UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 98-6585-CIV-UNGARO-BENAGES

THE REV. DR. MICHAEL A. NEWDOW,

Plaintiff,

vs.

THE UNITED STATES, et al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

THIS CAUSE came before the Court upon the Motion to Dismiss of Defendants Clinton, the Congress of the United States, Graham, Mack, and Shaw, Jr , filed October 30, 1998.

THE COURT has considered the above-referenced Motion and the pertinent portions of the record and is otherwise fully advised in the premises. On September 22, 1998, the Plaintiff filed a Second Amended Complaint for declaratory and injunctive relief alleging that the phrase "one Nation Under God" as included in the Pledge of Allegiance violates the Establishment Clause and the Free Exercise Clause of the First Amendment and that Broward County School system Rule #6003, incorporating the Pledge of Allegiance into morning exercises, violates the First Amendment.[1] On October 30, 1998, the Defendants filed a Motion to Dismiss for lack of standing and failure to state a cause of action. The record reflects that the Plaintiff has not filed a response.

[1]The First Amendment provides, *inter alia*, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I.

The Court finds that the Plaintiff lacks standing and that the Second Amended Complaint fails to state a cause of action.

LEGAL STANDARD

On a motion to dismiss the Court must view the complaint in the light most favorable to the plaintiff, *Jenkins v. McKeithen*, 395 U.S. 411, 421-22, 89 S.Ct. 1843, 1848-49, 23 L.Ed.2d 404 (1969), and may grant the motion only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which could entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957); *Bradberry v. Pinnellas County*, 789 F.2d 1513, 1515 (11th Cir. 1986). Moreover, the Court must, "at this stage of the litigation, . . . accept [the plaintiff's] allegations as true." *Hishon v. King & Spalding*, 467 U.S. 69, 73 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984); *Stevens v. Dept. of Health and Human Services*, 901 F.2d 1571, 1573 (11th Cir. 1990). Thus, the inquiry focuses on whether the challenged pleadings "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley*, 355 U.S. at 47.

LEGAL ANALYSIS

As with the Amended Complaint, the Plaintiff in his Second Amended Complaint challenges 36 U.S.C. § 172 which sets forth the Pledge of Allegiance including the phrase "one Nation Under God". The Plaintiff also alleges that Broward County School system Rule #6003 violates the First Amendment because it "results in the daily indoctrination of the School Board's students with religious dogma."[2] The Defendants argue that the Plaintiff does not have standing to bring this suit

---

[2]Rule #6003 "Opening Exercises- Display of Flags" provides, in pertinent part:
"The morning opening exercise shall include the Pledge of Allegiance to the Flag of the United States of America under adult supervision within the room."

and that even if he did, the Plaintiff has failed to state a claim upon which relief can be granted. The Court agrees.

It is well established that in order to have standing to bring suit, a plaintiff must demonstrate some actual or threatened injury personally suffered that can be traced to the challenged action and is likely to be redressed by a favorable judicial decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555; *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982); *Warth v. Seldin*, 422 U.S. 490 (1975); *Alabama v. U.S. EPA*, 871 F.2d 1548 (11th Cir. 1989). The Plaintiff has failed to show how he or his child faces any real or threatened injury from the inclusion of "one Nation Under God" in the Pledge of Allegiance. As the Defendants point out, the Plaintiff has not alleged that he has been forced to recite the Pledge. Instead, he alleges that he wishes to run for public office which would require him to chose between accepting "these governmental affronts to his religious code or to protest, thereby making his religious beliefs relevant to his standing in the political community." He also alleges that he wishes to teach in the Broward County School system. Neither of these allegations, however, implicates any actual or threatened "injury in fact." *See, e.g., United States v. Richardson*, 418 U.S. 166 (1974); *Lujan*, 504 U.S. at 560 (plaintiff must show that he suffered an "injury in fact" and that there is a causal connection between the injury and the defendant's action). The Plaintiff also states that he is a father who must educate his child. But the Complaint does not allege that the Plaintiff's child has been forced to recite the Pledge or even to be present during the recitation of the Pledge. In fact, the Complaint is devoid of any allegation that the Plaintiff's child is even enrolled in the Broward

County School system.[3] *See Sherman v. Community of Consolidated School District 21 of Wheeling Township*, 980 F.2d 437 (7th Cir. 1992) (father of child *obliged to be present* during the Pledge of Allegiance has standing to challenge school statute) (emphasis added). In the absence of any allegation of an actual or threatened injury to the Plaintiff or his child, the Plaintiff lacks standing to bring this suit.

Even assuming the Plaintiff has standing to bring this action, the Second Amended Complaint fails to state a cause of action. The Supreme Court, although not directly addressing the issue, has suggested that the inclusion of "one Nation Under God" in the Pledge of Allegiance does not endorse religion and is consistent with the First Amendment. *See, e.g., County of Allegheny v. American Civil Liberties Union*, 109 S.Ct. 3086 (1989) ("Our previous opinions have considered in dicta the motto and the pledge, characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief."); *Lynch v. Donnelly*, 104 S.Ct. 1355 (1984) ("I would suggest that . . . references to God in the Pledge of Allegiance can best be understood, in Dean Rostow's apt phrase, as a form of 'ceremonial deism,' protected from the Establishment Clause scrutiny chiefly because they have lost through rote repetition any significant religious content."); *Murray v. City of Austin*,947 F.2d 147 (5th Cir. 1991) (noting that it is well established that "One Nation Under God" included in the Pledge of Allegiance is permitted as a matter of law).

---

[3]The Plaintiff also states that he is a taxpayer and that his taxes "are used in the education of our schoolchildren." However, in the absence of some allegation that the Plaintiff's tax funds are being used to promote the Pledge of Allegiance, generalized taxpayer status is an insufficient basis for standing. *See Valley Forge*, 454 U.S. at 472; *Schlesinger v. Reservists to Stop the War*, 418 U.S. 208 (1974).

Moreover, the undersigned is persuaded by the Seventh Circuit's holding in *Sherman v. Community Consolidated School District 21 of Wheeling Township*, 980 F.2d 437 (7th Cir. 1992). The Seventh Circuit, pointing to historical, ceremonial references to God and citing to numerous Supreme Court cases implying the permissibility of the Pledge, reasoned that reference in the Pledge to "one Nation Under God" is a form of 'ceremonial deism' and that "so long as the school does not compel pupils to espouse the content of the Pledge as their own belief, it may carry on with patriotic exercises." *Id.* at 445. The Plaintiff has not alleged that his child was compelled to recite the Pledge of Allegiance, nor is there any allegation that his child is enrolled in the Broward County School system. Based on the foregoing, the Court finds that the Plaintiff's Complaint fails to state a cause of action. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Defendants' Motion to Dismiss is GRANTED and the Plaintiff's Second Amended Complaint is DISMISSED. It is further

ORDERED AND ADJUDGED that the case is CLOSED for administrative purposes, and all pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 1 day of December, 1998.

Ursula Ungaro-Benages

URSULA UNGARO-BENAGES
UNITED STATES DISTRICT JUDGE

copies provided:
Michael Newdow, *pro se*
Counsel of Record