IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

THE FREEDOM FROM RELIGION FOUNDATION, *et al*.	)	
Plaintiffs,	)	
v.	)	Civil Action No. 07-356 (SM)
HANOVER SCHOOL DISTRICT and DRESDEN SCHOOL DISTRICT,	)	
Defendants,	)	
THE UNITED STATES OF AMERICA,	)	
Defendant-Intervenor,	)	
THE STATE OF NEW HAMPSHIRE,	)	
Defendant-Intervenor,	)	
and	)	
MURIEL CYRUS, *et al.*,	)	
Defendant-Intervenors.	)	

REPLY MEMORANDUM IN SUPPORT OF RENEWED MOTION TO DISMISS ALL CLAIMS OF DEFENDANT-INTERVENORS MURIEL CYRUS, *et al.*

Plaintiffs' latest filing makes clearer than ever that their lawsuit hinges entirely on one proposition: that the phrase "one Nation under God" can be interpreted ***only*** as a "purely religious claim." Reponse Br., Dkt. No. 57 at 13. All of Plaintiffs' claims, including their new parental rights claims, depend on the Court's agreement with that proposition. *See* Response Brief at 7 (parental claims "become actionable" when Establishment Clause is violated). But if Schoolchildren Intervenors are correct that "one Nation under God" should be read as a

statement of political philosophy akin to the even more Deity-rich words of the Declaration of Independence, then Plaintiffs must lose. *See* Schoolchildren Br., Dkt. 22 at 9-18, 22-23. Plaintiffs must also lose if the United States and New Hampshire are correct that those words can be interpreted as an acknowledgement of role of religious belief in our nation's history.

Indeed, if either of those interpretations is merely ***possible***, the Court must dismiss Plaintiff's claims. That is because the Court may not choose an unconstitutional interpretation of an ambiguous statute where another possible interpretation is available: "if an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is 'fairly possible,' [the Court is] obligated to construe the statute to avoid such problems." *INS* v. *St. Cyr*, 533 U.S. 289, 299-300 (2001) (quoting *Crowell* v. *Benson*, 285 U.S. 22, 62 (1932) and citing *Ashwander* v. *TVA*, 297 U.S. 288, 341 (1936) (Brandeis, J., concurring); *United States ex rel. Attorney General* v. *Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)). If Plaintiffs' interpretation were credited, the official text of the Pledge set forth in 4 U.S.C. § 4 will be unconstitutional. The Court is obligated to avoid this outcome if there are other possible interpretations of "one Nation under God."

The response brief confirms the narrowness of the question before the Court. Plaintiffs admit their claims cannot succeed if they are "considered religious only because of the unique views of the given plaintiffs." Response Brief at 13. For if the Pledge is not "purely religious" then Plaintiffs are merely one more group complaining that the public schools aren't run in accordance with their wishes. Unless this Court agrees that no reasonable person can attribute a secular meaning to "one Nation under God," then Plaintiffs' lawsuit must fail.

The Court should grant the motions to dismiss.

Dated: January 12, 2009

Respectfully submitted,

/s/Eric Rassbach

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically and served electronically by operation of the Court's electronic filing system to all counsel of record on January 12, 2009.

/s/Eric Rassbach