the Pledge of Allegiance is recited under the
19 direction of the Boards. Id. at 9.

20 **B. PLAINTIFFS JAN AND PAT DOE, AND DOE CHILD**

21 Plaintiffs Jan Doe and Pat Doe are residents and citizens of
22 the United States, of the State of California, and of Sacramento
23 County. They own property in Elk Grove and pay taxes that are used
24 to fund the EGUSD and its schools. They are the parents of
25 Doe child, with full legal custody of that child. Doe child is a
26 seventh grade student enrolled in one of EGUSD's schools. Compl.

1 at 2.

2 Jan and Pat Doe are atheists who deny the existence of God.
3 The Does allege that the Pledge of allegiance is recited in
4 Doe child's classes. Jan and Pat Doe have also attended EGUSD
5 school board meetings where the Pledge is recited, causing the Does
6 to cease attending school board meetings. The Does have attended
7 their child's classes and other events where the Pledge has been
8 recited. They have written to the principal of their child's
9 school, asking that the Pledge not be recited in their child's
10 classrooms, but were not provided with any such assurance. Compl.
11 at 11.

12 Plaintiffs allege that Doe child is an atheist who denies the
13 existence of God. They contend that Doe child has been forced to
14 experience the recitation of the Pledge that has been led by public
15 school teachers in the class and at assemblies. Plaintiff Doe
16 child has suffered harassment by other students due to Doe child's
17 refusal to participate in the Pledge. Compl. at 11.

18 **C. PLAINTIFFS JAN ROE AND ROECHILD-1 AND ROECHILD-2**

19 Plaintiff Jan Roe is a resident and citizen of the United
20 States, of the State of California, and of Sacramento County.⁸ Jan
21 Roe is also the owner of property situated in the Elverta area of
22 Sacramento county. Roe pays taxes that are used to fund the EJESD
23

24 ⁸ It is unclear from the complaint whether Roe is the father
25 or mother of the Roe children. The defendants refer to this
26 plaintiff as he, and the court follows that practice. The court
apologizes if, in fact, this plaintiff is the mother rather than
the father of the Roe children.

1 and its schools. He is the parent of RoeChild-1 and RoeChild-2,
2 with full joint legal custody of those children. Jan Roe is an
3 atheist who denies the existence of God. He alleges that the
4 Pledge has been recited in both of his children's classes. He has
5 written to the principals of both schools, asking that the Pledge
6 not be recited in the children's classes, but has not been provided
7 any assurances that this would happen. Roe has been present in the
8 classes of both children while their teachers have led their
9 classes in reciting the Pledge.

10 Plaintiff RoeChild-1 is a third grade student enrolled in one
11 of the EJESD's schools. RoeChild-1 is a pantheist, who denies the
12 existence of a personal God. She has been forced to experience the
13 recitation of the Pledge of Allegiance in her classes and has been
14 led by her teachers in her class and at assemblies in reciting the
15 Pledge. Compl. at 12.

16 Plaintiff RoeChild-2 is a kindergarten student enrolled in one
17 of RLSD's schools. Compl. at 2. RoeChild-2 has been forced to
18 experience the reciting of the Pledge of Allegiance in class and
19 at school assemblies. Compl. at 12. Even though RoeChild-2's
20 teachers know about Jan Roe's objections to the Pledge, they have
21 been unable to devise any way "to avoid the indoctrination without
22 other adverse effects to RoeChild-2." Compl. at 12.

23 **D. OTHER ALLEGATIONS**

24 Each adult plaintiff claims that he or she has been made to
25 feel like a "political outsider" due to the "government's embrace
26 of (Christian) monotheism in the Pledge of Allegiance." Compl. at

1 13. The parents contend that they are deeply involved in the
2 education of their children, and that they have attempted to
3 participate in school matters, but once their atheism becomes
4 known, it interferes with their ability to "fit in" and "effect
5 changes within the political climate of parent-teacher
6 associations,[and] school board meetings." Id. Finally, the adult
7 plaintiffs maintain that they are placed in an untenable situation
8 requiring them "to choose between effectiveness as an advocate for
9 his or her child's education, and the free exercise clause of his
10 or her religious beliefs." Id.

11 III.

12 DISMISSAL STANDARDS UNDER FED. R. CIV. P. 12(b) (6)

13 On a motion to dismiss, the allegations of the complaint
14 must be accepted as true. See Cruz v. Beto, 405 U.S. 319, 322
15 (1972). The court is bound to give the plaintiff the benefit of
16 every reasonable inference to be drawn from the "well-pleaded"
17 allegations of the complaint. See Retail Clerks Intern. Ass'n,
18 Local 1625, AFL-CIO v. Schermerhorn, 373 U.S. 746, 753 n.6
19 (1963). Thus, the plaintiff need not necessarily plead a
20 particular fact if that fact is a reasonable inference from
21 facts properly alleged. See id.; see also Wheeldin v. Wheeler,
22 373 U.S. 647, 648 (1963) (inferring fact from allegations of
23 complaint).

24 In general, the complaint is construed favorably to the
25 pleader. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). So
26 construed, the court may not dismiss the complaint for failure

1 to state a claim unless it appears beyond doubt that the
2 plaintiff can prove no set of facts in support of the claim
3 which would entitle him or her to relief. See Hishon v. King &
4 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355
5 U.S. 41, 45-46 (1957)). In spite of the deference the court is
6 bound to pay to the plaintiff's allegations, however, it is not
7 proper for the court to assume that "the [plaintiff] can prove
8 facts which [he or she] has not alleged, or that the defendants
9 have violated the . . . laws in ways that have not been
10 alleged." Associated General Contractors of California, Inc. v.
11 California State Council of Carpenters, 459 U.S. 519, 526
12 (1983).

13 IV.

14 ANALYSIS

15 _____ Pending before the court are motions to dismiss filed by
16 all defendants. Before turning to the substantive claims made
17 by plaintiffs, the court must resolve the issue of standing.

18 A. STANDING

19 To bring suit in a federal court, a party must establish
20 standing to prosecute the action. Elk Grove, 124 S.Ct. at 2308.
21 The familiar three part test for standing requires pleading that
22 the plaintiff "(1) . . . has suffered an 'injury in fact' that
23 is (a) concrete and particularized and (b) actual or imminent,
24 not conjectural or hypothetical; (2) the injury is fairly
25 traceable to the challenged action of the defendant; and (3) it
26 is likely as opposed to merely speculative, that the injury will

1 be redressed by a favorable decision." Friends of the Earth,
2 Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 180-81
3 (2000) (citation omitted).

4 The defendants do not challenge the standing of Doe
5 plaintiffs, and it clear that Doe plaintiffs have standing to
6 challenge a practice that interferes with their right to direct
7 their children's religious education. See Doe v. Madison Sch.
8 Dist. No. 321, 177 F.3d 789, 795 (9th Cir. 1999) ("Parents have a
9 right to direct the religious upbringing of their children, and
10 on that basis, have standing to protect their right."). Thus,
11 Doe plaintiffs have standing to challenge EGUSD's policy and
12 practice regarding the recitation of the Pledge because DoeChild
13 is enrolled in the seventh grade.

14 Defendants do, however, contend that Newdow and the Roe
15 plaintiffs lack standing. I address defendants' contentions
16 below.⁹

17 ////

18 ////

19 ////

20 ////

21
22 ⁹ It is true that "the general rule applicable to federal
23 court suits with multiple plaintiffs is that once the court
24 determines that one of the plaintiffs has standing, it need not
decide the standing of others." See Leonard v. Clark, 12 F.2d 885,
888 (9th Cir. 1993) (citation omitted). Thus, it is arguable that
it is unnecessary to consider Newdow and the Roes' standing.

25 Nonetheless, the court believes that it must consider the
26 standing of each plaintiff since they challenge the Pledge practice
in districts in which the Doe children are not registered.

1 1. Newdow

2 a. Parental Standing

3 Newdow asserts claims against both EGUSD and SCUSD. In
4 addition to suing as "next friend" for his child, he also
5 contends that he has standing to sue because he has attended
6 government meetings, including school board meetings, where the
7 Pledge has been administered, and that he is a state taxpayer
8 and owns property in Elk Grove and Sacramento, and pays local
9 property taxes to support their school districts.¹⁰

10 I turn first to whether Newdow has standing as a parent to
11 challenge the school districts' policies, and conclude that he
12 lacks prudential standing. In his opposition to the motion,
13 Newdow appears to concede that the custody arrangement has not
14 changed since the Supreme Court rendered its decision in Elk
15 Grove concluding that he was without standing. Whatever the
16 personal relationship Newdow has with his daughter,¹¹ the Supreme
17 Court has made clear that "having been deprived under California
18 law of the right to sue as next friend, Newdow lacks prudential
19 standing to bring this suit in federal court." Elk Grove, 124
20 S.Ct. 2301, 2312 (2004).

21 ////

22 _____
23 ¹⁰ The Roe defendants make similar claims concerning their
24 school districts.

25 ¹¹ Newdow alleges that "there has never been any indication
26 that his love of, care for or dedication to his child is anything
less than that of the most wonderful and devoted parent on Earth."
Opp'n at 5.

1 standing, citing the Supreme Court's analysis in Elk Grove.
2 That argument simply does not address the present taxpayer
3 standing argument premised on the plaintiff's status as a
4 property owner. See Fed. Defs.' Mot. at 17, School Dists.' Mot.
5 at 14, State Defs.' Mot. at 4-5. Nonetheless, as I now explain,
6 plaintiffs' taxpayer standing argument must fail.

7 The Ninth Circuit has explained that there is a limited
8 Establishment Clause exception to the general rule against
9 federal taxpayer standing. Cammack v. Waihee, 932 F.2d 765, 772
10 (9th Cir. 1991) ("This notion of standing is consistent with the
11 traditional judicial hospitality extended to Establishment
12 Clause challenges by taxpayers generally.") (citations omitted).
13 Even so, plaintiffs challenge the use of municipal and state
14 rather than federal tax revenues. Consequently, Doremus v.
15 Board of Educ. of Borough of Hawthorne, 342 U.S. 429 (1952),
16 controls the requirements for taxpayer standing.¹³ To establish
17 standing under Doremus, a plaintiff must merely allege that the
18 activity challenged "is supported by any separate tax or paid
19 for from any particular appropriation or that it adds any sum
20 whatever to the cost of conducting the school." Id. at 433.

21 ////

22 ////

23
24 ¹³ In Doremus, a taxpayer challenged a state statute that
25 provided for the reading of verses from the Bible at the beginning
26 of each school day. The Supreme Court held that the taxpayer
lacked standing because the action was not a "good-faith
pocketbook" challenge to the state statute. 342 U.S. at 430.

1 Plaintiffs argue that "teachers' salaries alone" in one
2 school district at issue are approximately \$138 million and that
3 if reciting "under God" adds approximately 1.25 seconds to the
4 Pledge, saying "under God" costs the taxpayers in said district
5 more than \$5,000 per year. Id. at 119. The argument does not
6 lie.¹⁴

7 Under Doremus and Doe, "the taxpayer must demonstrate that
8 the government spends 'a measurable appropriation or
9 disbursement of school-district funds occasioned solely by the
10 activities complained of.'" Doe v. Madison Sch. Dist. No. 321,
11 177 F.3d 789, 794 (9th Cir. 1999) (emphasis added) (quoting
12 Doremus v. Board of Education, 342 U.S. 429, 434 (U.S. 1952)).
13 see also Taxpayers' Suits, A Survey and Summary, 69 YALE L.J.
14 895, 922 (1960) (Doremus "stands for the proposition that a
15 state or municipal taxpayer does not have a direct enough
16 interest for his suit to constitute an article III case or
17 controversy unless the activity challenged involves an
18 expenditure of public funds which would not otherwise be made."
19 Doe, 177 F.3d at 794). While plaintiffs' argument is ingenious,
20 it cannot prevail. Under Doremus, plaintiffs must prove that
21 the words "under God" "adds cost to the school expenses or
22 varies by more than an incomputable scintilla" Id. at
23 431. Plaintiffs' calculations fail because teachers in this

24
25 ¹⁴ Plaintiffs expressly state that they have no objection to
26 the recitation of the Pledge. Comp. at 21. Their only objection
is to the inclusion of the phrase "under God," and suggest a return
to the pre-1954 version of the Pledge.

1 state are not paid on an hourly basis, and thus the few seconds
2 a day relied on simply do not meet the test. I conclude that
3 Newdow lacks standing and his claim relative to the state and
4 district defendants must be dismissed.¹⁵

5 2. Roe Plaintiffs

6 Defendants challenge whether Jan Roe has standing to bring
7 suit in this litigation. In the first amended complaint, Jan
8 Roe states that he is the parent of RoeChild-1 and RoeChild-2,
9 with full legal custody of those children. Compl. at 2.

10 Defendants contend that "this statement is insufficient to
11 support a finding that Plaintiffs Jan Roe and Roe children are
12 proper parties to raise this dispute." Fed. Defs.' Mot. at 15.
13 Defendants assert that plaintiffs have "failed to allege that
14 Jan Roe has final-decision-making authority regarding the
15 educational upbringing of Roe Children."¹⁶ Id.

16
17 ¹⁵ Newdow also asserts that he would like to run for public
18 office but that he believes doing so would be futile because of the
19 public's antipathy towards atheism. He believes his inability to
20 obtain elected office "is due in part to the official endorsement
21 of monotheism contained in the Pledge." The court will assume
arguendo standing since it is clear that the argument simply has
no merit. Acknowledging that there is public antipathy directed
towards atheists, common experience teaches that the Pledge has no
bearing on that fact.

22 ¹⁶ Defendants explain that they have attempted to resolve
23 this issue without the court's involvement and asked plaintiff's
24 counsel for clarification. Cassidy Decl. ¶ 2. In response,
25 plaintiffs' counsel provided Jan Roe's declaration and a family law
26 stipulation and order indicating that Jan Roe has joint legal and
joint physical custody of Roe children. The parties have not
submitted Jan Roe's declaration for the court's consideration.
Defendants also explain that Newdow has indicated that the current
custody arrangement of Roe children is likely to be changing as a
new arrangement is in the process of being negotiated. Id. ¶ 4.

1 In Elk Grove, the Supreme Court's admonished that "it is
2 improper for the federal courts to entertain a claim by a
3 plaintiff whose standing to sue is founded on family rights that
4 are in dispute when prosecution of the lawsuit may have an
5 adverse effect on the person who is the source of plaintiff's
6 standing." 124 S.Ct. at 2312. That conclusion has no bearing
7 on the instant case since there is no indication that family
8 rights are in dispute with regard to the Roe children. It is
9 important to recall that what is before the court is a motion to
10 dismiss, requiring that the court give the plaintiff the benefit
11 of every reasonable inference to be drawn from the "well-
12 pleaded" allegations of the complaint. See Retail Clerks Intern.
13 Ass'n, Local 1625, AFL-CIO v. Schermerhorn, 373 U.S. 746, 753
14 n.6 (1963). Thus, the plaintiff need not plead a particular
15 fact if that fact is a reasonable inference from facts properly
16 alleged. See id.; see also Wheeldin v. Wheeler, 373 U.S. 647,
17 648 (1963) (inferring fact from allegations of complaint).
18 Plaintiff has properly alleged that he has custody of his
19 children and thus by reasonable inference decision-making power
20 over them, and defendant has tendered nothing to rebut that
21 inference. The court concludes that plaintiff Roe has
22 sufficiently pled standing.

23 Having resolved the standing question, I turn to the
24 substance of the complaint. As I explain below, the court
25 concludes that it is bound by the Ninth Circuit's previous
26 determination that the school district's policy with regard to

1 the pledge is an unconstitutional violation of the children's
2 right to be free from a coercive requirement to affirm God. The
3 court also concludes, however, that by virtue of that
4 determination, the claims concerning the Pledge itself are
5 rendered moot.

6 **B. RECITATION OF THE PLEDGE IN THE CLASSROOM**

7 **1. Binding Effect of Newdow III**

8 In Newdow III, the Ninth Circuit amended its previous
9 opinion, declining to rule on the constitutionality of the
10 federal statute at issue in this litigation, and also declining
11 to reach whether it must grant Newdow's claim for declaratory
12 relief as to that statute. The court, however, continued to
13 hold, as it did in Newdow I, that the Elk Grove School
14 District's practice of teacher-led recitation of the Pledge
15 "aims to inculcate in students a respect for the ideals set
16 forth in the Pledge, including the religious values it
17 incorporates." I must now address the binding effect of the
18 Ninth Circuit's holding in Newdow III.

19 While the Supreme Court ruled in Elk Grove that plaintiff
20 Newdow lacked prudential standing to raise the claim and
21 reversed the Ninth Circuit's decision in Newdow III, the High
22 Court did not address the Ninth Circuit's conclusion concerning
23 the school district's policy. Thus, the question is what effect
24 the reversal on other grounds of Newdow III by Elk Grove has
25 upon this court's freedom to consider anew plaintiffs' claims
26 and defendants' oppositions.

1 It is established that there is a distinction between a
2 case being reversed on other grounds and a case being vacated.
3 A decision that is reversed on other grounds may still have
4 precedential value, whereas a vacated decision has no
5 precedential authority. See Durning v. Citibank, N.A., 950 F.2d
6 1419, 1424 n. 2 (9th Cir. 1991) ("A decision may be reversed on
7 other grounds, but a decision that has been vacated has no
8 precedential authority whatsoever."); see also O'Connor v.
9 Donaldson, 95 S.Ct. 2486, 2495 (1975) ("Of necessity our
10 decision vacating the judgment of the Court of Appeals deprives
11 that court's opinion of precedential effect").

12 During oral argument, counsel for the federal defendants
13 argued that the Ninth Circuit lacked authority as a
14 jurisdictional matter to proceed on the merits in Newdow III,
15 and thus, the decision is a nullity, citing Steel Co. v.
16 Citizens for a Better Environment, 523 U.S. 83 (1998). I cannot
17 agree that I am free, as defense counsel urges, to take a "fresh
18 look" at the matter. Defendants' argument rests on an erroneous
19 premise, that there is no distinction between prudential
20 standing and Article III standing. Indeed, however, the Supreme
21 Court in Steel Co. recognized the distinction, and limited its
22 holding to Article III standing. Steel Co., 523 U.S. at 97
23 ("The latter question is an issue of statutory standing. It has
24 nothing to do with whether there is a case or controversy under
25 Article III.").

26 ////

1 Prudential standing and Article III standing are distinct.
2 Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 ("[O]ur
3 standing jurisprudence contains two strands: Article III
4 standing, which enforces the Constitution's case or controversy
5 requirement; and prudential standing, which embodies 'judicially
6 self-imposed limits on the exercise of federal
7 jurisdiction[.]'"') (citations omitted). Important to the
8 present issue is that in Elk Grove, the Supreme Court determined
9 that Newdow lacked prudential standing but did not dispute the
10 existence of Article III standing. Elk Grove, 542 U.S. at 29
11 ("the Court does not dispute that respondent Newdow . . .
12 satisfies the requisites of Article III standing") (Rehnquist,
13 J., concurring).

14 When a court lacks Article III standing, there is no
15 jurisdiction because there is no case or controversy within the
16 meaning of the Constitution. A federal court, however, may
17 reach the merits when only prudential standing is in dispute.
18 See, e.g., American Iron and Steel Institute v. Occupational
19 Safety and Health Admin., 182 F.3d 1261, 1274 (11th Cir. 1999)
20 (citing Steel Co., supra, for the proposition that "courts
21 cannot pretermitt Article III standing issues, but can pretermitt
22 prudential standing issues, in order to resolve cases where the
23 merits are relatively easy"); Environmental Protection
24 Information Center, Inc. v. Pacific Lumber Co., 257 F.3d 1071,
25 1076 (9th Cir. 2001) (suggesting review of the merits prior to a
26 prudential standing determination is proper where "the parties

1 retain a stake in the controversy satisfying Article III"). In
2 sum, because a court may reach the merits despite a lack of
3 prudential standing, it follows that where an opinion is
4 reversed on prudential standing grounds, the remaining portion
5 of the circuit court's decision binds the district courts below.
6 Contrary to the urging that a "fresh look" is demanded by Steel
7 Co., this court remains bound by the Ninth Circuit's holding in
8 Newdow III.

9 **2. The Newdow III decision**

10 In Newdow III, the Ninth Circuit applied the "coercion
11 test" formulated by the Supreme Court in Lee v. Weisman, 505
12 U.S. 577, 580 (1992), and concluded that the district's pledge
13 policy "impermissibly coerces a religious act."¹⁷ The court
14 determined that the school district's policy, like the school's
15 action in Lee of including prayer at graduation ceremonies,
16 "places students in the untenable position of choosing between
17 participating in an exercise with religious content or
18 protesting." The court observed that the "coercive effect of
19 the policy here is particularly pronounced in the school setting
20 given the age and impressionability of schoolchildren"
21 Newdow III, 328 F.3d at 488. Finally, the court noted, that
22 non-compulsory participation is no basis for distinguishing it

23
24 ¹⁷ In Lee, a public school student and her father sought a
25 permanent injunction to prevent the inclusion of invocations and
26 benedictions in graduation ceremonies of city public schools. The
Supreme Court held that public schools could not provide for
"nonsectarian" prayer to be given by a clergyman selected by the
school.

1 from West Virginia State Board of Education v. Barnette, 319
2 U.S. 624 (1943), where the Court held unconstitutional a school
3 district's wartime policy of punishing students who refused to
4 recite the Pledge and salute the flag.¹⁸ The Ninth Circuit
5 concluded that even without a recitation requirement for each
6 child, "the mere presence in the classroom every day as peers
7 recite the statement 'one nation under God' has a coercive
8 effect." Newdow III, 328 F.3d at 488. "The 'subtle and
9 indirect' social pressure which permeates the classroom also
10 renders more acute the message to non-believing school-children
11 that they are outsiders." Id. (citing Lee, 505 U.S. at 592-93).
12 The court then determined that "there can be little doubt that
13 under the controlling Supreme Court cases, the school district's
14 policy fails the coercion test." Id. Accordingly, the court
15 held that "the school district's policy and practice of
16 teacher-led recitation of the Pledge, with the inclusion of the
17 added words 'under God,' violates the Establishment Clause."
18 Newdow v. U.S. Congress, 328 F.3d 466, 490 (9th Cir. 2002).

19 The EGUSD school policy at issue in this litigation, and
20 which affect Newdow and the Doe plaintiffs, is identical to the
21 one in the prior litigation. As noted above, defendants have
22 submitted AR 6115 for EJESD which, on its face, does not mandate
23 daily recitation of the Pledge. Plaintiff, however, alleges
24 that in any case RoeChild-1 is being led in such a daily

25 ¹⁸ Barnette was decided before the 1954 Act added the words
26 "under God" to the Pledge.

1 recitation. That allegation suffices to bring the complaint
2 within the ambit of § 1983 which provides jurisdiction to
3 restrain unconstitutional customs or usage, i.e., practice.¹⁹

4 Because this court is bound by the Ninth Circuit's holding
5 in Newdow III, it follows that the school districts' policies
6 violate the Establishment Clause. Accordingly, upon a properly-
7 supported motion, the court must enter a restraining order to
8 that effect. Because of that conclusion, however, as I explain
9 below, it follows that the plaintiffs' federal claims are
10 rendered moot.

11 3. Mootness

12 The doctrine of mootness restricts judicial power to live
13 cases and controversies. Lujan v. Defenders of Wildlife, 504
14 U.S. 555, 559-61 (1992). As with Article III standing, "[t]he
15 federal courts lack power to make a decision unless the
16 plaintiff has suffered an injury in fact, traceable to the
17 challenged action, and likely to be redressed by a favorable
18 decision." Snake River Farmers' Ass'n v. Dept. of Labor, 9 F.3d
19 792, 795 (9th Cir. 1993). If one of these required
20 prerequisites to the exercise of judicial power is absent, the
21 judicial branch loses its power to render a decision on the
22 merits of the claim. Nome Eskimo Community v. Babbitt, 67 F.3d

23
24 ¹⁹ Again, the complaint alleges that in each of the minor
25 plaintiffs' classes, there is teacher-led recitation of the Pledge
26 of Allegiance every morning, and that each child has suffered by
virtue thereof, and that the parents' ability to guide their
childrens' religious beliefs have been adversely affected.

1 813 (9th Cir. 1995).

2 In the case at bar, the plaintiffs' claims, in so far as
3 they relate to the in-class pledges, are resolved because the
4 Ninth Circuit has held that the school policy mandating the
5 Pledge is unconstitutional, and as the court indicated above,
6 upon proper motion it will issue an appropriate injunction.
7 Upon the issuance of that injunction, plaintiffs will no longer
8 suffer from an injury-in-fact which would require redress from
9 this court. Thus, any claims relating to federal statute must
10 be dismissed.

11 **C. PLEDGE RECITATION AT SCHOOL BOARD MEETINGS AND OTHER**
12 **GOVERNMENTAL MEETINGS**

13 Aside from the allegations related to the school districts'
14 compulsory administration of the Pledge to student-plaintiffs,
15 the complaint also alleges that each of the parents have,
16 independent of their relationship to their offspring, cognizable
17 claims. Specifically, the adult plaintiffs assert that they
18 have attended school board meetings where the Pledge has been
19 recited. Compl. at 9- 12.²⁰ These parent-plaintiffs submit

20
21 ²⁰ As noted above, the Supreme Court held that Newdow lacks
22 prudential standing to raise this argument, Elk Grove, 124 S.Ct.
23 at 2312, n.8, but plaintiffs Doe and Roe arguably have standing to
24 bring this claim. Plaintiffs argue that they have standing to
25 bring this suit as it applies to the Pledge being recited at school
26 board meetings because they are forced to "confront government-
sponsored religious dogma." Compl. at 9. Plaintiffs cite to cases
where physical religious structures are erected on federal land.
See Van Orden v. Perry, 351 F.3d 173 (5th Cir. 2003), cert.
granted, 125 S.Ct. 1240 (2005); ACLU v. McCreary County, 361 F.3d
928 (6th Cir. 2004), cert. granted, 125 S.Ct. 944 (2005); Allegheny
County v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989). The Ninth

1 that when they are faced with the Pledge of Allegiance, "a
2 significant hurdle arises, interfering with an ability to 'fit
3 in' and effect changes within the climate of parent-teacher
4 associations, school board meetings, and the like." Id. at
5 ¶ 92. In essence, plaintiffs argue that they are branded with a
6 "political outsider" status. Id. at ¶ 91.

7 Plaintiffs' arguments must be rejected. The Pledge itself
8 does not compel recitation anywhere, at any time. Thus,
9 properly understood, plaintiffs are complaining about a school
10 board policy or practice. Yet the present complaint does not
11 seek relief from that practice but attacks the content of the
12 Pledge, which is significant only because of that practice.
13 Even if this were not the case, however, the present status of
14 Establishment Clause jurisprudence compels rejection of
15 plaintiffs' claim in this regard.

16 It cannot be gainsaid that the practice of reciting the
17 Pledge in the context of adults attending a school board meeting
18 tenders a different question than the recitation of the Pledge
19 in a classroom. In Lee v. Weisman, the case upon which the
20 Newdow III court relied, the Supreme Court explained the
21 inherent differences between religious activity involving
22

23 Circuit has repeatedly held that inability to unreservedly use
24 public land suffices as injury-in-fact. Buono v. Norton, 371 F.3d
25 543, 548 (9th Cir. 2004). The instant case is distinguishable from
26 this line of cases because it does not involve physical structures.
The court, however, need not rule on plaintiffs' standing as it
relates to the school board meetings because, as explained,
plaintiffs have failed to plead a cognizable claim.

1 students in a public school system and, for instance, a prayer
2 said at the opening of a session of a state legislature, the
3 issue at bar in Marsh v. Chambers, 463 U.S. 783 (1983). In Lee,
4 the court emphasized "recognition [of] the real conflict of
5 consequence by the young student." Lee, 505 U.S. at 596. In
6 contrast the Court explained:

7 [t]he atmosphere at the opening of a session of a
8 state legislature where adults are free to enter and
9 leave with little comment and for any number of
reasons cannot compare with the constraining potential
of the [the student's graduation]. . . .

10 Id.

11 Plaintiffs' claim must be rejected because both the Ninth
12 Circuit and the Supreme Court have applied the coercion test and
13 the "outsider" status claim with great restraint, recognizing it
14 only in the context of children who are more likely to be
15 pressured and negatively impacted. Here, plaintiffs are adults
16 who, like the legislators in Marsh, are "free to enter and
17 leave" at the opening of a school board session. ²¹

18 For all the above reasons, the motion to dismiss the
19 parents' suit relative to school board meetings must be granted.

20 ////

21 ////

22
23 ²¹ This court is, of course bound by the distinction noted
24 above, but as the saying goes, it is not gagged. The cramped view
25 of the Establishment Clause underlying the distinction between
26 Marsh and Lee ignores a primary function of the First Amendment;
namely, to act as a bulwark barring the introduction of sectarian
division into the body politic, and thus advancing the ideal of
national unity.

1 IV.

2 CONCLUSION

3 For all the foregoing reasons, the court ORDERS as follows:

4 1. Defendants' motions to dismiss the claim as to the
5 recitation of the Pledge in a classroom is DENIED; and

6 2. As to all the other causes of action, the motion is
7 GRANTED.

8 IT IS SO ORDERED.²²

9 DATED: September 14, 2005.

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

13
14 ²² This court would be less than candid if it did not
15 acknowledge that it is relieved that, by virtue of the disposition
16 above, it need not attempt to apply the Supreme Court's recently
17 articulated distinction between those governmental activities which
18 endorse religion, and are thus prohibited, and those which
19 acknowledge the Nation's asserted religious heritage, and thus
20 are permitted. As last terms cases, McCreary County v. ACLU, 125
21 S.Ct. 2722, 2005 WL 1498988 (2005) and Van Orden v. Perry, 125
22 S.Ct. 2854, 2005 WL 1500276 (2005) demonstrate, the distinction is
23 utterly standardless, and ultimate resolution depends of the
24 shifting, subjective sensibilities of any five members of the High
25 Court, leaving those of us who work in the vineyard without
26 guidance. Moreover, because the doctrine is inherently a boundary-
less slippery slope, any conclusion might pass muster. It might
be remembered that it was only a little more than one hundred ago
that the Supreme Court of this nation declared without hesitation,
after reviewing the history of religion in this country, that "this
is a Christian nation." Church of the Holy Trinity v. United
States, 143 U.S. 457, 471 (1892). As preposterous as it might
seem, given the lack of boundaries, a case could be made for
substituting "under Christ" for "under God" in the pledge, thus
marginalizing not only atheists and agnostics, as the present form
of the Pledge does, but also Jews, Muslims, Buddhists, Confucians,
Sikhs, Hindus, and other religious adherents who, not only are
citizens of this nation, but in fact reside in this judicial
district.

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5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

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

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

13 Plaintiffs,

14 v.

O R D E R

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

17 Defendants.
_____ /

18 The court's September 14, 2005 order is amended at 30:21,
19 footnote 22, to add the word "years" following the phrase "one
20 hundred."

21 IT IS SO ORDERED.

22 DATED: September 14, 2005.

23
24 /s/Lawrence K. Karlton
25 LAWRENCE K. KARLTON
26 SENIOR JUDGE
UNITED STATES DISTRICT COURT

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6 JOINT ELEMENTARY SCHOOL DISTRICT and RIO LINDA UNION SCHOOL
7 DISTRICT

8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
11

12 THE REV. DR. MICHAEL A. NEWDOW
IN PRO PER, JAN DOE AND PAT DOE,
13 PARENTS; DOECHILD, A MINOR
CHILD; JAN ROE; PARENT; ROECHILD-
14 1 AND ROECHILD-2, MINOR
CHILDREN,

15 Plaintiffs,

16 vs.

Case No.: CIV 05-0017 LKK DAD

**DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL**

17 THE CONGRESS OF THE UNITED
STATES OF AMERICA; THE UNITED
18 STATES OF AMERICA; THE STATE OF
CALIFORNIA; THE ELK GROVE
19 UNIFIED SCHOOL DISTRICT
("EGUSD"); DR. STEVEN LADD,
20 SUPERINTENDENT, EGUSD; THE
SACRAMENTO CITY UNIFIED SCHOOL
21 DISTRICT ("SCUSD"); DR. M.
MAGDALENA CARRILLO MEJIA,
22 SUPERINTENDENT, SCUSD; THE
ELVERTA JOINT ELEMENTARY
23 SCHOOL DISTRICT ("EJESD"); DR.
DIANNA MANGERICH,
24 SUPERINTENDENT, EJESD; THE RIO
LINDA UNION SCHOOL DISTRICT
25 ("RLUSD"); FRANK S. PORTER,
SUPERINTENDENT, RLUSD;

26 Defendants.
27 _____/

28 ///

1 Come now Defendants ELK GROVE UNIFIED SCHOOL DISTRICT, ELVERTA
2 JOINT ELEMENTARY SCHOOL DISTRICT and RIO LINDA UNION SCHOOL
3 DISTRICT (referred to herein as "SCHOOL DISTRICT Defendants") and answer Plaintiffs'
4 First Amended Complaint as follows:

5 1. Answering paragraph 1, these answering Defendants admit that jurisdiction is
6 proper under 28 U.S.C. Section 1331. Answering the remaining allegations contained in said
7 paragraph, these answering Defendants contend that the remaining allegations are
8 conclusions of law and not averments of fact to which an answer is required, but insofar as
9 an answer may be deemed required, generally and specifically deny each and every remaining
10 allegation contained in said paragraph.

11 2. Answering paragraph 2, these answering Defendants deny the allegations
12 contained in said paragraph.

13 3. Answering paragraphs 3, 4, 5, and 6, these answering Defendants contend that
14 the allegations in these paragraphs pertain to parties that are no longer Defendants in this
15 case and therefore no answer is required. Insofar as an answer may be required, these
16 answering Defendants lack sufficient information or knowledge to enable them to answer the
17 allegations contained in said paragraphs and basing their denial on that ground, generally and
18 specifically deny each and every allegation contained in said paragraphs.

19 4. Answering paragraph 7, these answering Defendants admit the allegations
20 contained in said paragraph.

21 5. Answering paragraph 8, these answering Defendants admit that their place of
22 business is in Sacramento County, California and that venue is therefore proper. Answering
23 the remaining allegations contained in said paragraph, these answering Defendants lack
24 sufficient information or knowledge to enable them to answer the remaining allegations
25 contained in said paragraph, and basing their denial on that ground, generally and specifically
26 deny each and every remaining allegation contained in said paragraph.

27 6. Answering paragraphs 9, 10 and 11, these answering Defendants admit the
28 allegations contained in said paragraphs.

1 14. Answering paragraphs 38 and 39, these answering Defendants lack sufficient
2 information or knowledge to enable them to answer the allegations contained in said
3 paragraphs, and basing their denial on that ground, generally and specifically deny each and
4 every allegation contained in said paragraphs.

5 15. Answering paragraph 40, these answering Defendants admit that the words
6 “under God” were added to the Pledge of Allegiance by the Act of 1954. Answering the
7 remaining allegations contained in said paragraph, these answering Defendants generally and
8 specifically deny each and every remaining allegation contained in said paragraph.

9 16. Answering paragraphs 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55,
10 these answering Defendants contend that said paragraphs contain conclusions of law and/or
11 arguments to which an answer is not required, but insofar as an answer may be deemed
12 required, these answering Defendants generally and specifically deny each and every
13 allegations contained in said paragraphs.

14 17. Answering paragraph 56, these answering Defendants admit that Plaintiffs have
15 never been actually compelled to say the words “under God” in the Pledge of Allegiance.
16 Answering the remaining allegations contained in said paragraph and the accompanying
17 footnote, these answering Defendants generally and specifically deny each and every
18 remaining allegation contained in said paragraph.

19 18. Answering paragraphs 57, 58, and 59, these answering Defendants lack
20 sufficient information or knowledge to enable them to answer the allegations contained in
21 said paragraphs, and basing their denial on that ground, generally and specifically deny each
22 and every allegation contained in said paragraphs.

23 19. Answering paragraph 60, these answering Defendants admit that NEWDOW
24 is the biological father of a child currently attending the EGUSD and that he does not have
25 final decision making authority with respect to the educational upbringing of that child.
26 Answering the remaining allegations contained in said paragraph, these answering
27 Defendants lack sufficient information or knowledge to enable them to answer the remaining
28 allegations contained in said paragraph, and basing their denial on that ground, generally and

1 specifically deny each and every remaining allegation contained in said paragraph.

2 20. Answering paragraph 61, these answering Defendants admit that NEWDOW's
3 child has in the past and is presently voluntarily reciting the Pledge of Allegiance with the
4 words "under God". Answering the remaining allegations contained in said paragraph, these
5 answering Defendants generally and specifically deny each and every remaining allegation
6 contained in said paragraph.

7 21. Answering paragraph 62, 63, and 64, these answering Defendants contend that
8 no answer is required to these paragraphs based on that portion of the District Court ruling
9 granting Defendants' Motion to Dismiss with respect to Plaintiff NEWDOW, but insofar as
10 an answer may be deemed required, these answering Defendants generally and specifically
11 deny each and every allegation contained in said paragraphs.

12 22. Answering paragraph 65, these answering Defendants lack sufficient
13 information or knowledge to enable them to answer the allegations contained in said
14 paragraph and basing their denial on that ground, generally and specifically deny each and
15 every allegation contained in said paragraph.

16 23. Answering paragraphs 66, these answering Defendants admit the allegations
17 contained in said paragraph.

18 24. Answering paragraphs 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81,
19 83, 84 and 85 these answering Defendants lack sufficient information or knowledge to enable
20 them to answer the allegations contained in said paragraphs, and basing their denial on that
21 ground, generally and specifically deny each and every allegation contained in said
22 paragraphs.

23 25. Answering paragraph 82, these answering Defendants generally and
24 specifically deny each and every allegation contained in said paragraph.

25 26. Answering paragraph 86 these answering Defendants admit that Plaintiff
26 RoeChild-2 is a student at a public school administered by RLUSD, answering the reaming
27 allegations these answering Defendants generally and specifically deny each and every
28 remaining allegation contained in said paragraph.

1 27. Answering paragraphs 87 and 88, these answering Defendants lack sufficient
2 information or knowledge to enable them to answer the allegations contained in said
3 paragraphs, and basing their denial on that ground, generally and specifically deny each and
4 every allegation contained in said paragraphs

5 28. Answering paragraphs 89, 90, 91, 92, 93, 94, 95, 96 and 97, these answering
6 Defendants lack sufficient information or knowledge to enable them to answer the allegations
7 contained in said paragraphs, and basing their denial on that ground, generally and
8 specifically deny each and every allegation contained in said paragraphs.

9 29. Answering paragraphs 98, 99, 101 and 102, and each of the footnotes referred
10 to therein, these answering Defendants generally and specifically deny each and every
11 allegation contained in said paragraphs.

12 30. Answering paragraphs 100, 103 and 104, and each of the footnotes referred to
13 therein, these answering Defendants lack sufficient information and knowledge to enable
14 them to answer the allegations contained in said paragraphs, and basing their denial on that
15 ground, generally and specifically deny each and every allegation contained in said
16 paragraphs.

17 31. Answering paragraph 105, these answering Defendants admit the allegations
18 contained in said paragraph.

19 32. Answering paragraphs 106, 107, 108 and 109, and each of the footnotes
20 referred to therein, these answering Defendants generally and specifically deny each and
21 every allegation contained in said paragraphs.

22 33. Answering paragraphs 110, 111, 112, 113 and 114, these answering Defendants
23 lack sufficient information or knowledge to enable them to answer the allegations contained
24 in said paragraphs, and basing their denial on that ground, generally and specifically deny
25 each and every allegation contained in said paragraphs.

26 34. Answering paragraphs 115, 116, 117, 118 and 119, and each of the footnotes
27 referred to therein, these answering Defendants generally and specifically deny each and
28 every allegation contained in said paragraphs.

1 35. Answering paragraphs 120, 121, 122, 123, 124, 125 and 126, and each of the
2 footnotes referred to therein, these answering Defendants lack sufficient information or
3 knowledge to enable them to answer the allegations contained in said paragraphs, and basing
4 their denial on that ground, generally and specifically deny each and every allegation
5 contained in said paragraphs.

6 36. Answering paragraphs 127, 128, 129, 130, 131, 132 and 133, and each of the
7 footnotes referred to therein, these answering Defendants generally and specifically deny
8 each and every allegation contained in said paragraphs.

9 37. Answering paragraphs 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144,
10 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162,
11 163, 164, 165 and 166, and each of the appendixes or footnotes referred to therein, these
12 answering Defendants lack sufficient information or knowledge to enable them to answer the
13 allegations contained in said paragraphs, and basing their denial on that ground, generally
14 and specifically deny each and every allegation contained in said paragraphs.

15 38. Answering paragraph 167, these answering Defendants admit that EGUSD,
16 SCUSD, EJESD, and RLUSD are all governmental entities obliged to ensure that the
17 Constitution of the United States of America is upheld. Answering the remaining allegations
18 contained in said paragraph, these answering Defendants generally and specifically deny each
19 and every remaining allegation contained in said paragraph.

20 39. Answering paragraph 168, these answering Defendants admit that DR.
21 STEVEN LADD, DR. M. MAGDALENA CARRILLO MEJIA, DR. DIANNA
22 MANGERICH and FRANK S. PORTER are all individuals serving in governmental capacity
23 who have an obligation to ensure the Constitution of the United States of America is upheld.
24 Answering the remaining allegations contained in said paragraph, these answering
25 Defendants generally and specifically deny each and every remaining allegation contained
26 in said paragraph.

27 40. Answering paragraph 169, these answering Defendants admit that EGUSD,
28 SCUSD, EJESD and RLUSD are all governmental entities obliged to ensure the Constitution

1 of the United States of America is upheld. Answering the remaining allegations contained
2 in said paragraph, these answering Defendants generally and specifically deny each and every
3 remaining allegation contained in said paragraph.

4 41. Answering paragraph 170, 171, 172, 174 and 175, and each of the appendixes
5 referred to therein, these answering Defendants generally and specifically deny each and
6 every allegation contained in said paragraphs.

7 42. Answering paragraph 173, these answering Defendants contend that said
8 paragraph contains conclusions and not averments to fact to which an answer is deemed
9 required, but insofar as an answer may be deemed required, these answering Defendants
10 generally and specifically deny each and every allegation contained in said paragraph.

11 **AFFIRMATIVE DEFENSES**

12 **FIRST AFFIRMATIVE DEFENSE**

13 The First Amended Complaint, in its entirety and through each separately stated cause
14 of action, fails to state claims upon which relief can be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 Plaintiffs' claims, and each of them, are barred by the doctrines of collateral estoppel
17 and/or res judicata.

18 **THIRD AFFIRMATIVE DEFENSE**

19 Plaintiffs' claims, and each of them, are barred by the Eleventh Amendment to the
20 U.S. Constitution.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' claims and each of them are barred by the doctrine of laches.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 Plaintiffs lack standing to bring the claims being asserted in this action.

25 WHEREFORE, Defendants ELK GROVE UNIFIED SCHOOL DISTRICT,
26 ELVERTA JOINT ELEMENTARY SCHOOL DISTRICT and RIO LINDA UNION
27 SCHOOL DISTRICT pray for judgment as follows:

- 28 1. That Plaintiffs' action be dismissed;

- 1 2. That Plaintiffs take nothing by way of their Complaint;
2 3. That Defendants be awarded their costs of suit, including attorney fees; and
3 4. For such other relief as the Court deems proper.

4 Dated: September 26, 2005

PORTER, SCOTT, WEIBERG & DELEHANT
A Professional Corporation

6 By /s/ Terence J. Cassidy

Terence J. Cassidy
Michael W. Pott
Attorney for Defendants
ELK GROVE UNIFIED SCHOOL
DISTRICT, ELVERTA JOINT
ELEMENTARY SCHOOL DISTRICT
and RIO LINDA UNION SCHOOL
DISTRICT

13 **DEMAND FOR JURY TRIAL**

14 Defendants ELK GROVE UNIFIED SCHOOL DISTRICT, ELVERTA JOINT
15 ELEMENTARY SCHOOL DISTRICT and RIO LINDA UNION SCHOOL DISTRICT
16 hereby demand a trial by jury in the above-entitled action as provided by the Seventh
17 Amendment to the United States Constitution and Rule 38 of the Federal Rules of Civil
18 Procedure.

19 Dated: September 26, 2005

PORTER, SCOTT, WEIBERG & DELEHANT
A Professional Corporation

21 By /s/ Terence J. Cassidy

Terence J. Cassidy
Michael W. Pott
Attorney for Defendants
ELK GROVE UNIFIED SCHOOL
DISTRICT, ELVERTA JOINT
ELEMENTARY SCHOOL DISTRICT
and RIO LINDA UNION SCHOOL
DISTRICT

PORTER, SCOTT, WEIBERG & DELEHANT

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

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,

vs.

THE CONGRESS OF THE UNITED
STATES OF AMERICA; THE UNITED
STATES OF AMERICA; THE STATE OF
CALIFORNIA; 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.


Case No.: CIV 05-0017 LKK DAD

**STIPULATION OF DISMISSAL AND
ORDER**

///

1 Plaintiffs JAN DOE AND PAT DOE, PARENTS; DOECHILD, A MINOR CHILD;
2 JAN ROE; PARENT; ROECHILD-1 AND ROECHILD-2, MINOR CHILDREN, by and
3 through their counsel of record, Michael A. Newdow, and Defendant ELVERTA JOINT
4 ELEMENTARY SCHOOL DISTRICT by and through its counsel of record, Michael W.
5 Pott, hereby stipulate that Plaintiffs JAN ROE and ROECHILD-1 are dismissing the
6 Complaint in its entirety without prejudice as it pertains to ELVERTA JOINT
7 ELEMENTARY SCHOOL DISTRICT. This stipulation will result in the dismissal from this
8 lawsuit of ROECHILD-1 and the ELVERTA JOINT ELEMENTARY SCHOOL DISTRICT.
9 All parties are to bear their own fees and costs.

10 Dated: 24 OCT 05



Michael A. Newdow
Counsel for Plaintiffs 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

16 Dated: 10/25/05

PORTER, SCOTT, WEIBERG & DELEHANT
A Professional Corporation

19 By MWP

Michael W. Pott
Attorney for Defendants
ELK GROVE UNIFIED SCHOOL
DISTRICT, DR. STEVEN LADD,
SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT, DR. M. MAGDALENA
CARRILLO MEJIA, EL VERTA JOINT
ELEMENTARY SCHOOL DISTRICT,
DR. DIANNA MANGERICH, RIO LINDA
UNION SCHOOL DISTRICT and FRANK
S. PORTER

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IT IS SO ORDERED.

Dated: 10/26/05


Lawrence K. Karlton
Judge of the United States District Court

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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

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

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

13 Plaintiffs,

14 v.

O R D E R

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

17 Defendants.
_____ /

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

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

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

4 On November 16, 2005, Elk Grove Unified School District
5 ("EGUSD") moved to dismiss plaintiffs Jan Doe, Pat Doe and
6 DoeChild's claims against it.¹ Defendant EGUSD explains that the
7 declaration of DoeChild filed in support of the request for a
8 permanent injunction establishes that he or she currently attends
9 one of EGUSD's middle schools and that his or her teacher does not
10 lead the students in reciting the Pledge, and that the last time
11 the Pledge was recited in his or her classroom was last year. They
12 thus contend that because DoeChild is no longer in elementary
13 school, he or she is not affected by EGUSD's Patriotic Observances
14 Elementary School Administrative Regulation which states that
15 "[e]ach elementary school class [shall] recite the pledge of
16 allegiance to the flag once each day." Mot. at 2. The court has
17 confirmed that DoeChild is currently a student in one of EGUSD's
18 Middle Schools and that DoeChild's teacher does not lead him or her
19 in saying the Pledge. DoeChild Decl. at ¶¶ 4, 9.²

20 ////

21
22 ¹ Defendants explained that they were not made aware of the
23 fact that the Doe plaintiffs do not have standing to bring a claim
against EGUSD until October 24, 2005.

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

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

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

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

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

IT IS SO ORDERED.

DATED: November 18, 2005.

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

P

1 The Becket Fund for Religious Liberty
2 Derek L. Gaubatz, Esq.* (C.B.N. 208405)
3 Anthony R. Picarello, Jr., Esq.
4 Jared N. Leland, Esq.
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9 *Counsel for Defendants*
10 * *Counsel of Record*

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

10	_____)	
11	THE REV. DR. MICHAEL A. NEWDOW, <i>et al.</i>)	
12)	
13	<i>Plaintiffs,</i>)	
14)	
15	v.)	2:05-cv-00017-LKK-DAD
16)	
17	THE CONGRESS OF THE UNITED STATES)	Notice of Appeal
18	OF AMERICA, <i>et al.</i>)	of Defendant-Intervenors
19)	John Carey <i>et al.</i>
20)	
21	<i>Defendants,</i>)	
22)	
23	and)	
24)	
25	JOHN CAREY, <i>et al.</i>)	
26)	
27	<i>Defendant-Intervenors.</i>)	
28	_____)	

NOTICE OF APPEAL OF
DEFENDANT-INTERVENORS JOHN CAREY, ET AL.

Notice is hereby given that John Carey, Adrienne Carey, Brenden Carey, Adam Araiza, Albert Araiza, Anita Araiza, Michaela Bishop, Craig Bishop, Marie Bishop, Teresa Declines, Darien Declines, Ryanna Declines, Rommel Declines, Janice Declines, Anthony Doerr, Dan Doerr, Karen Doerr, Sean Forschler, Tiffany Forschler, Fred Forschler, Esterlita Forschler, Mary McKay, Robert

1 McKay, Sharon McKay, and the Knights of Columbus, Defendant-Intervenors in the above-named
2 case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that portion of
3 this Court's November 18, 2005 Order granting Plaintiffs' motion for a permanent injunction and
4 that portion of this Court's September 14, 2005 Order denying Defendants' and Defendant-
5 Intervenors' motions to dismiss.

6 Respectfully submitted,

7
8 /s/ Derek L. Gaubatz

9 The Becket Fund for Religious Liberty
10 Derek L. Gaubatz, Esq.* (C.B.N. 208405)
11 Anthony R. Picarello, Jr., Esq.
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15 Date: November 21, 2005

Counsel for Defendant-Intervenors John Carey et al.
**Counsel of Record*

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

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,

vs.

THE CONGRESS OF THE UNITED
STATES OF AMERICA; THE UNITED
STATES OF AMERICA; THE STATE OF
CALIFORNIA; 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.

Case No.: CIV 05-0017 LKK DAD

**DEFENDANT RIO LINDA UNION
SCHOOL DISTRICT'S NOTICE OF
APPEAL**

1 NOTICE IS HEREBY GIVEN that Defendant RIO LINDA UNION SCHOOL
2 DISTRICT hereby appeals to the United States Courts of Appeals for the Ninth Circuit from
3 Orders entered in this action on 14th day of September, 2005 and the 18th day of November,
4 2005, by U.S. District Court Senior Judge Lawrence K. Karlton, denying Defendants' Motion
5 to Dismiss and granting Plaintiffs' Motion for a Permanent Injunction, respectively.

6 The Representation Statement and Civil Appeal Docketing Statement are attached as
7 required by the Ninth Circuit Local Rules 3-2 and 3-4. Attached hereto as Exhibit "A" is a
8 copy of the September 14, 2005 Order and as Exhibit "B" a copy of the November 18, 2005
9 Order are also attached as required by Ninth Circuit Local Rule 3-4.

10 Respectfully Submitted,

11 Dated: December 9, 2005

PORTER, SCOTT, WEIBERG & DELEHANT
A Professional Corporation

12
13 By 
14

Terence J. Cassidy
Michael W. Pott
Attorney for Defendants
ELK GROVE UNIFIED SCHOOL
DISTRICT, DR. STEVEN LADD,
SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT, DR. M. MAGDALENA
CARRILLO MEJIA, EL VERTA JOINT
ELEMENTARY SCHOOL DISTRICT,
DR. DIANNA MANGERICH, RIO LINDA
UNION SCHOOL DISTRICT and FRANK
S. PORTER

Exhibit A

Omitted for Purposes of Appeal

A copy of the document that was attached to this Notice of Appeal as

Exhibit A can be found at pages 198-227 of this Excerpts of Record

Exhibit B

Omitted for Purposes of Appeal

A copy of the document that was attached to this Notice of Appeal as

Exhibit B can be found at pages 241-244 of this Excerpts of Record



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United States of America

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

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

Plaintiffs,

v.

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

Defendants.

NO. CIV. 2:05-cv-000017-LKK-DAD

NOTICE OF APPEAL

Date: (none)
Time: (none)
Judge: Hon. Lawrence K. Karlton
Courtroom: No. 4

NOTICE IS HEREBY GIVEN that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, the United States of America hereby appeals to the United States Court of Appeals for the Ninth Circuit from the District Court's permanent injunction dated November 18, 2005 and the District Court's orders dated September 14, 2005.

The Representation Statement and Civil Appeals Docketing Statement are attached as required by the Ninth Circuit Rules 3-2 and 3-4. Attached hereto as Exhibit "A" is a copy of both of the September 14, 2005 Orders and as Exhibit "B" a copy of the November 18, 2005 Order as required by Ninth Circuit Rule 3-4.

1
2 Respectfully submitted,

3 PETER D. KEISLER
4 Assistant Attorney General

5 MCGREGOR W. SCOTT
6 United States Attorney

7 /s/Theodore C. Hirt
8 THEODORE C. HIRT
9 (D.C. No. 242982)
10 Assistant Director
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13 P.O. Box 883
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17 Attorneys for the
18 United States of America

19 Dated: January 13, 2006
20
21
22
23
24
25
26
27
28

Exhibit A

Omitted for Purposes of Appeal

A copy of the document that was attached to this Notice of Appeal as

Exhibit A can be found at pages 198-227 of this Excerpts of Record

Exhibit B

Omitted for Purposes of Appeal

A copy of the document that was attached to this Notice of Appeal as

Exhibit B can be found at pages 241-244 of this Excerpts of Record

APPEAL, CIVIL

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:05-cv-00017-LKK-DAD**

Newdow et al v. Congress of the United States of America et al	Date Filed: 01/03/2005
Assigned to: Senior Judge Lawrence K. Karlton	Jury Demand: None
Referred to: Magistrate Judge Dale A. Drozd	Nature of Suit: 440 Civil Rights: Other
Cause: 28:1331 Federal Question: Other Civil Rights	Jurisdiction: U.S. Government Defendant

Plaintiff**Rev. Dr. Michael A Newdow**

represented by **Michael Arthur Newdow**
Michael Newdow, Esq.
P.O. Box 233345
Sacramento, CA 95823
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Pat Doe**

represented by **Michael Arthur Newdow**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**DoeChild**

represented by **Michael Arthur Newdow**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Jan Poe**

represented by **Michael Arthur Newdow**
(See above for address)
LEAD ATTORNEY
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Plaintiff**PoeChild**

represented by **Michael Arthur Newdow**
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Plaintiff**Jan Roe**

represented by **Michael Arthur Newdow**

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Plaintiff

RoeChild-1

represented by **Michael Arthur Newdow**
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LEAD ATTORNEY
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Plaintiff

Jan Doe

represented by **Michael Arthur Newdow**
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Plaintiff

Pat Doe

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Plaintiff

DoeChild

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Plaintiff

Jan Poe

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Plaintiff

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Plaintiff

Jan Roe

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Plaintiff

RoeChild-1

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Plaintiff

RoeChild-2

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Plaintiff

William Mayo

TERMINATED: 01/13/2005

represented by **William Mayo**
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PRO SE

V.

Defendant

**Congress of the United States of
America**

represented by **Craig Manning Blackwell**
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TERMINATED: 10/13/2005
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Defendant

Elk Grove School District

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Defendant

Lincoln Unified School District
TERMINATED: 04/11/2005

represented by **Terence John Cassidy**
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ATTORNEY TO BE NOTICED

Defendant

Sacramento City Unified School District

represented by **Terence John Cassidy**
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Michael William Pott
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Elverta Joint Elementary School District
TERMINATED: 10/28/2005

represented by **Terence John Cassidy**
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Michael William Pott
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Rio Linda Unified School District

represented by **Terence John Cassidy**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael William Pott
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ATTORNEY TO BE NOTICED

Defendant**United States of America**

represented by **Craig Manning Blackwell**
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TERMINATED: 10/13/2005
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Theodore Charles Hirt
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Dr. Steven Ladd**

*Superintendent, Elk Grove Unified
School District*

represented by **Terence John Cassidy**
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LEAD ATTORNEY
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Michael William Pott
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Defendant**State of California**

TERMINATED: 04/11/2005

represented by **Jill Bowers**
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Defendant**Janet Petsche**

*Associate Superintendent, Lincoln
Unified School District*
TERMINATED: 04/11/2005

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Defendant**M Magdalena Carrillo Mejia**

*Superintendent, Sacramento City
Unified School District*

represented by **Terence John Cassidy**
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LEAD ATTORNEY
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Michael William Pott
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Defendant

Dr. Dianna Mangerich
*Superintendent, Elverta Joint
Elementary School District*

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Michael William Pott
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ATTORNEY TO BE NOTICED

Defendant

Frank S Porter
*Superintendent, Rio Linda Union
School District*

represented by **Terence John Cassidy**
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LEAD ATTORNEY
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Michael William Pott
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ATTORNEY TO BE NOTICED

Defendant

Peter LeFevre
Law Revision Counsel

represented by **Craig Manning Blackwell**
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TERMINATED: 10/13/2005
LEAD ATTORNEY
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Theodore Charles Hirt
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Arnold Schwarzenegger
Governor of California

represented by **Jill Bowers**
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ATTORNEY TO BE NOTICED

Defendant

Richard J. Riordan
California Secretary for Education

represented by **Jill Bowers**
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V.

Intervenor Defendant

John Carey, et al.

represented by **Anthony R. Picarello**
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Intervenor

USA

represented by **Theodore Charles Hirt**
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Date Filed	#	Docket Text
01/03/2005	<u>1</u>	COMPLAINT against all defendants, filed by Michael Newdow, Jan Doe, Pat Doe, DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1,

		RoeChild-2 against all defendants, filed by Pat Doe, DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, Jan Doe, Pat Doe, DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, RoeChild-2.(Newdow, Michael) (Entered: 01/03/2005)
01/04/2005		RECEIPT number 202 12779 for \$150.00 for Civil Case Filing from Michael Newdow. (Warren, P) (Entered: 01/04/2005)
01/04/2005	<u>3</u>	CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 3/14/2005 at 11:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Attachments: # <u>1</u> Consent Forms # <u>2</u> VDRP Forms) (Warren, P) (Entered: 01/04/2005)
01/05/2005	<u>4</u>	SUMMONS ISSUED as to *Congress of the United States of America, United States of America* with answer to complaint due within *60* days. (Holland, K) (Entered: 01/05/2005)
01/05/2005	<u>5</u>	SUMMONS ISSUED as to *Elk Grove School District, Steven Ladd, State Of California, Lincoln Unified School District, Janet Petsche, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District* with answer to complaint due within *20* days. (Holland, K) (Entered: 01/05/2005)
01/06/2005	<u>6</u>	CERTIFICATE of SERVICE by Pat Doe, DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, Jan Doe, Michael A Newdow, RoeChild-2 (Newdow, Michael) (Entered: 01/06/2005)
01/07/2005	<u>7</u>	NOTICE of RELATED CASE 2:04-cv-1920, 2:05-cv-00017 by William Mayo (Mayo, William) (Entered: 01/07/2005)
01/13/2005	<u>8</u>	Non-Related Case ORDER. Court finds that it is inappropriate to relate or reassign this matter with CIV. S-04-1920 FCD PAN and therefore declines to do so, signed by Judge Frank C. Damrell Jr. on 1/11/2005. (Waggoner, D) (Entered: 01/13/2005)
01/30/2005	<u>9</u>	MOTION for PROTECTIVE ORDER by Pat Doe, DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, Jan Doe, Michael A Newdow, RoeChild-2. (Newdow, Michael) (Entered: 01/30/2005)
02/03/2005	<u>10</u>	MOTION for PROTECTIVE ORDER by DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, Jan Doe, Pat Doe, Michael A Newdow, RoeChild-2. Motion Hearing set for 3/7/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Newdow, Michael) (Entered: 02/03/2005)
02/03/2005	<u>11</u>	CERTIFICATE of SERVICE by DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, Jan Doe, Pat Doe, Michael A Newdow, RoeChild-2 re <u>10</u> MOTION for PROTECTIVE ORDER (<i>Notice of Motion</i>) (Newdow, Michael) (Entered: 02/03/2005)
02/15/2005	<u>12</u>	NOTICE of APPEARANCE by Jill Bowers on behalf of State Of California (Bowers, Jill) (Entered: 02/15/2005)

02/18/2005	<u>13</u>	RESPONSE to MOTION re <u>9</u> MOTION for PROTECTIVE ORDER, <u>10</u> MOTION for PROTECTIVE ORDER <i>filed by the federal defendants.</i> (Blackwell, Craig) (Entered: 02/18/2005)
02/18/2005	<u>14</u>	CERTIFICATE of SERVICE by Congress of the United States of America, United States of America re <u>13</u> Response to Motion for <i>protective order</i> (Blackwell, Craig) (Entered: 02/18/2005)
02/18/2005	<u>15</u>	MEMORANDUM/RESPONSE in OPPOSITION to <i>Plaintiff's Motion for Protective Orders.</i> (Bowers, Jill) (Entered: 02/18/2005)
02/18/2005	<u>16</u>	MEMORANDUM/RESPONSE in OPPOSITION to <i>Plaintiffs' Motion for Protective Order.</i> (Cassidy, Terence) (Entered: 02/18/2005)
02/22/2005	<u>17</u>	REPLY to RESPONSE to MOTION re <u>9</u> MOTION for PROTECTIVE ORDER. (Newdow, Michael) (Entered: 02/22/2005)
02/28/2005	<u>18</u>	ORDER RESETTNG MOTION HEARING as to <u>910</u> MOTION for PROTECTIVE ORDER: Motion Hearing set for 3/28/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. Signed by Judge Lawrence K. Karlton on 2/28/05. (Hinkle, T) (Entered: 02/28/2005)
03/04/2005	<u>19</u>	STATUS REPORT by Congress of the United States of America, United States of America. (Blackwell, Craig) (Entered: 03/04/2005)
03/04/2005	<u>20</u>	STATUS REPORT by State Of California. (Bowers, Jill) (Entered: 03/04/2005)
03/04/2005	<u>21</u>	STATUS REPORT by Pat Doe, DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, Jan Doe, Michael A Newdow, RoeChild-2. (Newdow, Michael) (Entered: 03/04/2005)
03/04/2005	<u>22</u>	STATUS REPORT by Elk Grove School District, Steven Ladd, Lincoln Unified School District, Janet Petsche, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District. (Cassidy, Terence) (Entered: 03/04/2005)
03/05/2005	<u>23</u>	STATUS REPORT by Pat Doe, DoeChild, Jan Poe, PoeChild, Jan Roe, RoeChild-1, Jan Doe, Michael A Newdow, RoeChild-2. (Newdow, Michael) (Entered: 03/05/2005)
03/07/2005	<u>24</u>	STIPULATION to <i>Continue Status Conference; Proposed Order</i> by State Of California. (Bowers, Jill) (Entered: 03/07/2005)
03/08/2005	<u>25</u>	ORDER signed by Judge Lawrence K. Karlton on 3/7/05: The parties' Stipulation <u>24</u> is DENIED. The Status Conference is CONFIRMED for 3/14/05. (Hinkle, T) (Entered: 03/08/2005)
03/14/2005	<u>26</u>	MINUTES for proceedings held before Judge Lawrence K. Karlton : SCHEDULING CONFERENCE held on 3/14/2005. Plaintiffs Counsel Michael Newdow present. Defendants Counsel Terry Cassidy (EGUSD), Craig Blackwell (Fed. Dfts) and Leslie Lopez (State Dfts) present. Court

		order to issue. (Hinkle, T) (Entered: 03/15/2005)
03/16/2005	<u>27</u>	SCHEDULING ORDER: Plaintiff is granted thirty days to amend. All motions to dismiss shall be filed by 5/16/05; oppositions by 6/20/05; replies by 7/8/05. The motions shall be noticed for hearing on the court's 7/18/05 law and motion calendar at 10:00 a.m. in Courtroom No. 4. Signed by Judge Lawrence K. Karlton on 3/15/05. (Hinkle, T) (Entered: 03/16/2005)
03/25/2005	<u>28</u>	LETTER from counsel for the school district defendants stating that all parties, with the exception of the state defendants, have reached agreement on a stipulation to resolve plaintiffs' motion for protective order. (Hinkle, T) (Entered: 03/25/2005)
03/25/2005	<u>29</u>	LETTER from counsel for the state defendants joining in the parties' agreement to stipulate to a protective order and requesting that the hearing on plaintiffs' motion, currently set for March 28, 2005, be dropped from calendar. (Hinkle, T) (Entered: 03/25/2005)
03/25/2005	<u>30</u>	MINUTE ORDER: Pursuant to the parties' representations that they have agreed in principle to stipulate to a protective order, the hearing on plaintiffs' motion, currently set for March 28, 2005 is DROPPED from calendar. The parties will file their proposed stipulated protective order by 3/28/05. MOTION for PROTECTIVE ORDER <u>9</u> & <u>10</u> terminated. Ordered by Judge Lawrence K. Karlton on 3/25/05. (No document attached). (Hinkle, T) (Entered: 03/25/2005)
03/28/2005	<u>31</u>	STIPULATION and PROPOSED ORDER Stipulated Protective Order by Elk Grove School District, Steven Ladd, Lincoln Unified School District, Janet Petsche, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District. (Cassidy, Terence) (Entered: 03/28/2005)
03/29/2005	<u>32</u>	STIPULATED PROTECTIVE ORDER signed by Judge Lawrence K. Karlton on 3/29/05. (Hinkle, T) (Entered: 03/29/2005)
04/11/2005	<u>33</u>	AMENDED COMPLAINT against all defendants, filed by Michael A Newdow. (Newdow, Michael) (Entered: 04/11/2005)
04/12/2005	<u>34</u>	SUMMONS ISSUED as to *Congress of the United States of America, United States of America* with answer to complaint due within *60* days. Attorney *Michael Newdow* *P.O. Box 233345* *Sacramento, CA 95823*. (Krueger, M) (Entered: 04/12/2005)
04/12/2005	<u>35</u>	SUMMONS ISSUED as to *Peter LeFevre, Arnold Schwarzenegger, Richard J. Riordan, Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District* with answer to complaint due within *20* days. Attorney *Michael Newdow* *P.O. Box 233345* *Sacramento, CA 95823*. (Krueger, M) (Entered: 04/12/2005)

04/13/2005	<u>36</u>	Amended summons issued as to *Peter LeFevre, Congress of the United States of America, United States of America* with answer to complaint due within *60* days. Attorney *Michael Newdow* *PO Box 233345* *Sacramento, CA 95823*. (Plummer, M) (Entered: 04/13/2005)
04/13/2005	<u>37</u>	Amended summons issued as to *Arnold Schwarzenegger, Richard J. Riordan, Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District* with answer to complaint due within *20* days. Attorney *Michael Newdow* *PO Box 233345* *Sacramento, CA 95823*. (Plummer, M) (Entered: 04/13/2005)
04/22/2005	<u>38</u>	CERTIFICATE of SERVICE by Michael A Newdow <i>First Amended Complaint and Summons to Defendants Schwarzenegger and Riordan and to U.S. Attorney</i> (Newdow, Michael) (Entered: 04/22/2005)
05/09/2005	<u>39</u>	MOTION to INTERVENE and <i>Memorandum in Support of Motion to Intervene</i> by John Carey, et al.. Motion Hearing set for 5/23/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Attachments: # <u>1</u> Memorandum In Support of Motion to Intervene)(Gaubatz, Derek) Modified on 5/10/2005 (Marciel, M). (Entered: 05/09/2005)
05/09/2005	<u>40</u>	ANSWER to AMENDED COMPLAINT by John Carey, et al..(Gaubatz, Derek) (Entered: 05/09/2005)
05/11/2005	<u>41</u>	MINUTE ORDER: re <u>39</u> Motion to Intervene. The Motion is defectively noticed, and will not be set for hearing on the Court's May 23, 2005 Law & Motion Calendar. Plaintiff is advised to file and serve a new notice of motion in accordance with Local Rule 78-230(b). (Rivas, A) (Entered: 05/11/2005)
05/16/2005	<u>42</u>	First Amended MOTION to AMEND/CORRECT Motion to Intervene and hearing date <u>39</u> MOTION to INTERVENE and <i>Memorandum in Support of Motion to Intervene</i> by John Carey, et al.. Motion Hearing set for 7/18/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Gaubatz, Derek) (Entered: 05/16/2005)
05/16/2005	<u>43</u>	MOTION to DISMISS by Peter LeFevre, Congress of the United States of America, United States of America. Motion Hearing set for 7/18/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Blackwell, Craig) (Entered: 05/16/2005)
05/16/2005	<u>44</u>	MEMORANDUM/RESPONSE in SUPPORT re <u>43</u> MOTION to DISMISS <i>on behalf of the Congress, the United States, and Peter LeFevre</i> . (Blackwell, Craig) (Entered: 05/16/2005)
05/16/2005	<u>45</u>	MOTION to INTERVENE by United States of America. Motion Hearing set for 7/18/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Blackwell, Craig) (Entered: 05/16/2005)
05/16/2005	<u>46</u>	MEMORANDUM/RESPONSE in SUPPORT re <u>45</u> MOTION to

		INTERVENE <i>of the United States</i> . (Blackwell, Craig) (Entered: 05/16/2005)
05/16/2005	<u>47</u>	MOTION to DISMISS by Arnold Schwarzenegger, Richard J. Riordan. Motion Hearing set for 7/18/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Attachments: # <u>1</u> Exhibit Exhibits A - C# <u>2</u> Appendix Part I of II# <u>3</u> Appendix Part II of II) (Bowers, Jill) (Entered: 05/16/2005)
05/16/2005	<u>48</u>	MOTION to DISMISS by Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District. Motion Hearing set for 7/18/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Pott, Michael) (Entered: 05/16/2005)
05/16/2005	<u>49</u>	MEMORANDUM/RESPONSE in SUPPORT <i>of Motion to Dismiss</i> . (Pott, Michael) (Entered: 05/16/2005)
05/16/2005	<u>50</u>	DECLARATION of Terence J. Cassidy in SUPPORT OF <i>Motion to Dismiss</i> . (Attachments: # <u>1</u> Exhibit A)(Pott, Michael) (Entered: 05/16/2005)
05/16/2005	<u>51</u>	REQUEST for JUDICIAL NOTICE by Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District. (Attachments: # <u>1</u> Exhibit A Volume I# <u>2</u> Exhibit A Volume II# <u>3</u> Exhibit B)(Pott, Michael) (Entered: 05/16/2005)
05/16/2005	<u>52</u>	MOTION to DISMISS <i>First Amended Complaint</i> by John Carey, et al.. Motion Hearing set for 7/18/2005 at 10:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. (Attachments: # <u>1</u> Memorandum In Support of Motion to Dismiss)(Gaubatz, Derek) (Entered: 05/16/2005)
05/17/2005	<u>53</u>	PROPOSED ORDER re Eric C. Rassbach to appear pro hac vice for John Carey, et al.. (Duong, D) (Entered: 05/18/2005)
05/17/2005	<u>54</u>	PROPOSED ORDER re Jared N Leland to appear pro hac vice for John Carey et al. (Duong, D) (Entered: 05/18/2005)
05/17/2005	<u>55</u>	PROPOSED ORDER re Anthony R. Picarello Jr. to appear pro hac vice for John Carey, et al. (Duong, D) (Entered: 05/18/2005)
05/17/2005		RECEIPT number 6250 for \$180 for Pro Hac Vice Application from Eric C. Rassbach (Duong, D) (Entered: 05/18/2005)
05/17/2005		RECEIPT number 6251 for \$180 for Pro Hac Vice Application from Anthony R. Picarello. (Duong, D) (Entered: 05/18/2005)
05/18/2005		RECEIPT number 6252 for \$180 for Pro Hac Vice Application from Jared N. Leland. (Duong, D) (Entered: 05/18/2005)

05/19/2005	<u>56</u>	PROPOSED ORDER Propsed Order Granting School District Defendants' Motion to Dismiss re <u>48</u> MOTION to DISMISS, <u>49</u> Memorandum/Response in Support of Motion, <u>50</u> , <u>51</u> Request for Judicial Notice, by Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District. (Cassidy, Terence) (Entered: 05/19/2005)
06/03/2005	<u>57</u>	STATEMENT of NON-OPPOSITION to MOTION re <u>39</u> MOTION to INTERVENE <i>and Memorandum in Support of Motion to Intervene by Defendant-Intervenors John Carey</i> . (Bowers, Jill) (Entered: 06/03/2005)
06/07/2005	<u>58</u>	NOTICE of withdrawal of intervenors Dave Magnino, Lynette Magnino, and Brenden Magnino re <u>39</u> MOTION to INTERVENE. (Gaubatz, Derek) Modified on 6/8/2005 (Dotson, B). (Entered: 06/07/2005)
06/13/2005	<u>59</u>	ORDER Denying re <u>535455</u> Proposed Orders granting such applications filed by Jared N Leland, Anthony R Picarello Jr., and Eric C. Rassbach signed by Judge Lawrence K. Karlton on 6/10/05. (cc J Leland, A Picarello and E Rassbach) (Duong, D) (Entered: 06/13/2005)
06/15/2005	<u>60</u>	PRO HAC VICE APPLICATION by John Carey, et al. for attorney Anthony R. Picarello, Jr. to appear Pro Hac Vice for Intervenor Defendant John Carey, et al.. (Attachments: # <u>1</u> Signature Page for Application# <u>2</u> Proposed Order # <u>3</u> Declaration regarding fees# <u>4</u> Signature Page for Declaration)(Picarello, Anthony) (Entered: 06/15/2005)
06/15/2005	<u>61</u>	PRO HAC VICE APPLICATION by John Carey, et al. for attorney Eric C. Rassbach to appear Pro Hac Vice for Intervenor Defendant John Carey, et al.. (Attachments: # <u>1</u> Signature Page for Application# <u>2</u> Proposed Order # <u>3</u> Declaration regarding fees# <u>4</u> Signature Page for Declaration)(Rassbach, Eric) (Entered: 06/15/2005)
06/15/2005	<u>62</u>	PRO HAC VICE APPLICATION by John Carey, et al. for attorney Jared N. Leland to appear Pro Hac Vice for Intervenor Defendant John Carey, et al.. (Attachments: # <u>1</u> Signature Page for Application# <u>2</u> Proposed Order # <u>3</u> Declaration regarding fees# <u>4</u> Signature Page for Declaration) (Leland, Jared) (Entered: 06/15/2005)
06/20/2005	<u>63</u>	RESPONSE to MOTION re <u>43</u> MOTION to DISMISS. (Newdow, Michael) (Entered: 06/20/2005)
06/30/2005	<u>64</u>	RESPONSE to <u>45</u> MOTION to INTERVENE. (Newdow, Michael) Modified on 7/1/2005 (Dotson, B). (Entered: 06/30/2005)
07/08/2005	<u>65</u>	REPLY to RESPONSE to MOTION re <u>47</u> MOTION to DISMISS ; <i>Appendix</i> . (Attachments: # <u>1</u> Appendix Part 1 of 5# <u>2</u> Appendix Part 2 of 5# <u>3</u> Appendix Part 3 of 5# <u>4</u> Appendix Part 4 of 5# <u>5</u> Appendix Part 5 of 5)(Bowers, Jill) (Entered: 07/08/2005)
07/08/2005	<u>66</u>	REPLY to RESPONSE to MOTION re <u>43</u> MOTION to DISMISS.

		(Blackwell, Craig) (Entered: 07/08/2005)
07/08/2005	<u>67</u>	REPLY to RESPONSE to MOTION re <u>45</u> MOTION to INTERVENE. (Blackwell, Craig) (Entered: 07/08/2005)
07/08/2005	<u>68</u>	REPLY to RESPONSE to MOTION <i>to Intervene of Defendant-Intervenors John Carey, et al.</i> . (Gaubatz, Derek) (Entered: 07/08/2005)
07/08/2005	<u>69</u>	REPLY to RESPONSE to MOTION <i>to Dismiss</i> by Schoold District dfts. (Pott, Michael) Modified on 7/11/2005 (Duong, D). (Entered: 07/08/2005)
07/08/2005	<u>70</u>	REQUEST for JUDICIAL NOTICE by Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District <i>in Support of Reply</i> . (Pott, Michael) (Entered: 07/08/2005)
07/12/2005	<u>71</u>	REPLY to RESPONSE to MOTION re <u>52</u> MOTION to DISMISS <i>First Amended Complaint</i> . (Gaubatz, Derek) (Entered: 07/12/2005)
07/13/2005	<u>72</u>	PRO HAC VICE ORDER re <u>60</u> signed by Judge Lawrence K. Karlton on 7/12/05 allowed Attorney Anthony R. Picarello to appear for dft-intervenors John Carey, et al. (Duong, D) (Entered: 07/13/2005)
07/13/2005	<u>73</u>	PRO HAC VICE ORDER re <u>62</u> signed by Judge Lawrence K. Karlton on 7/12/05 allowed Attorney Jared N. Leland to appear for dft-intervenors John Carey, et al. (Duong, D) (Entered: 07/13/2005)
07/13/2005	<u>74</u>	PRO HAC VICE ORDER re <u>61</u> signed by Judge Lawrence K. Karlton on 7/12/05 allowed Attorney Eric C. Rassbach to appear for dft-intervenors John Carey, et al. (Duong, D) (Entered: 07/13/2005)
07/14/2005	<u>75</u>	DISREGARD [REQUEST for JUDICIAL NOTICE by Pat Doe, DoeChild, RoeChild-1, Jan Doe, Jan Roe, Michael A Newdow, RoeChild-2. (Newdow, Michael)] Modified on 7/14/2005 (Duong, D). (Entered: 07/14/2005)
07/14/2005	<u>76</u>	REQUEST for JUDICIAL NOTICE by Pat Doe, DoeChild, Jan Roe, RoeChild-1, Jan Doe, Michael A Newdow, RoeChild-2. (Newdow, Michael) (Entered: 07/14/2005)
07/15/2005	<u>77</u>	LETTER from counsel for proposed intervenors requesting leave to late-file their reply brief. (Hinkle, T) (Entered: 07/15/2005)
07/15/2005	<u>78</u>	MINUTE ORDER: Defendant-Intervenors' request <u>77</u> to late-file their reply brief is GRANTED. Their brief is deemed timely filed. Ordered by Judge Karlton on 7/15/05. (No document attached).(Hinkle, T) (Entered: 07/15/2005)
07/18/2005	<u>79</u>	MINUTES for proceedings held before Judge Lawrence K. Karlton: MOTION HEARING held on 7/18/2005 re <u>3945</u> MOTIONS TO INTERVENE and <u>42474852</u> MOTIONS to DISMISS by defendants and Intervenors. <u>39</u> MOTION to INTERVENE filed by John Carey, et al.,

		and <u>45</u> MOTION to INTERVENE filed by United States of America are GRANTED. After Oral Argument the motions stand SUBMITTED. The Court will issue an order. Motions terminated: <u>39</u> MOTION to INTERVENE filed by John Carey, et al. <u>45</u> MOTION to INTERVENE filed by United States of America. Plaintiffs Counsel Michael Newdow present. Defendants Counsel Jill Bowers, Terence Cassidy, Craig Blackwell, Eric Rassback, Jared Leland present. Court Reporter: C. Bodene. (Rivas, A) (Entered: 07/18/2005)
08/11/2005	<u>80</u>	NOTICE of New Case Law in support of dfts' Motion to Dismiss by Elk Grove School District, Steven Ladd, M Magdalena Carrillo Mejia, Dianna Mangerich, Frank S Porter, Sacramento City Unified School District, Elverta Joint Elementary School District, Rio Linda Unified School District (Attachments: # <u>1</u> Exhibit A)(Cassidy, Terence) Modified on 8/12/2005 (Duong, D). (Entered: 08/11/2005)
09/14/2005	<u>81</u>	MEMORANDUM, OPINION AND ORDER granting in part and denying in part <u>43</u> , <u>47</u> , <u>48</u> , <u>52</u> defendants' Motions to Dismiss: Defendants' motions to dismiss the claim as to the recitation of the Pledge in a classroom is DENIED; and as to all other causes of action, the motion is GRANTED. Signed by Judge Lawrence K. Karlton on 9/14/05. [TO BE PUBLISHED] (Hinkle, T) Modified on 9/14/2005 (Duong, D). (Entered: 09/14/2005)
09/14/2005	<u>82</u>	ORDER signed by Judge Lawrence K. Karlton on 9/14/05 amending <u>81</u> Order at page 30, line 21, in footnote 22, to add the word "years" following the phrase "one hundred." (Hinkle, T) (Entered: 09/14/2005)
09/19/2005	<u>83</u>	NOTICE and PETITION for Certification of Order for Interlocutory Appeal by dft-intervenors (Attachments: # <u>1</u> Memorandum in Support of Petition for Certification of Order for Interlocutory Appeal# <u>2</u> Proposed Order). Hearing set for 10/24/05 10:00am.(Gaubatz, Derek) Modified on 9/20/2005 (Duong, D). (Entered: 09/19/2005)
09/19/2005	<u>84</u>	NOTICE of APPEARANCE by Theodore Charles Hirt on behalf of United States of America (Hirt, Theodore) (Entered: 09/19/2005)
09/23/2005	<u>85</u>	MINUTE ORDER: A Status Conference is now set for 10/31/2005 at 11:00 AM in Courtroom 4 (LKK) before Senior Judge Lawrence K. Karlton. The parties are directed to FILE status reports not later than ten (10) days preceding the conference. (No document attached)(Rivas, A) (Entered: 09/23/2005)
09/23/2005	<u>86</u>	MINUTE ORDER: The Minute Order [<u>85</u>] dated 09/23/2005 is amended as follows: The status conference currently set for 10/31/2005 is hereby ADVANCED to 10/05/2005 at 10:00 AM. The parties need not file status reports. (Rivas, A) (Entered: 09/23/2005)
09/26/2005	<u>87</u>	<i>Defendants'</i> ANSWER to AMENDED COMPLAINT <i>and Demand for Jury Trial</i> by Elk Grove School District, Elverta Joint Elementary School District, Rio Linda Unified School District.(Cassidy, Terence) (Entered: 09/26/2005)

09/29/2005	<u>88</u>	STATUS REPORT by Elk Grove School District, Elverta Joint Elementary School District, Rio Linda Unified School District. (Cassidy, Terence) (Entered: 09/29/2005)
09/30/2005	<u>89</u>	APPLICATION/REQUEST for Telephonic Appearance by Counsel by United States of America. (Hirt, Theodore) (Entered: 09/30/2005)
10/05/2005	<u>90</u>	MINUTES for proceedings held before Judge Lawrence K. Karlton: STATUS CONFERENCE held on 10/5/2005. Plaintiffs are instructed to file Affidavits re the issue of standing within three (3) weeks (by 10/26/2005). Defendants, if they find appropriate, may file a Motion for Summary Judgment by 10/26/2005. Opposition briefs and Responsive Affidavits due by 11/16/2005. Matter will stand submitted at that time. The Court will set the matter for hearing if necessary. Plaintiffs Counsel Michael Newdow present. Defendants Counsel Terence Cassidy, Eric Rassbach, Theo Hirt (via telephone), Joseph Maloney, Michael Pott present. Court Reporter: C. Bodene. (Rivas, A) (Entered: 10/05/2005)
10/12/2005	<u>91</u>	ORDER setting briefing schedule signed by Judge Lawrence K. Karlton on 10/11/05: (1) plaintiffs are directed to file affidavits in support of injunction and the merits by 10/26/05; (2) by that date, defendants are directed to file an msj as to Elverta School Dist.; (3) defendants shall file responsive affidavits by 11/16/05; (4) by that date plaintiffs shall also file an opposition to dfts.' msj; (5) the hearing on the motion to certify for interlocutory appeal is vacated. (Hinkle, T) (Entered: 10/12/2005)
10/25/2005	<u>92</u>	STIPULATION of DISMISSAL AND PROPOSED ORDER by Elk Grove School District, Elverta Joint Elementary School District, Rio Linda Unified School District. (Pott, Michael) (Entered: 10/25/2005)
10/26/2005	<u>93</u>	MOTION for PERMANENT INJUNCTION by Michael A Newdow. (Newdow, Michael) (Entered: 10/26/2005)
10/26/2005	<u>94</u>	DECLARATION of Doe, Doechild & Roe in Support of re <u>93</u> MOTION for PERMANENT INJUNCTION. (Attachments: # <u>1</u> Affidavit Doe, DoeChild and Roe Affidavits# <u>2</u> Proposed Order Permanent Injunction plus Stay)(Newdow, Michael) (Entered: 10/26/2005)
10/28/2005	<u>95</u>	STIPULATION and ORDER <u>92</u> signed by Judge Lawrence K. Karlton on 10/26/05. Plaintiffs are DISMISSING Complaint in its entirety, and without prejudice, as to defendant Elverta Joint Elementary School District. All parties to bear their own fees and costs. (Marciel, M) (Entered: 10/28/2005)
11/16/2005	<u>96</u>	MEMORANDUM/RESPONSE in OPPOSITION re <u>93</u> MOTION for PERMANENT INJUNCTION. (Gaubatz, Derek) (Entered: 11/16/2005)
11/16/2005	<u>97</u>	OBJECTIONS by Intervenor Defendant John Carey, et al. to <u>94</u> <i>Declarations in Support of Motion for Permanent Injunction</i> . (Gaubatz, Derek) (Entered: 11/16/2005)
11/16/2005	<u>98</u>	MEMORANDUM/RESPONSE in OPPOSITION from School District Dfts to plts' motion for a permanent injunction/counter-motion to

		dismiss/summary adjudication re the Doe plts/dfts' Request for stay. (Cassidy, Terence) Modified on 11/17/2005 (Duong, D). (Entered: 11/16/2005)
11/16/2005	<u>99</u>	MEMORANDUM/RESPONSE in OPPOSITION <i>Objections to Evidence Proffered by Plaintiffs in Support of Their Motion for Permanent Injunction.</i> (Cassidy, Terence) (Entered: 11/16/2005)
11/16/2005	<u>100</u>	NOTICE by Elk Grove School District, Rio Linda Unified School District <i>Notice of Motion and Motion to Dismiss/Motion for Summary Adjudication as to the Doe Plaintiffs and Elk Grove Unified School District</i> (Cassidy, Terence) (Entered: 11/16/2005)
11/16/2005	<u>101</u>	DECLARATION of Dr. Steven Ladd in in Support of <i>School District Defendants' Opposition to Plaintiffs' Motion for a Permanent Injunction/Defendants' Request for Stay.</i> (Cassidy, Terence) (Entered: 11/16/2005)
11/16/2005	<u>102</u>	PROPOSED ORDER by Elk Grove School District, Rio Linda Unified School District. (Cassidy, Terence) (Entered: 11/16/2005)
11/16/2005	<u>103</u>	PROPOSED ORDER by Elverta Joint Elementary School District, Rio Linda Unified School District. (Cassidy, Terence) (Entered: 11/16/2005)
11/16/2005	<u>104</u>	MEMORANDUM/RESPONSE in OPPOSITION <i>to Motion for Permanent Injunction.</i> (Hirt, Theodore) (Entered: 11/16/2005)
11/16/2005	<u>105</u>	SUPPLEMENT by Elk Grove School District, Rio Linda Unified School District re <u>98</u> Memorandum/Response in Opposition to Motion, <i>Table of Contents and Table of Authorities.</i> (Cassidy, Terence) (Entered: 11/16/2005)
11/18/2005	<u>106</u>	ORDER signed by Judge Lawrence K. Karlton on 11/18/05 ORDERING Doe pltf DISMISSED; EGUSD is DISMISSED as a dft in this case; dft Rio Linda School District is PROHIBITED from applying its Board Policy AR6115 to the extent the policy requires the recitation of the Pledge of Allegiance so as to fulfill the patriotic exercise requirement of CA Education Code Section 52720; the permanent injunction issued by this Court as to Rio Linda School District is STAYED pending resolution of any and all appeals regarding this matter brought before the US Court of Appeals for the Ninth Circuit and the US Supreme Court. (Carlos, K) (Entered: 11/18/2005)(Carlos, K) (Entered: 11/18/2005)
11/21/2005	<u>107</u>	NOTICE of APPEAL by John Carey, et al. as to <u>81</u> Order on Motion to Dismiss,,,,,, <u>106</u> Order,,. (Attachments: # <u>1</u> Statement Civil Appeals Docketing Statement# <u>2</u> Statement Representation Statement)(Gaubatz, Derek) (Entered: 11/21/2005)
11/21/2005	<u>108</u>	Attachment - Orders Appealed by John Carey, et al. re <u>107</u> Notice of Appeal. (Gaubatz, Derek) Modified on 11/30/2005 (Mena-Sanchez, L). (Entered: 11/21/2005)
11/21/2005	<u>110</u>	USCA APPEAL FEES received of *\$ 255* receipt number 202 14586 re <u>107</u> Notice of Appeal filed by John Carey, et al., (Mena-Sanchez, L)

		(Entered: 11/21/2005)
11/23/2005	<u>111</u>	APPEAL PROCESSED to Ninth Circuit re <u>107</u> Notice of Appeal filed by John Carey, et al.,. Filed dates for Notice of Appeal *11/21/2005*, Complaint *1/3/2005* and Appealed Order *9/14/2005*. Court Reporter: *C. Bodene*. *Fee Status: Paid on 11/21/2005 in the amount of \$255.00* ** (Attachments: # <u>1</u> Appeal Notice) (Duong, D) (Entered: 11/23/2005)
12/01/2005	<u>112</u>	Transcript Designation and Ordering Form (Gaubatz, Derek) Modified on 12/2/2005 (Duong, D). (Entered: 12/01/2005)
12/02/2005	<u>113</u>	CERTIFICATE of RECORD transmitted to Ninth Circuit re <u>107</u> Notice of Appeal filed by John Carey, et al., for USCA Case Number ** (Duong, D) (Entered: 12/02/2005)
12/07/2005	114	USCA CASE NUMBER 05-17257 for <u>107</u> Notice of Appeal filed by John Carey et al. (Duong, D) (Entered: 12/08/2005)
12/09/2005	<u>115</u>	NOTICE of APPEAL by Rio Linda Unified School District (Attachments: # <u>1</u> Representation Statement# <u>2</u> Civil Appeals Docketing Stmt)(Cassidy, Terence) (Entered: 12/09/2005)
12/09/2005	<u>116</u>	APPEAL PROCESSED to Ninth Circuit re <u>115</u> Notice of Appeal filed by Rio Linda Unified School District,. Filed dates for Notice of Appeal *12/9/2005*, Complaint *1/3/2005* and Appealed Order / Judgment *11/18/2005*. Court Reporter: *C. Bodene*. *Fee Status: Not Paid - Billed* *Rio Linda Union School District* (Attachments: # <u>1</u> Appeal Notice # <u>2</u> Bill) (Duong, D) FEE PAID on 12/12/05 Modified on 12/13/2005 (Girgis, C). (Entered: 12/09/2005)
12/12/2005		RECEIPT number 201 11288 for \$255.00 for Appeal Fee from Dft Rio Linda Union School District. (Kastilahn, A) (Entered: 12/12/2005)
12/13/2005	<u>117</u>	NOTICE sent to USCA re: Appeal <u>115</u> paid. (Kastilahn, A) (Entered: 12/13/2005)
12/16/2005	118	USCA CASE NUMBER 05-17344 for <u>115</u> Notice of Appeal filed by Rio Linda Unified School District. (TEXT ONLY ENTRY) (Matson, R) (Entered: 12/19/2005)
01/13/2006	<u>119</u>	NOTICE of APPEAL by USA (Attachments: # <u>1</u> Exhibits A-B# <u>2</u> Representation Statement # <u>3</u> Appeal Docketing Statement # <u>4</u> Attachment to Docketing Statement)(Hirt, Theodore) Modified on 1/17/2006 (Duong, D). (Entered: 01/13/2006)
01/17/2006	<u>120</u>	APPEAL PROCESSED to Ninth Circuit Filed dates for Notice of Appeal *1/13/2006*, Complaint *1/3/2005* and Appealed Order / Judgment *11/8/2005*. Court Reporter: *C. Bodene*. *Fee Status: Govt/USA Appeal* ** (Attachments: # <u>1</u> Appeal Notice) (Duong, D) (Entered: 01/17/2006)
01/23/2006	121	USCA CASE NUMBER 06-15093 for <u>119</u> Notice of Appeal filed by USA. (Duong, D) (Entered: 01/24/2006)

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