

CASE NO. 09-2473

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

FREEDOM FROM RELIGION FOUNDATION, et al.

Plaintiffs-Appellants,

v.

HANOVER SCHOOL DISTRICT, et al.

Defendants-Appellees,

**On Appeal from the United States District Court
for the District of New Hampshire**

(District Court #1:07-cv-356)

APPENDIX TO THE BRIEFS

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

Civil Action No. 07-cv-356-SM

THE FREEDOM FROM RELIGION FOUNDATION;
JAN DOE AND PAT DOE, PARENTS; DOECHILD-1, DOECHILD-2 and
DOECHILD-3, MINOR CHILDREN;

Plaintiffs,

v.

THE HANOVER SCHOOL DISTRICT (“HSD”);
THE DRESDEN SCHOOL DISTRICT (“DSD”);

Defendants.

and

MURIEL CYRUS, *et al.*;
THE UNITED STATES OF AMERICA;
THE STATE OF NEW HAMPSHIRE;

Defendants-Intervenors.

PLAINTIFFS’ FIRST AMENDED COMPLAINT

Plaintiffs allege as follows:

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1 **JURISDICTION AND VENUE**

2 1. This is a civil action claiming (among others) violations of the First, Fifth and
3 Fourteenth Amendments of the Constitution of the United States of America.

4 As such, this Court has jurisdiction under 28 U.S.C. § 1331.

5 2. This action alleges that Defendants Hanover School District (“HSD”) and
6 Dresden School District (“DSD”) have deprived and/or will deprive Plaintiffs of
7 rights secured by the First, Fifth and Fourteenth Amendments to the
8 Constitution of the United States of America. As such, this Court has
9 jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a)(3).

10 3. A substantial part of the events or omissions giving rise to this claim occurred,
11 occur or will occur in the District of New Hampshire. Venue is therefore proper
12 under 28 U.S.C. § 1391(b)(2).

13 4. Defendants HSD and DSD reside in New Hampshire. Venue is therefore proper
14 under 28 U.S.C. § 1391(b)(1) and (3).

15
16 **PARTIES**

17 5. Plaintiff Freedom From Religion Foundation (FFRF) is a national association
18 of freethinkers (atheists and agnostics), established as a 501(c)(3) educational
19 group in 1978, which works to protect its members by keeping church and state
20 separate. The Foundation, based in Madison, Wisconsin, has members in every

1 state, including New Hampshire. Current total membership is approximately
2 12,600, of which approximately 60 are from New Hampshire. Members of
3 FFRF live in, pay taxes in, and have children (or are children) who attend
4 public schools in this judicial district.

5 6. Plaintiffs Jan Doe and Pat Doe are members of FFRF. They are residents and
6 citizens of the United States, of the State of New Hampshire and of Hanover,
7 New Hampshire. They own property situated in Hanover, New Hampshire.
8 Accordingly, they pay taxes that are used to fund HSD and DSD and their
9 schools. They are the parents of DoeChild-1, DoeChild-2 and DoeChild-3, with
10 full legal custody of those children.

11 7. Plaintiffs DoeChild-1, DoeChild-2 and DoeChild-3 are residents and citizens of
12 the United States, of the State of New Hampshire, and of Hanover, New
13 Hampshire. They are all siblings and they are all children of Jan and Pat Doe.

14 8. All three of the DoeChildren are currently enrolled in elementary school within
15 HSD.

16 9. As a sixth grader, DoeChild-1 currently attends a middle school which is
17 jointly administered by HSD and DSD. DoeChild-1 will begin seventh grade –
18 solely under the control of DSD – beginning at the end of the coming summer
19 (2009).

1 10. DoeChild-2 and DoeChild-3 will eventually attend one or more of DSD's
2 schools as well.

3 11. Defendant the Hanover School District ("HSD") is the governing body
4 responsible for operating, controlling and supervising free public elementary
5 schools in Hanover, New Hampshire.

6 12. Defendants Dresden School District ("DSD") is the governing body responsible
7 for operating, controlling and supervising free public middle and high schools
8 in Hanover, New Hampshire.

9

10

11

RELEVANT LAW

12

A. CONSTITUTIONAL PROVISIONS

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

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

21

22 14. The First Amendment to the Constitution of the United States of America
23 states, in pertinent part, that "Congress shall make no law respecting an

24 establishment of religion or prohibiting the free exercise thereof. ..." By way of

1 the aforementioned Fourteenth Amendment, the States are subject to these
2 Religion Clauses. Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940).

3 15. Article 6 (Morality and Piety) of the New Hampshire Constitution provides, in
4 pertinent part:

5 [N]o person shall ever be compelled to pay towards the
6 support of the schools of any sect or denomination. And
7 every person, denomination or sect shall be equally under
8 the protection of the law; and no subordination of any one
9 sect, denomination or persuasion to another shall ever be
10 established.

11
12
13 **B. STATUTES**

14 16. Pursuant to 4 U.S.C. § 4, the Pledge of Allegiance to the Flag of the United
15 States of America reads:

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

20
21 17. RSA § 194:15-c (New Hampshire School Patriot Act) states:

22 I. As a continuation of the policy of teaching our
23 country's history to the elementary and secondary
24 pupils of this state, this section shall be known as the
25 New Hampshire School Patriot Act.

26 II. A school district shall authorize a period of time
27 during the school day for the recitation of the pledge
28 of allegiance. Pupil participation in the recitation of
29 the pledge of allegiance shall be voluntary.

30 III. Pupils not participating in the recitation of the pledge
31 of allegiance may silently stand or remain seated but
32 shall be required to respect the rights of those pupils

1 electing to participate. If this paragraph shall be
2 declared to be unconstitutional or otherwise invalid,
3 the remaining paragraphs in this section shall not be
4 affected, and shall continue in full force and effect.
5

6 18. RSA § 169-D:23 (Religious Preference) states (in pertinent part):

7 No child under the supervision of any state institution
8 shall be denied the free exercise of his religion or that of
9 his parents.
10

11
12 **RELEVANT HISTORY**

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

16 I pledge allegiance to my Flag and to the Republic for which it stands: one
17 Nation indivisible, with Liberty and Justice for all.
18

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

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

24 22. As increasing numbers of immigrants flowed into the country, “my Flag”
25 became somewhat ambiguous. Thus, in 1923, those two words were replaced

1 by “the flag of the United States.” The phrase “of America” was appended a
2 year later.

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

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

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

11
12 25. It is to be noted that there is and was nothing religious in the 1942 version of
13 the Pledge.

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

¹ “Section 7 of [the Act of June 22, 1942] contains the pledge of allegiance to the flag; and it is the purpose of this proposed legislation to amend that pledge by adding the words ‘under God’ so as to make it read, in appropriate part, ‘one Nation under God, indivisible.’” H.R. 1693, 83rd Cong., 2d Sess., reprinted in 1954 U.S. Code Cong. & Ad. News, vol. 2: 2339, 2340.

1 I pledge allegiance to the flag of the United States of America, and to the
2 Republic for which it stands, one Nation under God, indivisible, with liberty
3 and justice for all.
4

5 27. The text of the phrase that the Act of 1954 intruded into the Pledge of

6 Allegiance is “under God.” This is patently, facially, unquestionably and
7 clearly religious text.

8 28. The legislative history demonstrates that the Act of 1954 was passed for the
9 purposes of endorsing (Christian) Monotheism and disapproving of Atheism.

10 As the Report accompanying the legislation clearly enunciated:

11 The inclusion of God in the Pledge, therefore, would
12 further acknowledge the dependence of our people and
13 our Government upon the moral directions of the
14 Creator.²
15

16 29. Not only was Congress intent upon espousing the value of Monotheism, but it

17 simultaneously had in mind the denigration of Atheism, as it wrote that “[t]he
18 inclusion of God in the Pledge” also “would serve to deny the atheistic and
19 materialistic concepts of communism.”³

20 30. The history also reveals that our representatives specifically intended for the

21 new religious verbiage to be recited by public school children in the public

22 schools. As President Eisenhower noted as he signed the Act of 1954 into law:

² H.R. 1693, 83rd Cong., 2d Sess., at 2. It might be emphasized that “**the Creator**,” not “a creator,” was written. This demonstrates that it was the (Judeo-) Christian Creator to which Congress was referring.

³ Id.

1 From this day forward the millions of our schoolchildren
2 will daily proclaim in every city and town, every village
3 and rural schoolhouse the dedication of our Nation and
4 our people to the Almighty.

5
6 31. That the purpose of the Act of 1954 was purely religious can also be noted by
7 its association with religion in the minds of the legislators. Rep. Oliver Bolton
8 of Ohio (who sponsored one of the eighteen versions of the Bill) called the
9 White House regarding a picture taking during that year's Flag Day ceremony.
10 He recommended "that a Protestant, a Catholic and a Jew be in the group."⁴

11 32. Similarly, Rep. Peter Rodino of New Jersey asked his colleagues in the House
12 to "join together, Protestant, Jew, and Catholic, in taking this action."⁵

13 33. At the Flag Day ceremony itself (carried live on CBS's morning news show⁶),
14 *Onward Christian Soldiers* was played.⁷ The lyrics to that song are:

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

19
20

⁴ Dwight D. Eisenhower President Library, Reports to the President on Pending Legislation prepared by the White House Records Office (Bill File) June 14, 1954 – June 18, 1954, Box No. 22.

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

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

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

1 34. As the foregoing demonstrates, Congress's actions with regard to the Act of
2 1954 unquestionably violated the Supreme Court's Establishment Clause
3 tests.⁸

4 35. Additionally, Atheistic (and other non-Montheistic) Americans have had their
5 religious free exercise rights abridged, since they cannot attend government
6 meetings, attend public schools or participate in other activities without being
7 given the message that their religious beliefs are wrong.

8
9
10 **CLAIM FOR RELIEF**

11 36. Plaintiff FFRF represents its members, including the Doe Plaintiffs, as well as
12 others who may suffer the same or similar injuries that the Doe Plaintiffs
13 endure (as listed in the following paragraphs).

14 37. Plaintiff Jan Doe is an Atheist, who denies the existence of a God.

15 38. Plaintiff Pat Does is agnostic, who doubts the existence of a God.

16 39. Plaintiffs Jan and Pat Doe are the parents of Plaintiffs DoeChild-1, DoeChild-2
17 and Doe-Child-3.

⁸ See, e.g., Lemon v. Kurtzman, 403 U.S. 602 (1971); Lynch v. Donnelly, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring).

1 40. Plaintiff DoeChild-1 attends a public middle school jointly administered by
2 HSD and DSD. Plaintiffs, DoeChild-2 and DoeChild-3 are students at a public
3 elementary school administered solely by Defendant HSD.

4 41. Plaintiffs DoeChild-1, DoeChild-2 and DoeChild-3 are all Atheists or
5 agnostics, who specifically deny/doubt the existence of God.

6 42. Pursuant to RSA § 194:15-c (New Hampshire School Patriot Act), Defendants
7 HSD and DSD have their teachers and/or other government agents lead their
8 public school students in reciting the Pledge of Allegiance during school hours.

9 43. DoeChild-1, DoeChild-2 and DoeChild-3 have all been led by their public
10 school teachers in recitations of the Pledge of Allegiance. Thus, the
11 DoeChildren have all repeatedly been forced by Defendant HSD's agents to
12 confront the government's purely religious claim that this is "one Nation under
13 God."

14 44. This harm is especially onerous because it is part of a request to participate in a
15 patriotic ritual. Thus, should any Plaintiff choose not to participate, his or her
16 patriotism is immediately called into question in front of neighbors and peers.

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

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

4 47. After completing elementary school in HSD, Plaintiffs DoeChild-2 and Doe-
5 Child-3 will attend public schools run by DSD. (Plaintiff DoeChild-1 currently
6 attends a middle school run jointly by HSD and DSD.)

7 48. Again, the Pledge of Allegiance, as codified in 4 U.S.C. § 4 (and as recited by
8 the students in HSD and DSD), makes the purely religious claim that the
9 United States is "one Nation under God." Plaintiffs, generally, deny that God
10 exists, and maintain that their constitutional and statutory rights are abridged
11 when the school district Defendants lead them in making this purely religious,
12 Monotheistic claim.

13
14 **A. FEDERAL COUNTS**

15 **COUNT I**

16 49. The introductory allegations set forth in paragraphs 1-48 are realleged herein.

17 50. The government-led recitations of the Pledge of Allegiance are not religiously
18 neutral, and have religious effects, endorsing the purely religious notion that
19 there exists a God.

1 51. The recitations also cause Plaintiffs to all suffer the specific harm that the
2 Establishment Clause seeks to prevent – i.e., degradation from the equal rank
3 of citizens on account of their religious beliefs.⁹ In other words, as a result of
4 the Defendants’ endorsement of Monotheism, Plaintiffs have suffered the
5 stigmatic injury of being turned into “outsiders, not full members of the
6 political community.” Lynch v. Donnelly, 465 U.S. 668, 688 (1984)
7 (O’Connor, J., concurring).

8 52. Additionally, in the setting of the public schools, the impressionable young
9 DoeChildren are coerced into joining in the recitation that the United States is
10 “one Nation under God.”

11 53. In view of the foregoing, Plaintiffs’ rights under the Establishment Clause are
12 violated.

13
14 **COUNT II**

15 54. The introductory allegations set forth in paragraphs 1-48 are realleged herein.

16 55. Plaintiffs all acknowledge and stipulate to the fact that none of them are or
17 have been actually compelled to say the words, “under God,” in the Pledge of

⁹ “It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority.” Madison, James. *The writings of James Madison : comprising his public papers and his private correspondence, including numerous letters and documents now for the first time printed.* Gaillard Hunt, ed. 9 vols. (New York: G.P.Putnam’s Sons; 1901), Vol. II, p. 188.

1 Allegiance. However, due to the setting and peer pressures, the three

2 DoeChildren have all been coerced.¹⁰

3 56. Coercion of small children to recite a purely religious ideology – especially
4 when it is completely contrary to the religious ideology their parents wish to
5 have instilled in them – violates the children’s rights to the Free Exercise of
6 their religion.

7
8 **COUNT III**

9 57. The introductory allegations set forth in paragraphs 1-48 are realleged herein.

10 58. Part of a parent’s free exercise right is the right to instill his or her religious
11 values in his or her children without governmental interference or influence.

12 59. Defendants are interfering with and/or influencing Jan Doe’s and Pat Doe’s
13 abilities to instill their religious values in their children.

14 60. Accordingly, the Doe parents’ Free Exercise rights are being infringed.

15
16 **COUNT IV**

17 61. The introductory allegations set forth in paragraphs 1-48 are realleged herein.

18 62. Defendants have a duty to show equal respect to Plaintiff’s religious beliefs.

¹⁰ “I think there is a clear difference between compulsion (Barnette) and coercion (Lee).” Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2328 n.4 (2004) (Rehnquist, C.J., concurring).

1 63. In leading public school students (and others) in claiming that there exists a
2 God, Defendants have breached, and continue to breach, that duty.

3 64. Additionally, by endorsing the religious notion that God exists, the now-
4 religious Pledge creates a societal environment where prejudice against
5 Atheists – and, thus, against Plaintiffs here – is perpetuated.

6 65. Assuming, *arguendo*, that there is a compelling interest in leading children
7 and other citizens in pledging allegiance to the flag, there is no such
8 compelling interest in including purely Monotheistic religious dogma in any
9 given pledge.

10 66. Accordingly, Plaintiffs’ rights under the Due Process and Equal Protection
11 provisions of the Fourteenth Amendment have been violated.

12
13 **COUNT V**

14 67. The introductory allegations set forth in paragraphs 1-48 are realleged herein.

15 68. There is a federal constitutional right of parenthood, which includes the right to
16 instill the religious beliefs chosen by the parents, free of governmental
17 interference. Wisconsin v. Yoder, 406 U.S. 205 (1972).¹¹

18
19

¹¹ Of note is that the Supreme Court in *Yoder* highlighted that the law involved (i.e., remaining in school until age 16) was “neutral on its face.” 406 U.S. at 220. Obviously, the Pledge statute is anything but neutral.

1 69. There is a corresponding right in children to be instructed in the religion of
2 their parents, also free of governmental interference. Id., at 215, 233. See also
3 dissenting opinion of Justice Douglas, generally.

4 70. Defendants interfere with those rights when they claim, as they do by having
5 their teachers lead their classes in recitations of the Pledge, that there exists a
6 God.

7 71. In fact, that interference is extreme, as Defendants – with their “power,
8 prestige and financial support,” Engel v. Vitale, 370 U.S. 421, 431 (1962) – tell
9 the DoeChildren, in essence, “Your parents’ religious beliefs are wrong.”

10 72. Accordingly, Defendants have violated – and continue to violate – Jan Doe’s
11 and Pat Doe’s federal rights of parenthood, as well as the concomitant rights of
12 the DoeChildren.

13
14
15 **B. STATE COUNTS**

16 **COUNT VI**

17 73. The introductory allegations set forth in paragraphs 1-48 are realleged herein.

18 74. In addition to breaching their duties to protect Plaintiffs against this harm
19 under federal law, Defendants are also breaching their duties under Article 6
20 (Morality and Piety) of the New Hampshire Constitution.

1 75. Specifically, by asking small schoolchildren to stand, place their hands over
2 their hearts and affirm that ours is “one Nation under God,” Defendants are
3 establishing the subordination of those who deny the existence of any god to
4 those who believe God exists.

5
6 **COUNT VII**

7 76. The introductory allegations set forth in paragraphs 1-48, 55 and 56 are
8 realleged herein.

9 77. Defendants have violated the DoeChildren’s Free Exercise rights under RSA §
10 169-D:23.

11
12 **COUNT VIII**

13 78. The introductory allegations set forth in paragraphs 1-48, and 68-71 are
14 realleged herein.

15 79. Accordingly, Defendants have violated – and continue to violate – Jan Doe’s
16 and Pat Doe’s state rights of parenthood, Sanborn v. Sanborn, 123 N.H. 740
17 (1983), as well as the associated state rights of the DoeChildren. Id.

18
19 **COUNT IX**

20 80. The introductory allegations set forth in paragraphs 1-48 are realleged herein.

1 81. The very purpose of the Pledge of Allegiance to the Flag – as can be
2 appreciated from its legislative history – is to provide a means of
3 demonstrating patriotism and engendering national unity.

4 82. By placing the religious words “under God” into the Pledge, Congress not only
5 interfered with the patriotism and national unity the Pledge was meant to
6 engender, but it actually fostered divisiveness.

7 83. Defendants’ Pledge recitations lead to the same undesirable outcome.

8 84. Accordingly, in addition to its constitutional and statutory infirmities, the use
9 of a Pledge of Allegiance containing the words “under God” is void as against
10 public policy.

11

12

13

14 85. It should be noted that Plaintiffs are making no objection to the recitation of a
15 patriotic Pledge of Allegiance. The government is certainly within its right to
16 foster patriotism, and it may certainly make the determination that recitation of
17 a Pledge of Allegiance serves that purpose. However, government may not
18 employ or include sectarian religious dogma towards this end.

CLAIM FOR RELIEF

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WHEREFORE, Plaintiff prays for relief and judgment as follows:

- I. To declare that by having their agents leading Plaintiffs and their peers in reciting the Pledge of Allegiance, Defendants HSD and DSD violate the Establishment and Free Exercise Clauses of the First Amendment, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, Article 6 of the New Hampshire Constitution, and New Hampshire RSA § 169-D:23;
- II. To declare that RSA § 194:15-c (New Hampshire School Patriot Act) is void as against public policy;
- III. To enjoin Defendants HSD and DSD from using the now-sectarian Pledge of Allegiance in the public schools within its jurisdictions;
- IV. To allow Plaintiffs to recover costs, expert witness fees, attorney fees, etc. as may be allowed by law; and
- V. To provide such other and further relief as the Court may deem proper.

Respectfully submitted,

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November 6, 2008

**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) |
| |) | |
| THE CONGRESS OF THE UNITED STATES |) | |
| OF AMERICA, et al., |) | |
| |) | |
| Defendants. |) | |

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HENSARLING, WALLY HERGER, PETER HOEKSTRA, DUNCAN HUNTER,
WALTER B. JONES, RIC KELLER, STEVE KING, JACK KINGSTON, JOHN KLINE,
FRANK D. LUCAS, JOHN M. MCHUGH, DONALD A. MANZULLO, JIM MARSHALL,
GARY G. MILLER, JEFF MILLER, SUE WILKINS MYRICK, STEVAN PEARCE,
MIKE PENCE, JOSEPH R. PITTS, PETE SESSIONS, JOHN B. SHADEGG, JOHN
SHIMKUS, MARK E. SOUDER, JOHN SULLIVAN, LEE TERRY, DAVE WELDON,
AND JOE WILSON, AND THE COMMITTEE TO PROTECT “UNDER GOD” IN
SUPPORT OF THE FEDERAL DEFENDANTS’ MOTION TO DISMISS**

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Attorneys for Amici Curiae

Allegiance as it appears in 4 U.S.C. § 4.

Amicus, the Committee to Protect “Under God,” consists of over 80,000 Americans from across the country. The Committee includes many parents of school-age children who attend public schools and desire to recite the Pledge of Allegiance in its entirety.

Plaintiffs’ strategy to purge all religious observances and references from American public life must not be permitted to move forward. If Plaintiffs are successful, it will undoubtedly embolden further challenges to other religious expressions in government venues, including the several religious works of art² and various religious inscriptions in the Capitol Complex,³ as well as the prayer rooms in House and Senate Office buildings.⁴ *Amici* take the position that the words “one Nation under God” in the Pledge of Allegiance in no way violate either the Establishment Clause or the Free Exercise Clause of the First Amendment to the United States Constitution. These words simply echo the sentiments found in the Declaration of Independence and recognize the undeniable truth that our freedoms come from God. These words were placed in the Pledge of Allegiance for the express purpose of reaffirming America’s unique understanding of this truth. The United States is different from nations who recognize no

² For example, in the Rotunda of the Capitol Building are paintings with religious themes, such as *The Apotheosis of Washington*, depicting the ascent of George Washington into Heaven, and the *Baptism of Pocahontas*, portraying Pocahontas being baptized by an Anglican minister.

³ For example, a wall in the Cox Corridor of the Capitol is inscribed with a line from Katherine Lee Bates’ Hymn, *America the Beautiful*: “America! God shed his grace on Thee, and crown thy good with brotherhood from sea to shining sea.” In the prayer room of the House Chamber, two distinctly religious statements are inscribed: 1) “Annuit coeptus,” which means God has favored our undertakings; and 2) “Preserve me, O God, for in thee do I put my trust,” Psalm 16:1.

⁴ Plaintiffs’ overall strategy seeks to proscribe religious expression well beyond the phrase “under God” in the Pledge of Allegiance and includes presidential addresses invoking the name of God, the use of legislative chaplains, the invocation “God save the United States and this Honorable Court” prior to judicial proceedings, oaths of public officers, court witnesses, and jurors and the use of the Bible to administer such oaths, the use of “in the year of our Lord” to date public documents, the Thanksgiving and Christmas holidays, the National Day of Prayer, and the national motto, “In God We Trust.”

Statement of the [school boards] in connection with Pledge of Allegiance Litigation

1. The Dresden School Board, the Hanover School Board, and SAU70 (hereinafter the “School Boards”) have adopted the following position in connection with the complaint filed in the United States District Court for the District of New Hampshire by the Freedom from Religion Foundation and the parents identified in the complaint as Jan Doe and Pat Doe, and their three children who are currently enrolled in schools in the district. The complaint alleges that the recitation of the Pledge of Allegiance (the “Pledge”) within schools in the SAU70 district violate the Establishment and Free Exercise Clauses of the First Amendment as well as Article 6 of the New Hampshire Constitution.

2. RSA Section 194:15-c (New Hampshire Patriot Act) states that “[a] school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance”. It further provides that “[p]upil participation in the recitation of the pledge of allegiance shall be voluntary”.

3. The New Hampshire Patriot Act (“NHPA”) does not include directions to local school districts concerning the time or manner in which the Pledge might be recited. Nor does it prescribe the ways and means by which school districts might ensure the voluntary nature of the recitation of the Pledge. The school boards in this district have not adopted policies or practices relating to the recitation of the Pledge having left to the discretion of principals how best to carry out the provisions of the NHPA.

From time to time, the various boards have received information from school administrators concerning how the NHPA has been put into practice. In connection with the filing of the Plaintiff's complaint, the boards have requested information from Principals concerning current practices relating to the recitation of the Pledge in schools in the district.¹

4. Practices vary among schools in the district although all schools emphasize to students, parents, and teachers the voluntary nature of recitation of the Pledge. In the Hanover High School, at the start of the school day, a designated student will typically recite the pledge over the school intercom system. Participation is voluntary.. Student are requested to pause their movement through the school corridors and respect the rights of students choosing to recite the pledge.² A similar practice is followed in the Richmond Middle School at a time set aside at the beginning of the school day for a student to recite the pledge over the school intercom system.³ In the Ray School, the elementary school in the district, time for recitation of the pledge is set aside in individual classrooms with the actual practices followed determined by the Principal, together with each classroom teacher.

5. The approach of this district has been, and is, to emphasize the voluntary nature of the pledge and to respect the individual views of students as well as their teachers

¹ Copies of brief written reports are attached hereto.

² Before the Pledge is read, the reader says, "Will everyone please pause quietly for the saying of the Pledge of Allegiance by those who wish to do so."

³ At the Richmond Middle School, every Monday, Wednesday, and Friday morning, at the end of the morning meeting, two members of the Student Council use the PA system to read the Pledge. Every Tuesday and Thursday, two staff members lead a recitation of the Pledge with any students who are interested in joining.

concerning the recitation of the pledge. Though these practices have not been a consequence of formal policy statements and directives (other than the mandate of the NHPA relating to the voluntary nature of the recitation of the pledge), they respect the open and inclusive values of the local community. They have also rested on a clear understanding and appreciation of the Supreme Court's decision in West Virginia Board of Education v. Barnette, 319 U.S.624 (1943) that permits students on religious grounds to abstain from the recitation of the pledge.

6. In the response to the complaint filed by the Freedom from Religion Foundation, the school boards reaffirm the important principle of the Barnette case that the recitation of pledge is voluntary and a matter of individual conscience on the part of students, their parents, and their teachers. The School Boards have requested principals to ensure that this basic underpinning of practice and policy in our district and of the NHPA is well understood by all concerned parties—students, parents, and teachers. The school boards further recognize that intertwined with, and integral to, the right to refrain altogether from recitation of the pledge is the right to refrain from reciting the words “under God” during the course of the recitation of the Pledge. The complaint notes that the “[p]laintiffs are making no objection to the recitation of a patriotic Pledge of Allegiance”. Original Complaint at Para. 70. The essence of their claim is that text of the Pledge of Allegiance, as enacted by the Congress in 1954 amending the original pledge created in 1892, included religious dogma through adding the words “under God”, is unconstitutional and that, notwithstanding its voluntary nature, the recitation of the Pledge is impermissibly coercive “due to the setting and peer pressures”. Complaint at Para. 37

7. For reasons set forth above, the school boards do not interpret the NHPA to be inherently coercive in nature. By its terms, the NHPA recognizes that the recitation of the pledge is voluntary. The practice within the school district respects differences of views regarding the recitation of the Pledge. These policies and practices have been reaffirmed in connection with the school boards' deliberations concerning the pending complaint

8. The school boards are, of course mindful of the fact that the core principles behind the Pledge are intended to be the subject for thoughtful reflection and not merely intended for rote recitation. What it means for a nation or community to be "indivisible" but remain a nation or community "with liberty and justice for all" involves a civic lesson of paramount importance. The school boards are also mindful of the fact that individual students and their parents as well as teachers and other members of the Hanover community—including members of school boards in our district-- may hold divergent views with respect to the underlying constitutional claims raised by the complaint in this proceeding. Recognizing these differences of view, the school boards are also aware that no useful purpose would be served by conducting a wide-spread plebiscite—within each school, the school administration, the school boards, and the community—concerning the fundamental constitutional law questions ultimately be decided by the federal courts and in all likelihood the Supreme Court. The fundamental issues in the Plaintiffs' lawsuit are questions of constitutional law to be resolved by the federal courts. They also have a political dimension that can be addressed by the U.S. Congress. Indeed, the Plaintiffs seek through their lawsuit the immediate enactment of legislation by the U.S. Congress to

“remove the words ‘under God’ from the Pledge of Allegiance to the Flag as now written in 4 U.S.C. Section 4.” Complaint, Prayer for Relief IV at 19. The school boards are without authority to provide relief to the Plaintiffs that must necessarily result from judicial or Congressional action.

9. The school boards also recognize that essentially the same constitutional questions raised in the Plaintiff’s complaint have been the subject of litigation in other judicial districts in this country. The Plaintiffs Freedom from Religion Foundation (FFRF) and Michael Newdow have diligently litigated these issues in the federal district and appellate courts in the Ninth Circuit and in the Supreme Court. Plaintiff FFRF continues to litigate in the Ninth Circuit the very same constitutional questions raised in their current complaint in the U.S. Federal District Court for the District of New Hampshire; and this complaint may be held by the Plaintiff FFRF in abeyance pending the disposition of its litigation in the Ninth Circuit.

10. The school boards are of the opinion that the main parties to this complaint are the Plaintiffs, the United States through the Department of Justice, potentially also through independent counsel the U.S. Senate and House of Representatives , and the Attorney General of New Hampshire. These parties are in the best position to brief and carry forward to resolution within the First Circuit –and ultimately the Supreme Court-- the constitutional claims raised in the complaint.

11. The school boards have been advised that the constitutionality of Pledge under the United States Constitution and the New Hampshire Constitution will be supported by Department of Justice and the New Hampshire Attorney General.

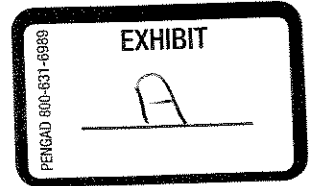
12. For all reasons set forth above, the school boards believe that the issues raised by the Plaintiffs can and should be expeditiously resolved on the basis of pleadings of the main parties to this proceeding. The school boards do not expect to submit their own brief on the merits of the underlying constitutional claims that the main parties can be expected to brief in the course of this litigation. However, they will continue to carry out their obligations under the NHPA and Supreme Court precedent in West Virginia Board of Education v. Barnette, supra, to ensure any recitation of the Pledge is undertaken in an environment that is voluntary and respectful of differing opinions within our community concerning the issues raised by the Plaintiffs in their complaint.

Respectfully submitted,

HB 1446 - AS INTRODUCED

2002 SESSION

02-2411
04/09



HOUSE BILL **1446**

AN ACT relative to the recitation of the pledge of allegiance in the public schools.

SPONSORS: Rep. Sapareto, Rock 13; Rep. Jacobson, Merr 2; Rep. Rosen, Belk 7; Rep. Stone, Rock 7; Rep. Milligan, Hills 18; Sen. Gatsas, Dist 16; Sen. Johnson, Dist 3; Sen. D'Allesandro, Dist 20; Sen. Disnard, Dist 8; Sen. Barnes, Dist 17

COMMITTEE: Education

ANALYSIS

This act establishes the New Hampshire School Patriot Act which requires that school districts authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1446 - AS INTRODUCED

02-2411
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT relative to the recitation of the pledge of allegiance in the public schools.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Lord's Prayer [~~and Pledge of Allegiance~~] in Public Elementary Schools. Amend RSA 194:15-a
2 to read as follows:

3 194:15-a Lord's Prayer [~~and Pledge of Allegiance~~] in Public Elementary Schools. As [~~a~~
4 ~~continuation of the policy of teaching our country's history and as~~] an affirmation of the freedom of
5 religion in this country, a school district may authorize the recitation of the traditional Lord's prayer
6 [~~and the pledge of allegiance to the flag~~] in public elementary schools. Pupil participation in the
7 recitation of the prayer [~~and pledge of allegiance~~] shall be voluntary. Pupils shall be reminded that
8 this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their
9 search for freedom. Pupils shall be informed that these exercises are not meant to influence an
10 individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils
11 shall learn of our great freedoms, which freedoms include the freedom of religion and are symbolized
12 by the recitation of the Lord's prayer.

13 2 New Section; School Districts; New Hampshire School Patriot Act. Amend RSA 194 by
14 inserting after section 15-a the following new section:

15 194:15-b New Hampshire School Patriot Act.

16 I. As a continuation of the policy of teaching our country's history to the elementary and
17 secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

18 II. A school district shall authorize a period of time during the school day for the recitation of
19 the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be
20 voluntary. Pupils shall be reminded that the pledge of allegiance is an affirmation of the freedoms
21 we enjoy, and is recited in remembrance of all the people who have sacrificed their lives in defense of
22 our country and in the service of freedom.

23 III. Pupils shall be required to stand during the recitation of the pledge of allegiance as a
24 gesture of respect to our nation's flag just as the public is required to stand when addressing a judge
25 in court as a gesture of respect to our judicial system. If this paragraph shall be declared to be
26 unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected,
27 and shall continue in full force and effect.

28 3 Effective Date. This act shall take effect 60 days after its passage.

HB 1446 - AS INTRODUCED

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28 3 Effective Date. This act shall take effect 60 days after its passage.

Date: April 4, 2002
Time: 10:30 AM
Room: State House Room 105-A

The Senate Committee on Education held a hearing on the following:

HB 1446 relative to the recitation of the pledge of allegiance
in the public schools.

Members of Committee present: Senator O'Hearn
Senator McCarley
Senator Disnard

The Chair, Senator Jane E. O'Hearn, opened the hearing by recognizing Representative Jacobson, a sponsor of the bill, as the first speaker.

Representative Jacobson: Thank you very much. My name is Alf Jacobson and I represent Merrimack District 2. And I am one of the co-sponsors of House Bill 1446. Let me say that I consider the flag as a symbol of our lives that has preserved for us liberty and freedom.

As some of you may know I was on Iwo Jima for thirty-five days. And one of the great events of that occurred on D+4, when from my foxhole on the east side of Iwo Jima I saw the American Flag raised on top of Mount Suribachi. And that was a moment that I personally shall never forget, as long as I live and have my facilities. So to me it is a very important symbol.

Now someone complained that the school children have to stand. Well we have to stand for a lot of things. My mother was after me all the time to stand up straight. But there are no penalties associated with it, so I think the number of people among school children that would be in resistance would be a very, very tiny number of people. So I would ask your support of it, and if there are any questions I will be glad to answer.

Senator Jane E. O'Hearn, D. 12: Questions? Knowing you are a professor and with some history, I look at *lines 21 and 22* of this, "...and is recited in remembrance of all of the people who have sacrificed their lives..." and I'm questioning that because the history that I have on it is more to build allegiance to their country and to bring the fifty states together. We're not just pledging allegiance to the state of New Hampshire; we're pledging

allegiance to the country to keep it united. Would you care to comment on lines 21 & 22?

Representative Jacobson: Well I think that's a generalized patriotic statement and is part of our history, beginning with the revolutionary war. We have made that part of our feeling toward the flag and toward the nation.

Senator Jane E. O'Hearn, D. 12: Okay, do you know how old the pledge is?

Representative Jacobson: No I don't but it's been ever since I was...and I'm 78 today so...

Senator Jane E. O'Hearn, D. 12: Happy birthday Representative Jacobson, actually it was the late 1800's when it first came in to...

Representative Jacobson: Well I wasn't around then.

Senator Jane E. O'Hearn, D. 12: Aren't we all glad we weren't there. Senator Disnard?

Senator George F. Disnard, D. 8: Madam Chairman, for the record my name is Senator George Disnard, Senate District 8, eight communities in Cheshire County and twelve communities in Sullivan County.

I'm proud to be able to be one of the co-sponsors of House Bill 1446. Like many people in this room today, I fought in two wars. I respected the flag. I was brought up to respect the flag.

And I had noticed in some research that was presented to me this morning, that in 1943 the U.S. Supreme Court overruled a similar case in *California*, where children were expelled for not reciting the pledge of allegiance. However, the court ruled that they could not be forced to recite the pledge, and this was *West Virginia Board of Education vs. Barnette*: 319-U.S.

If we look at the bill, starting on *line 16*, we can read that this is a voluntary act. They are certainly mandated and required to stand; they are not required-they the students in this instance-to recite the pledge of allegiance to our flag. They just have to stand out of respect for this country.

And I believe, and I may be stepping on toes, but if someone wants to be a citizen or a visitor, a temporary student in this country, they should be able to understand our history and our heritage. And they should be compelled, in our schools, to stand out of respect for our flag. We are not forcing them to

recite, especially if they are not a citizen of this country, but just out of respect. I thank you very much for the opportunity to speak.

Senator Jane E. O'Hearn, D. 12: Questions? Thank you very much Senator. Representative Sapareto, the prime sponsor please.

Representative Sapareto: Thank you, Ms. Chairman and members of the committee. I'm Representative Frank Sapareto for the record, and I'm prime sponsor of House Bill 1446.

I submitted this legislation after hearing that some of the communities in the state fail to allow kids to say the pledge of allegiance. So I asked Rich Lambert in Legislative Services if that was the case. And he called ten of the largest schools in the state and asked them if they recite the pledge of allegiance on a daily basis. He responded that they do not, on a daily basis, four out of ten do not. So I thought, maybe that's an abnormal number call another ten and find out. And he got the same results after calling another ten, that four more failed to do that.

My children are five and seven years old. I would like them to grow up with an understanding of the pledge of allegiance, and instill in them the desire that I've gotten out of that. And I think that we've got a situation where they are being denied. The decision of even allowing them to say it is occurring now with the principal or the head of that school and not with the children who actually couldn't say it if they wanted to. And this is emphasized in the testimony after me.

This letter was written to me on March 7th and I read this to the House Floor, and this is from three children in the *Oyster River School District*.

(Letter read into record, see attachment A)

Now in 1992 the State Board of Education passed requirement for character and citizenship education for minimum standards, with rule making authority in the force of law. I can't think of anything more to the point of the reason behind that being the pledge of allegiance. Certainly it's summed up within a 45 second ritual that students can say.

There has been a lot of misinformation about this bill, the first being that it is part; it is mandatory for the kids to say this. It is not, it says right in the front of the bill, "*it shall be voluntary.*" This is simply giving children the opportunity to say the pledge of allegiance if they want.

And I think that's important, because we wonder why there's only 18 or 20% voter turnout, yet we do nothing to promote patriotism and for children to understand their civic duties. I can think of nothing more to the point

than allowing them to do this. We almost promote apathy; we eliminate our civil liberties, all the things that we may need that may be important to us to impress upon our kids what's important.

How can a child know the importance, the sacrifices that have been made, and the importance of the pledge of allegiance if they're not explain, of if it isn't even allowed to be presented to them in school? We think that all of a sudden patriotism is going to bubble up out of nowhere to them? They need to see how others respond, or how others react to it, and that's what this bill does; it gives them at least that opportunity to do that. So that they know that they're not going to be chastised by their peers just for simply wanting to recite the pledge or being patriotic. And it shouldn't take an event like September 11th for them to do that. And that's why this bill was put in.

The other misconception is if you look at the current statute right now on the pledge of allegiance and unfortunately previously it was included along with the lord's prayer, that statute. Now I'd like to submit this to the committee (*see attachment B*) because the bill that I put in, this bill right here, the only differences to the existing statute. This is all that my proposal does, and there is nowhere in this statute where the lords prayer is even mentioned. If you look, it creates a new section *194: 15-B*, that now talks about the pledge of allegiance, and that's two parts; I'll get into that.

And the second part where it says, "*deletes the following*," all I did was separate out the pledge of allegiance. I specifically did not touch anything with the lords prayer. People who want to remove that or do whatever they want to it; I would appreciate it if they used another bill to do that. This bill was solely designed to affect the pledge of allegiance, period.

And I'm certain it concerns the committee or following amendments, which the house committee had concerns with as well, which is why it had an ITL the first time around. The first time around it had 13-2 from the house committee. And then after some of the members started discussing it, one with a parent who identified, that member, how his view changed of the pledge of allegiance because of his recitation, that he was oblivious to and his mother reminded him.

To another member who changed her vote, she had a daughter who was in the school system that did not recite the pledge of allegiance and a niece in one that did. And after voting against it she talked to the two of them, and the difference between the two of them was night and day, and they both attributed to their recitation of the pledge of allegiance, and that changed her vote.

And I would think that if others would really research this they would realize the importance of that. But they changed their votes on this, and the second time around it was 9-8. And the reason why it was 9-8, I can think of at least one member that did it because of some amendments. They wanted the bill to go through just as it is.

And strongly would urge that there's no other religious things or other things attached to this other than give the kids a chance to say the pledge of allegiance and that's what *194:15-B* does.

The second part of this is that many people are often offended by a failure to stand during the pledge of allegiance and I have a perfect example, my father, who is 83 years old is a substitute teacher down in *Florida*. And he had a situation after September 11th where children wanted to say the pledge of allegiance in his class. And all of them stood up except for one student in the class who didn't stand up. There was almost a fight in the class. My dad couldn't handle a fight with fourteen or fifteen year olds too well. So he asked the fourteen-year-old to leave. The child's parents were wanting to sue the school system for having my father have their child stand outside to prevent a confrontation from the kids.

Now without something in statute that protects the teacher who does that, the decision to step outside was done by the teacher. What I put in there is that you at least should stand. And I purposely put in there no penalties. And I sought to find other situations where the federal government requires a citizen to stand, and they do that in a court of law. If you fail to stand for a judge or a justice upon entrance to the court, you could be found in contempt and incarcerated.

I didn't want such a severe penalty be put in this. But certainly if you can show respect for a justice, there has to be respect for a flag. And if some parent decided to sue the school on that grounds they can refer simply to following the statute and have the judge decide why it's important to show respect for him but not for the flag. And let them develop that position. But that's why I put this in and there are no penalties for it.

This was also designed to be as a guideline to explain to students that it is appropriate for them to stand upon the recitation of the pledge of allegiance. There's nothing mandatory that is really in this or that is in force of law. There's no penalty for that second part.

But I can't express the importance of why we have to stop this apathetic trend of forgetting some of the things that we had when we were in school. And in fact, even when Rich Lambert called them, some of these school

systems were actually offended that they would have to be asked to say the pledge of allegiance. So I thought that was a little disconcerting.

In closing I just want to, a member from *Rumney*, not a member really a constituent, out of the blue and I've gotten numerous correspondence on this bill, had sent something to me that I was not aware of. And it's regarding something, *Red Skelton's* pledge of allegiance. But he presented a commentary on the pledge of allegiance and I'll submit this into the committee to look at (*see attachment C*). But one of the things is, what he does is he breaks down the pledge of allegiance explaining what the meanings of each words are as well as our local historian Ken here who has the kids do the same thing, but this one comes from Red Skelton.

And what I'm seeing now is that it's our job to preserve that freedom and this is one of the best things I could have submitted in legislation, at least for me, right now to pass on the ability to say the pledge of allegiance to future generations. It could be one of the most important pieces of legislation that we pass, because it's going to affect generations to come, and I think it has to still be allowed to be said in the schools and it is currently not. Thank you.

Senator Jane E. O'Hearn, D. 12: Questions, Senator McCarley?

Senator Caroline McCarley, D. 6: Representative Sapareto, I am in firm agreement with you relative to the importance and respect due to our pledge of allegiance and our flag and I hope that one can ask questions of the sponsors without immediately being tagged as anything but simply asking questions.

That being said, I think it is a lot more important that our teachers are embedding in their curriculum all these values you're talking about. And I remain unconvinced that a mandatory, necessary recitation of the pledge of allegiance over the loud speaker at Spaulding High School is going to get where you want to go. I have no problem, I happen to think Spaulding High School does it, I happen to think their loudspeaker system is lousy. You can put together those two and see what I think of how effective I think it is. I think; I happen to know in Rochester the elementary schools all do it and I believe the middle school does over their loudspeaker.

But I just, I mean I think a mandatory civics requirement at our high school level is how we start to get kids' attention. I couldn't convince my colleagues in the senate last year. I was wholly unsuccessful; I have no idea where you stood on that bill and it doesn't matter. I'm just raising a question about...a recitation is an important component of the day I guess, but it's really about a whole lot more than that.



Mike Newdow <newdowlaw@gmail.com>

Activity in Case 1:07-cv-00356-SM The Freedom From Religion Foundation v. Jan Doe, et al. Order on Motion for Protective Order

1 message

ecf_bounce@nhd.uscourts.gov <ecf_bounce@nhd.uscourts.gov>

Sun, Jan 27, 2008 at 7:46 AM

To: nef@nhd.uscourts.gov

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District of New Hampshire

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Case Name: The Freedom From Religion Foundation v. Jan Doe, et al.**Case Number:** [1:07-cv-356](#)**Filer:****Document Number:** No document attached**Docket Text:**

ENDORSED ORDER granting [23] Motion for Protective Order. *Text of Order: Granted. So Ordered by Judge Steven J. McAuliffe. (jab)*

1:07-cv-356 Notice has been electronically mailed to:Bradford T. Atwood batwood@cas-law.net, info@cas-law.netEric B. Beckenhauer eric.beckenhauer@usdoj.govDavid H. Bradley dbradley@stebbinsbradley.comRosanna T. Fox rosief13@comcast.netTheodore C. Hirt theodore.hirt@usdoj.govMichael A. Newdow newdowlaw@gmail.comJohn Anthony Simmons, Sr. help@clearvictory.orgNancy J. Smith nancy.smith@doj.nh.gov, laura.maynard@doj.nh.govGretchen Leah Witt gretchen.witt@usdoj.gov, daryl.healy@usdoj.gov, judy.prindiville@usdoj.gov,
USANH.ECFCivil@usdoj.gov**1:07-cv-356 Notice, to the extent appropriate, must be delivered conventionally to:****APP039**



Mike Newdow <newdowlaw@gmail.com>

Activity in Case 1:07-cv-00356-SM The Freedom From Religion Foundation v. Jan Doe, et al. Order on Motion to Intervene

3 messages

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Sun, Jan 27, 2008 at 7:02 AM

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U.S. District Court

District of New Hampshire

Notice of Electronic Filing

The following transaction was entered on 1/27/2008 at 10:02 AM EST and filed on 1/25/2008

Case Name: The Freedom From Religion Foundation v. Jan Doe, et al.

Case Number: [1:07-cv-356](#)

Filer:

Document Number: No document attached

Docket Text:

ENDORSED ORDER granting [15] Motion to Intervene as defendant by USA. *Text of Order: Granted. So Ordered by Judge Steven J. McAuliffe. (jab)*

1:07-cv-356 Notice has been electronically mailed to:

Bradford T. Atwood batwood@cas-law.net, info@cas-law.net

Eric B. Beckenhauer eric.beckenhauer@usdoj.gov

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APP040

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U.S. District Court

District of New Hampshire

Notice of Electronic Filing

The following transaction was entered on 1/27/2008 at 10:01 AM EST and filed on 1/25/2008

Case Name: The Freedom From Religion Foundation v. Jan Doe, et al.

Case Number: [1:07-cv-356](#)

Filer:

Document Number: No document attached

Docket Text:

ENDORSED ORDER granting [12] Motion to Intervene as defendant by the State of New Hampshire. *Text of Order: Granted. So Ordered by Judge Steven J. McAuliffe. (jab)*

1:07-cv-356 Notice has been electronically mailed to:

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Eric B. Beckenhauer eric.beckenhauer@usdoj.gov

David H. Bradley dbradley@stebbinsbradley.com

Rosanna T. Fox rosief13@comcast.net

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Nancy J. Smith nancy.smith@doj.nh.gov, laura.maynard@doj.nh.gov

Gretchen Leah Witt gretchen.witt@usdoj.gov, daryl.healy@usdoj.gov, judy.prindiville@usdoj.gov, USANH.ECFCivil@usdoj.gov

1:07-cv-356 Notice, to the extent appropriate, must be delivered conventionally to:

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Sun, Jan 27, 2008 at 7:03 AM

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U.S. District Court

District of New Hampshire

APP041

Notice of Electronic Filing

The following transaction was entered on 1/27/2008 at 10:03 AM EST and filed on 1/25/2008

Case Name: The Freedom From Religion Foundation v. Jan Doe, et al.

Case Number: [1:07-cv-356](#)

Filer:

Document Number: No document attached

Docket Text:

ENDORSED ORDER granting [21] Motion to Intervene as defendants by Muriel Cyrus, et al. *Text of Order: Granted. So Ordered by Judge Steven J. McAuliffe. (jab)*

1:07-cv-356 Notice has been electronically mailed to:

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Eric B. Beckenhauer eric.beckenhauer@usdoj.gov

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Rosanna T. Fox rosief13@comcast.net

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Michael A. Newdow newdowlaw@gmail.com

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Nancy J. Smith nancy.smith@doj.nh.gov, laura.maynard@doj.nh.gov

Gretchen Leah Witt gretchen.witt@usdoj.gov, daryl.healy@usdoj.gov, judy.prindiville@usdoj.gov,
USANH.ECFCivil@usdoj.gov

1:07-cv-356 Notice, to the extent appropriate, must be delivered conventionally to:

EXHIBIT A

“REFERENCES TO [PROTESTANT CHRISTIANITY] ARE REPLETE IN OUR NATION’S HERITAGE”¹

“[We should be loath that any Person should be permitted to pass that we suspected to affect the Superstitions of the Church of Rome.”²

“[Catholics are] the scum & dregs of the earth.”³

“[Catholicism is] that whore [which] will shortly appear so extremely loathsome, in her drunkenness, bestialities, &c., that her bewitched paramours will tear her flesh, and burn her with fire unquenchable.”⁴

“[N]one who profess and Exercise the Popish Religion Commonly known by the Name of the Roman Catholic Religion can be protected in this Province by the Lawes of England.”⁵

¹ Memorandum in Support of the Federal Defendants’ Motion to Dismiss (hereafter “Fed. Memorandum”) at 1.

² Second Charter of Virginia, May 23, 1609. *Documents of American History*. Commager, Henry Steele (ed.). Third Edition. (New York: F.S. Crofts & Co.; 1946), p. 12.

³ Prayer recited twice each day by the captain of the guard in colonial Jamestown, Virginia. *Tracts and Other Papers, Relating Principally to the Origin, Settlement, and Progress of the Colonies in North America, from the Discovery of the Country to the Year 1776*. Collected by Peter Force (New York: Peter Smith; 1947). Vol. III, part II, page 67.

⁴ Publications of the Narragansett Club, Volume 6: *Letters of Roger Williams, 1632-1682*. (Providence, RI: Narragansett Club; 1874), p. 311.

⁵ Act of October 20, 1654, in Browne, William Hand (ed.). *Archives of Maryland, Proceedings and Acts of the General Assembly of Maryland, January 1637/38-September 1664*. (Baltimore: Maryland Historical Society; 1883), vol. I, pp. 340-41 (as provided in Ellis, John Tracy. *Documents of American Catholic History*. (Milwaukee: The Bruce Publishing Company; 1962), p. 114).

“I do firmly believe, that the Present Communion of the Roman-Catholic Church is both Superstitious and Idolatrous.”⁶

“[T]here is here perfect freedom of conscience for all, except Papists.”⁷

“[New Hampshire shall] permit liberty of conscience to all persons except Papists.”⁸

“[There shall be] a liberty of Conscience ... in the Worshipp [sic] of God to all Christians (Except Papists).”⁹

“[A]ll persons Inhabiting ... our ... Province ... Except Papists shall have a Free Exercise of their Religion.”¹⁰

“POPERY [is] an impious, an absurd, persecuting, blood feeding Religion; a Religion as disgraceful to human Understandings, as it is injurious to the sacred Ties of social Benevolence. ... *It is a Religion chiefly calculated to support the tyrannical Power, and the insatiable Avarice of their Clergy, and as opposite to true Christianity, as any one Thing can be opposite to another.*”¹¹

⁶ William Penn’s 1679 “test” for citizens to “secure your selves from *Papists.*” *The Political Writings of William Penn*. Introduction by Murphy AR. (Indianapolis: Liberty Fund; 2002) p. 133-34.

⁷ Klein, Milton M. *Shaping the American Tradition: The Microcosm of Colonial New York*. 59 *New York History* 173 (April, 1978), p. 190 (emphasis added).

⁸ New Hampshire Provincial Papers, II, 25 (1689), cited in Kinney, CB. *Church & State: The Struggle for Separation in New Hampshire - 1630-1900*, (Columbia University, New York; 1955, at 35(emphasis added).

⁹ The Massachusetts Charter of 1691, as provided in Poore, Benjamin Perley. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*. 2nd. Ed. (Washington: Government Printing Office; 1878), Part I, p. 950.

¹⁰ *Charter of Georgia (1732)*. Accessed on June 11, 2006 at <http://www.yale.edu/lawweb/avalon/states/ga01.htm> (emphasis added).

¹¹ The New York Mercury, Monday, September 23, 1754, p. 1.

“The members of this Congress [are] inviolably attached to the present happy establishment of the Protestant succession.”¹²

“That the late act of parliament for establishing the Roman Catholic religion and the French laws in that extensive country, now called Canada, is dangerous in an extreme degree to the Protestant religion and to the civil rights and liberties of all America; and, therefore, as men and Protestant Christians, we are indispensably obliged to take all proper measures for our security.”¹³

“[E]stablishing the Roman Catholic Religion in the province of Quebec ... erect[ed] a tyranny there, to the great danger, from so great a dissimilarity of Religion, law and government, of the neighbouring British colonies.”¹⁴

“[Catholicism is] a religion that has deluged your island in blood, and dispersed impiety, bigotry, persecution, murder and rebellion through every part of the world.”¹⁵

“We, his majesty's most loyal subjects, [are] the delegates of the free Protestant colonies.”¹⁶

¹² 1765 Resolutions of the Stamp Act, accessed on February 13, 2008 at <http://www.yale.edu/lawweb/avalon/resolu65.htm>) on April 13, 2007.

¹³ 1774 Suffolk Resolves, paragraph 10. Accessed on February 13, 2008 at <http://www.nps.gov/mima/forteachers/upload/The%20Suffolk%20Resolves.pdf>.

¹⁴ 1774 Declaration and Resolves of the First Continental Congress, accessed at <http://www.yale.edu/lawweb/avalon/resolves.htm> on February 13, 2008.

¹⁵ *Journals of the Continental Congress*. Ford WC, ed. (Washington, DC: Library of Congress (GPO); 1904), Volume I, p. 88. Writing “to the people of Great-Britain” on October 21, 1774, the Continental Congress referenced “their affectionate **protestant** brethren,” *id.*, at 100, and implored them to support “the ancient free **Protestant** colonies.” *Id.*, at 88.

¹⁶ October 20, 1774 Articles of Association, accessed on February 13, 2008 at <http://www.yale.edu/lawweb/avalon/contcong/10-20-74.htm>).

“[N]o person, who shall deny ... the truth of the **Protestant religion** ... shall be capable of holding any office or place of trust or profit in the civil department within this State”¹⁷

“[N]o Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; [and] all persons, professing a belief in the faith of any Protestant sect. who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others their fellow subjects.”¹⁸

“The representatives shall be ... of the Protestant [sic] religion.”¹⁹

“The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this State.”²⁰

“Romish policy ... [entails] reducing ... minds to a state of sordid ignorance and staring timidity.”²¹

“[M]uch more is to be dreaded from the growth of popery in America, than from the Stamp Act or any other acts destructive of civil rights.”²²

¹⁷ North Carolina Constitution of 1776, Article XXXII, accessed on February 13, 2008 at <http://www.yale.edu/lawweb/avalon/states/nc07.htm>.

¹⁸ New Jersey Constitution of 1776, Article XIX, accessed on February 13, 2008 at <http://www.yale.edu/lawweb/avalon/states/nj15.htm>.

¹⁹ Georgia Constitution of 1777, Article VI, accessed on February 13, 2008 at <http://www.yale.edu/lawweb/avalon/states/ga02.htm>. Emphasis added.

²⁰ South Carolina Constitution of 1778, Article XXXVIII accessed on February 13, 2008 at <http://www.yale.edu/lawweb/avalon/states/sc02.htm>.

²¹ Adams, John, *Dissertation on the Canon and the Feudal Law*, in Adams, Charles Francis. *The works of John Adams, second president of the United States : with a life of the author, notes and illustrations*. (Boston: Charles C. Little and James Brown; 1850), Vol. 3 (of 10) pp. 449-50.

“[America is comprised of] free, Protestant, English settlements.”²³

“[T]he several towns ... and other bodies politic or religious societies ... [should provide for] the support and maintenance of public **Protestant** teachers of piety, religion, and morality.”²⁴

“Abhor that arrant whore of Rome,
And all her blasphemies,
And drink not of her cursed cup;
Obey not her decrees.”²⁵

[D]uring the early years of the Republic, American schools -- including the first public schools -- were Protestant in character. Their students recited Protestant prayers, read the King James version of the Bible, and learned Protestant religious ideals. Those practices may have wrongly discriminated against members of minority religions, but given the small number of such individuals, the teaching of Protestant religions in schools did not threaten serious social conflict. (Catholics constituted less than 2% of American church-affiliated population at time of founding).²⁶

²² Statement of Samuel Adams. McAvoy, Thomas T. *A History of the Catholic Church in the United States*, (Notre Dame: London; 1969), p. 387. Adams was the “Patriarch of Liberty” and the “Father of the American Revolution,” who served in numerous official roles, including delegate to the Continental Congress, President of the Massachusetts State Senate, and Massachusetts governor.

²³ Webster, Noah. *An American selection of lessons in reading and speaking*. (Philadelphia: Young and McCulloch; 1787), p. 243.

²⁴ Massachusetts Bill of Rights of 1780. *Documents of American History*. Commager, Henry Steele (ed.). Third Edition. (New York: F.S. Crofts & Co.; 1946), p. 108.

²⁵ *New England Primer, or, An easy and pleasant guide to the art of reading: Adorned with cuts; to which is added, the Catechism*. (Boston: Massachusetts Sabbath School Society; 1843) p. 25.

²⁶ *Zelman v. Simmons-Harris*, 536 U.S. 639, 720 (2002) (Breyer, J., dissenting) (citations omitted).

EXHIBIT B

UNITED STATES SUPREME COURT MAJORITY OPINIONS DEMONSTRATING MANDATE FOR RELIGIOUS NEUTRALITY

- (1) *Van Orden v. Perry*, 125 S. Ct. 2854, 2860 (2005) (discussing “the very neutrality the Establishment Clause requires”¹)
- (2) *McCreary County v. ACLU*, 125 S. Ct. 2722, 2733 (2005) (“The touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’”)
- (3) *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (courts “must be satisfied that the Act’s prescriptions are and will be administered neutrally among different faiths”)
- (4) *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (“[W]here a government aid program is neutral with respect to religion ... the program is not readily subject to challenge under the Establishment Clause.”)
- (5) *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001) (“[W]e have held that “a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion.”)
- (6) *Mitchell v. Helms*, 530 U.S. 793, 809 (2000) (“In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality.”)
- (7) *Agostini v. Felton*, 521 U.S. 203, 234 (1997) (“We therefore hold that a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause ...”)
- (8) *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 839 (1995) (“A central lesson of our decisions is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion.);
- (9) *Bd. of Educ. v. Grumet*, 512 U.S. 687, 696 (1994) (“A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of ‘neutrality’ toward religion.”)
- (10) *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) (“[W]e have consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge.”)

¹ All internal citations are omitted in this listing.

- (11) *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993) (“A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.”)
- (12) *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393 (1993) (“[T]he total ban on using District property for religious purposes could survive First Amendment challenge only if excluding this category of speech was reasonable and viewpoint neutral.”)
- (13) *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 251 (1990) (“Government act is constitutional if it “evinces neutrality toward, rather than endorsement of, religious speech.”)
- (14) *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378, 384 (1990) (noting “the constitutional requirement for governmental neutrality.”)
- (15) *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 13 (1989) (referencing “the policy of neutrality”)
- (16) *Bowen v. Kendrick*, 487 U.S. 589, 609 (1988) (recognizing the requirement that “the challenged statute appears to be neutral on its face.”)
- (17) *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335 (1987) (“Lemon’s “purpose” requirement aims at preventing the relevant governmental decisionmaker -- in this case, Congress -- from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters.”)
- (18) *School Dist. v. Ball*, 473 U.S. 373, 382 (1985) (“The solution to this problem adopted by the Framers and consistently recognized by this Court is jealously to guard the right of every individual to worship according to the dictates of conscience while requiring the government to maintain a course of neutrality among religions, and between religion and nonreligion.”)
- (19) *Wallace v. Jaffree*, 472 U.S. 38, 60 (1985) (recognizing “the established principle that the government must pursue a course of complete neutrality toward religion.”)
- (20) *Mueller v. Allen*, 463 U.S. 388, 398-99 (1983) (“a program ... that neutrally provides state assistance to a broad spectrum of citizens is not readily subject to challenge under the Establishment Clause.”)
- (21) *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (upholding “policy ... founded on a ‘neutral, secular basis.’”)
- (22) *Larson v. Valente*, 456 U.S. 228, 246 (1982) (“This principle of denominational neutrality has been restated on many occasions.”)
- (23) *Widmar v. Vincent*, 454 U.S. 263, 274 (1981) (denying challenge because “the University’s policy is one of neutrality toward religion.”)

- (24) *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 720 (1981) (noting “the governmental obligation of neutrality in the face of religious differences.”)
- (25) *McDaniel v. Paty*, 435 U.S. 618, 629 (1978) (noting the Establishment Clause’s “command of neutrality.”)
- (26) *Meek v. Pittenger*, 421 U.S. 349, 372 (1975) (requiring “that auxiliary teachers remain religiously neutral, as the Constitution demands.”)
- (27) *Comm. for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 792-93 (1973) (“A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of ‘neutrality’ toward religion.”)
- (28) *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972) (noting “the constitutional requirement for governmental neutrality.”)
- (29) *Tilton v. Richardson*, 403 U.S. 672, 688 (1971) (approving of “facilities that are themselves religiously neutral.”)
- (30) *Lemon v. Kurtzman*, 403 U.S. 602, 618 (1971) (recognizing the mandate for “remaining religiously neutral.”)
- (31) *Gillette v. United States*, 401 U.S. 437, 449 (1971) (“the section survives the Establishment Clause because there are neutral, secular reasons to justify the line that Congress has drawn.”).
- (32) *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968) (“Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice.”)
- (33) *Sherbert v. Verner*, 374 U.S. 398, 409 (1963) (noting “the governmental obligation of neutrality in the face of religious differences.”)
- (34) *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 215 (1963) (“examining this ‘neutral’ position in which the Establishment and Free Exercise Clauses of the First Amendment place our Government.”)
- (35) *Engel v. Vitale*, 370 U.S. 421, 443 (1962) (“The First Amendment leaves the Government in a position not of hostility to religion but of neutrality.”)

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

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

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

Attending that sermon was President Eisenhower. Three days earlier, the President and other of the nation’s leaders publicly joined in attending a prayer breakfast sponsored by

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

² *Id.* at 1-2.

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

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

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

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

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

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

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

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

She cited as being contrary to the principle of separation of church and state Senator Homer Ferguson's resolution to insert "under God" in the pledge of allegiance.

She also was critical of Senator Ralph E. Flanders' proposed amendment to the Constitution which reads:

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

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

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

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

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

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

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

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

- (1) Recognizing that the pledge did not specifically acknowledge that we are a people who do believe in and want our Government to operate under divine guidance, I introduced in the Senate a resolution to add the words which forever, I hope, will be on the lips of Americans.
- (2) To put the words “under God” on millions of lips is like running up the believer’s flag as the witness of a great nation’s faith. It is also displayed to the gaze of those who deny the sacred sanctities which it symbolizes.
- (3) Then, appropriately, as the flag was raised a bugle rang out with the familiar strains of “Onward, Christian Soldiers!”

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

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

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

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

- (4) Thus at the White House and at the Capital was “under God” written across the Stars and Stripes, in its homage to deity taking its place with the “In God We Trust” on our coinage and “the power that hath made and preserved us a Nation” in our national anthem. Concerning this meaningful event the White House made this thrilling pronouncement, to which is the sound of a great “Amen” in a mighty host of God-fearing hearts:
- (5) “From this day forward the millions of our schoolchildren will daily proclaim in every city and town, every village and rural schoolhouse the dedication of our Nation and our people to the Almighty.
- (6) To be “under God” is to be under an intelligible explanation of the mysterious universe in which we find ourselves. To believe in nothing higher than the flag of one’s nation is to thwart the soul’s highest instincts, as well as to insult the intellect.
- (7) The results of blasphemous denials of God on a tremendous scale already are being shudderingly shown by the baneful social pattern of atheistic materialism.
- (8) Certainly, one who accepts the beliefs of unbelief, with its assumption of a universe that is dead and godless, is called before the bar of reason to explain such undeniable facts as self-sacrifice, nobility, and heroism, which have made the earthen vessels of humanity blaze with a shining glory.
- (9) To deny the implications of “under God” and to point to dust to explain destiny is about as sensible as declaring that you could take a bag containing the letters of the alphabet and, throwing a few handfuls of them into the air, expect them to fall to the ground in the form of a Shakespeare’s sonnet or of a Tennyson’s In Memoriam. The thing is absurd.
- (10) There is no liberty anywhere except under God.
- (11) We are suddenly aghast at the dire possibilities of stupendous power in the hands of men who have no God in their hearts.
- (12) Any so-called freedom, if it is not under God, is under sentence of death.
- (13) I hope, and respectfully suggest, that every newspaper in the country, at least once before the Fourth of July, print on its front page the new Pledge of Allegiance with the words “under God” in bold-face type, so that all the people may know the new pledge of allegiance.



THE WHITE HOUSE
WASHINGTON

November 13, 2002

Mitsuo Murashige and Associates
President
Hawaii State Federation of
Honpa Hongwanji Lay Associations
212 Ainalako Road
Hilo, Hawaii 96720-3705

Dear Mitsuo Murashige and Associates:

Thank you for your letter regarding the Pledge of Allegiance. I appreciate hearing your views and concerns.

As citizens recite the words of the Pledge of Allegiance, we help define our Nation. In one sentence, we affirm our form of government, our belief in human dignity, our unity as a people, and our reliance on God. During these challenging times, we are determined to stand for these words.

For more than two centuries, our flag has stood for a unified country. When we pledge allegiance to our flag, Americans feel a renewed respect and love for all it represents. We are thankful for our rights to life, liberty, and the pursuit of happiness. We are also grateful for our freedoms, which were protected by our Founding Fathers and defended by subsequent generations of brave Americans.

When we pledge allegiance to One Nation under God, our citizens participate in an important American tradition of humbly seeking the wisdom and blessing of Divine Providence. Our Declaration of Independence proclaims that our Creator endowed us with inalienable rights, and our currency says, "In God We Trust." May we always live by that same trust, and may the Almighty continue to watch over the United States of America.

Thank you again for writing, and best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "George W. Bush".

George W. Bush

83^D CONGRESS : : : : 2^D SESSION

JANUARY 6-DECEMBER 2, 1954

HOUSE REPORTS

VOL. 3

MISCELLANEOUS III

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1954

83D CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
2d Session } } No. 1693

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ORSE,
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AMENDING THE PLEDGE OF ALLEGIANCE TO THE FLAG
OF THE UNITED STATES

MAY 28, 1954.—Referred to the House Calendar and ordered to be printed

Mr. JONAS of Illinois, from the Committee on the Judiciary, sub-
mitted the following

REPORT

[To accompany H. J. Res. 243]

The Committee on the Judiciary, to whom was referred the joint
resolution (H. J. Res. 243) to amend the pledge of allegiance to the
flag of the United States of America, having considered the same,
report favorably thereon with an amendment and recommend that
the joint resolution, as amended, do pass.

The amendment is as follows:

Page 2, line 1, strike out the comma after the words "one Nation".

PURPOSE

The act of June 22, 1942 (ch. 435, 56 Stat. 1074), as amended,
relates to rules and customs pertaining to the display and use of the
flag of the United States of America. Section 7 of that act contains
the pledge of allegiance to the flag; and it is the purpose of this
proposed legislation to amend that pledge by adding the words
"under God" so as to make it read, in appropriate part, "one Nation
under God, indivisible,".

STATEMENT

Since the introduction of this legislation the committee and a great
number of the individual Members of Congress have received com-
munications from all over the United States urging the enactment of
this measure.

At this moment of our history the principles underlying our Ameri-
can Government and the American way of life are under attack by a
system whose philosophy is at direct odds with our own. Our
American Government is founded on the concept of the individuality
and the dignity of the human being. Underlying this concept is the

belief that the human person is important because he was created by God and endowed by Him with certain inalienable rights which no civil authority may usurp. The inclusion of God in our pledge therefore would further acknowledge the dependence of our people and our Government upon the moral directions of the Creator. At the same time it would serve to deny the atheistic and materialistic concepts of communism with its attendant subservience of the individual.

The Supreme Court ruled in 1892 that "this is a religious nation."¹ It reiterated this holding, more recently (1951), when it stated:

We are a religious people whose institutions presuppose a supreme being.²

Those words by our Supreme Court are true in a very fundamental and realistic sense. From the time of our earliest history our peoples and our institutions have reflected the traditional concept that our Nation was founded on a fundamental belief in God. For example, our colonial forebears recognized the inherent truth that any government must look to God to survive and prosper. In the year 1620, the Mayflower compact, a document which contained the first constitution in America for complete self-government, declared in the opening sentence "In the name of God. Amen." This was an open recognition, by our forebears, of the need for the official conjunction of the laws of God with the laws of the land.

It was William Penn who said: "Those people who are not governed by God will be ruled by tyrants."

Four years before the Declaration of Independence, we find George Mason arguing to the General Court of Virginia that—

All acts of legislature apparently contrary to the natural right and justice are, in our laws, and must be in the nature of things considered as void. The laws of nature are the laws of God, whose authority can be superseded by no power on earth.

On July 4, 1776, our Founding Fathers proclaimed our Declaration of Independence which no less than four times refers to the existence of the Creator. It states in part:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

This same document appeals to "the Supreme Judge of the world" that this Nation be free, and pledges our Nation to support the Declaration "with a firm reliance on the protection of divine Providence."

During the Presidency of Abraham Lincoln, the Congress passed the act of April 22, 1864, directing that the inscription "In God we trust" be placed on our coins. This avowal of faith has been imprinted on billions and billions of coins during the last 90 years.

Later at Gettysburg on November 19, 1863, Lincoln said:

That we here highly resolve that these dead shall not have died in vain; that this Nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.

¹ *Church of the Holy Trinity v. U. S.* (1892) (143 U. S. 457, 470).

² *Zorach v. Clauson* (1951) (343 U. S. 306, 313).

AMEND THE PLEDGE OF ALLEGIANCE TO THE FLAG

3

Recently President Eisenhower joined with Bishop Fulton J. Sheen, Dr. Norman Vincent Peale, Rabbi Norman Salit, and the American Legion Commander, Arthur J. Connell, in the American Legion's Back to God appeal in connection with its Four Chaplains' Day, commemorating the four military chaplains who heroically gave their lives when the troopship *Dorchester* was sunk in 1943. The President declared that "all the history of America" bears witness to the truth that "in time of test or trial we instinctively turn to God." "Today, as then (Gettysburg), there is need for positive acts of renewed recognition that faith is our surest * * * strength, our greatest resource."

Representative Louis C. Rabaut who testified at the hearing before the subcommittee aptly stated the need for this legislation in the following words:

By the addition of the phrase "under God" to the pledge, the consciousness of the American people will be more alerted to the true meaning of our country and its form of government. In this full awareness we will, I believe, be strengthened for the conflict now facing us and more determined to preserve our precious heritage.

More importantly, the children of our land, in the daily recitation of the pledge in school, will be daily impressed with a true understanding of our way of life and its origins. As they grow and advance in this understanding, they will assume the responsibilities of self-government equipped to carry on the traditions that have been given to us. Fortify our youth in their allegiance to the flag by their dedication to "one Nation, under God."

Since our flag is symbolic of our Nation, its constitutional government and the morality of our people, the committee believes it most appropriate that the concept of God be included in the recitations of the pledge of allegiance to the flag. It should be pointed out that the adoption of this legislation in no way runs contrary to the provisions of the first amendment to the Constitution. This is not an act establishing a religion or one interfering with the "free exercise" of religion. A distinction must be made between the existence of a religion as an institution and a belief in the sovereignty of God. The phrase "under God" recognizes only the guidance of God in our national affairs. The Supreme Court has clearly indicated that the references to the Almighty which run through our laws, our public rituals, and our ceremonies in no way flout the provisions of the first amendment (*Zorach v. Clauson* (343 U. S. 306, 312-313)). In so construing the first amendment, the Court pointed out that, if this recognition of the Almighty was not so, then even a fastidious atheist or agnostic could object to the way in which the Court itself opens each of its sessions, namely, "God save the United States and this Honorable Court" (id., 313).

Included as a part of this report is an opinion from the Legislative Reference Service of the Library of Congress, concerning the proper placement of the words "under God" in the pledge of allegiance.

MAY 11, 1954.

To: Mr. Cyril F. Brickfield [Assistant Counsel], House Committee on the Judiciary.

Subject: Placing of the words "under God" in the pledge of allegiance.

The pledge of allegiance to the flag was recognized and codified by Congress in the Flag Code of 1942 (act of June 22, 1942, amended December 22, 1942, U. S. C. 36:172). The pledge law now reads: "I pledge allegiance to the flag

AMEND THE PLEDGE OF ALLEGIANCE TO THE FLAG

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

Currently, several proposals are pending, to insert in this pledge the word "under God." These present several alternatives as to placement and punctuation:

- (1) * * * Republic for which it stands, one Nation, under God, indivisible with liberty * * *
- (2) * * * Republic for which it stands, one Nation under God, indivisible with liberty * * *
- (3) * * * Republic for which it stands, one Nation indivisible under God, with liberty * * *

You have asked for a brief memorandum on the question of placement and punctuation, and whether the rules of grammar point to one form rather than another. The present statement is limited to this narrow point. Of course, before any judgment can be expressed, the fundamental question must be met—what is the exact meaning intended by the proposed insertion? On this point, we have some remarks in the Congressional Record as a guide.

Representative Rabaut, who introduced Joint Resolution 243, explained his measure in the Congressional Record of February 12, 1954, page A-1115. "Unless we are willing to affirm our belief in the existence of God and His creator-creature relationship to man, we drop man himself to the significance of a grain of sand. * * * Children and Americans of all ages must know that this is one Nation which "under God" means "liberty and justice for all."

Senator Ferguson, who introduced Senate Joint Resolution 126, commented that "Our Nation was founded on a fundamental belief in God * * * communism, on the contrary, rejects the very existence of God." (See Congressional Record, April 1, 1954, p. A-2527.)

It seems unlikely, then, that the insertion is intended as a general affirmation of the proposition that the United States of America is "founded on a fundamental belief in God." The new language should therefore be inserted, and punctuated, so as most clearly to indicate this general thought. Under the generally accepted rules of grammar, a modifier should normally be placed as close as possible to the word it modifies. In the present instance, this would indicate that the phrase "under God," being intended as a fundamental and basic characterization of our Nation, might well be put immediately following the word "Nation." Further, since the basic idea is a Nation founded on a belief in God, there would seem to be no reason for a comma after Nation; "one Nation under God" thus becomes a single phrase, emphasizing precisely the idea desired by the authors noted above.

This reading, it will be noticed, substitutes the basic concept of "one Nation under God" for the phrase now in the law, "one Nation indivisible"; and "indivisible" becomes a separate prime modifier.

In the alternative reading, "one Nation indivisible under God," the phrase "under God" would by the normal rules of grammar be read as modifying "indivisible," rather than "Nation." By the same reasoning, in the reading "one Nation under God indivisible," indivisible would naturally be construed as modifying the word "God."

It may be noted in passing that as the expression is used in Lincoln's Gettysburg Address [that this Nation, under God, shall have a new birth of freedom * * *] the phrase "under God" seems to mean "with the help of God." Lincoln was solemnly asking his people to resolve that the Nation, with God's help, should have a new birth of freedom. The difference in context seems adequate reason for the punctuation as given.

W. C. GILBERT, *Assistant Director.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives there is printed below in roman type without brackets existing law in which no change is proposed by enactment of this bill: New provisions proposed to be inserted are shown in italic.

E FLAG

AMEND THE PLEDGE OF ALLEGIANCE TO THE FLAG 5

TITLE 28, UNITED STATES CODE

§ 172. PLEDGE OF ALLEGIANCE TO THE FLAG; MANNER OF DELIVERY

The following is designated as the pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation *under God*, indivisible, with liberty and justice for all." Such pledge should be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute.



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Examples of Religious Tests in the Colonial Constitutions*

Delaware (1776)

Article 22: “Every person who shall be chosen a member of either house ... shall make and subscribe the following declaration, to wit: ‘I ...do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost.’”

Pennsylvania (1776)

Article 2, Section 10: “[E]ach member ... shall make and subscribe the following declaration, viz: ‘I do believe in one God, the creator and governor of the universe ... And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.’”

New Jersey (1776)

Article 19: “[A]ll persons, professing a belief in the faith of any Protestant sect. ... shall be capable of being elected into any office.”

Georgia (1777)

Article VI: “The representatives ... shall be of the Protestant religion.”

Massachusetts (1780)

Chapter 6, Article 1: “Any person chosen ... representative ... shall ... make and subscribe the following declaration, viz.—‘I, A. B., do declare, that I believe the Christian religion, and have a firm persuasion of its truth.’”

Maryland (1776)

Section 55: “[E]very person, appointed to any office of profit or trust, shall ... subscribe a declaration of his belief in the Christian religion.”

South Carolina (1778)

Article 12: “[N]o person shall be eligible to a seat in the said senate unless he be of the Protestant religion...”

Article 13: “[N]o person shall be eligible to sit in the house of representatives unless he be of the Protestant religion...”

New Hampshire (1784)

Article VI: “[E]very denomination of christians ... shall be equally under the protection of the law:”

North Carolina (1776)

Article 32: “[N]o person, who shall deny the being of God or the truth of the Protestant religion, ...shall be capable of holding any office.”

* Accessed on February 16, 2008 at <http://candst.tripod.com/toc.htm#constitutions>.

**SAMPLES OF STATEMENTS BY THE FRAMERS REGARDING
THE TREATMENT OF RELIGION IN THE CONSTITUTION**

*“As to the subject of religion ... No power is given to the general government to interfere with it at all. Any act of Congress on this subject would be a usurpation.”*¹

– Richard Dobbs Spaight

*“If any future Congress should pass an act concerning the religion of the country, it would be an act which they are not authorized to pass, by the Constitution.”*²

– James Iredell

*The President “has no particle of spiritual jurisdiction”*³

– Alexander Hamilton

*“[T]here is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation.”*⁴

– James Madison

*“[The document lacks any indication of] a belief of the existence of a Deity, and of a state of future rewards and punishments.”*⁵

– Luther Martin

*“Many pious people wish the name of the Supreme Being had been introduced somewhere in the new Constitution. Perhaps an acknowledgement may be made of his goodness or of his providence in the proposed amendments.”*⁶

– Dr. Benjamin Rush

¹ Elliot, Jonathan, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*. . . . 5 vols. 2d ed. 1888.

² *Id.*

³ Federalist #69, accessed at http://thomas.loc.gov/home/histdox/fed_69.html on April 15, 2006.

⁴ Elliot’s *Debates*, Vol. 3 at 330.

⁵ Elliot’s *Debates*, Vol. 1 at 385-86.

⁶ 1 Letters of Benjamin Rush 517, 517 (L.H. Butterfield ed., 1951).

United States Supreme Court
Citations to James Madison’s *Memorial and Remonstrance*

“[T]he most important document explaining the Founders' conception of religious freedom.”¹

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¹ McConnell M. *New Directions in Religious Liberty: "God is Dead and We Have Killed Him!"*: *Freedom of Religion in the Post-modern Age*. 1993 B.Y.U.L. Rev. 163, 169 (1993).

United States Supreme Court
Citations to James Madison's Memorial and Remonstrance

- (1) Van Orden v. Perry, 125 S. Ct. 2854, 2892 (2005) (Souter, J., dissenting)
- (2) McCreary County v. ACLU, 125 S. Ct. 2722, 2754 (Scalia, J., dissenting)
- (3) McCreary County v. ACLU, 125 S. Ct. 2722, 2746, 2747, (O'Connor, J., concurring)
- (4) Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2332 (2004) (Thomas, J., concurring)
- (5) Locke v. Davey, 540 U.S. 712, 722 (2004) (Rehnquist, C.J., majority)
- (6) Zelman v. Simmons-Harris, 536 U.S. 639, 711 (2002) (Souter, J., dissenting)
- (7) Mitchell v. Helms, 530 U.S. 793, 871 (2000) (Souter, J., dissenting)
- (8) City of Boerne v. Flores, 521 U.S. 507, 560-61 (1997) (O'Connor, J., dissenting)
- (9) Agostini v. Felton, 521 U.S. 203, 243 (1997) (Souter, J., dissenting)
- (10) Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 853 (1995) (Thomas, J., concurring)
- (11) Lee v. Weisman, 505 U.S. 577, 590 (1992) (Kennedy, J., majority)
- (12) Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 341 n.2 (1987) (Brennan, J., concurring)
- (13) Edwards v. Aguillard, 482 U.S. 578, 605-606 (1987) (Powell, J., concurring)
- (14) Wallace v. Jaffree, 472 U.S. 38, 55 n.38 (1985) (Stevens, J., majority)
- (15) Marsh v. Chambers, 463 U.S. 783, 804 (1983) (Brennan, J., dissenting)
- (16) Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 502 (1982) (Brennan, J., dissenting)
- (17) Meek v. Pittenger, 421 U.S. 349, 383 (1975) (Brennan, J., dissenting)
- (18) Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756, 760, 772, 783, 798 (1973) (Powell, J., majority)
- (19) Lemon v. Kurtzman, 411 U.S. 192, 209 (1973) (Douglas, J., dissenting)
- (20) Wisconsin v. Yoder, 406 U.S. 205, 218 (1972) (Burger, C.J., majority)
- (21) Lemon v. Kurtzman, 403 U.S. 602, 633 (1971) (Douglas, J., concurring)
- (22) Tilton v. Richardson, 403 U.S. 672, 696 (1971) (Douglas, J., dissenting)
- (23) Walz v. Tax Com. of New York, 397 U.S. 664, 675 n.3 (1970) (Burger, J., majority)
- (24) Flast v. Cohen, 392 U.S. 83, 103 (1968) (Warren, C.J., majority)
- (25) Board of Education v. Allen, 392 U.S. 236, 266 (1968) (Douglas, J., dissenting)
- (26) School Dist. v. Schempp, 374 U.S. 203, 213, 225 (1963) (Clark, J., majority)
- (27) Engel v. Vitale, 370 U.S. 421, 433 n.13, n.15, 436 n.22 (1962) (Black, J., majority)
- (28) Torcaso v. Watkins, 367 U.S. 488, 491 (1961) (Black, J., majority)
- (29) McGowan v. Maryland, 366 U.S. 420, 431 n.7 (1961) (Warren, C.J., majority)
- (30) Illinois ex rel. McCollum v. Bd. of Educ., 333 U.S. 203, 214, 216 (1948) (Black, J., majority)
- (31) Everson v. Board of Education, 330 U.S. 1, 12, 13 n.12 (1947) (Black, J., majority)
- (32) Everson v. Board of Education, 330 U.S. 1, 12, 13 n.12 (1947) (extensive discussion in Justice Rutledge's dissent)
- (33) Reynolds v. United States, 98 U.S. 145, 163 (1878) (Waite, C.J., majority)

SELECTED EXCERPTS FROM THE CONGRESSIONAL RECORD
Circa 1954¹

“I think that the criminal flood is an inescapable result of our earlier failure to teach God convincingly to the youthful unfortunates who are our juvenile delinquents of today and who will be our adult criminals of tomorrow.”²

“Without these words, ... the pledge ignores a definitive factor in the American way of life and that factor is belief in God.”³

“[T]he fundamental issue which is the unbridgeable gap between America and Communist Russia is a belief in Almighty God.”³

“From the root of atheism stems the evil weed of communism.”³

“An atheistic American ... is a contradiction in terms.”³

“[T]he American way of life is ... ‘a way of life that sees man as a sentient being created by God and seeking to know His will, whose soul is restless till he rests in God.’”³

“From their earliest childhood our children must know the real meaning of America. Children and Americans of all ages must know that this is one Nation which ‘under God’ means ‘liberty and justice for all.’”³

“[T]he fundamental basis of our Government is the recognition that all lawful authority stems from Almighty God.”⁴

“[W]e recognize the spiritual origins and traditions of our country as our real bulwark against atheistic communism.”⁴

“[O]nly under God will our beloved country continue to be a citadel of freedom.”⁴

“The pledge of allegiance should be proclaimed in the spirit ... recogni[zing] God as the Creator of mankind, and the ultimate source both of the rights of man and of the powers of government.”⁵

¹ These quotations were originally used in Plaintiff’s prior challenge to “under God” in the Pledge of Allegiance. *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004). They are just as pertinent in revealing how the political climate of the 1950s was permeated with (Christian) monotheism, which Congress was intent on infusing into society.

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

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

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

“Certainly, in these days of great challenge to America, one can hardly think of a more inspiring symbolic deed than for America to reaffirm its faith in divine providence.”⁶

“What better training for our youngsters could there be than to have them, each time they pledge allegiance to Old Glory, reassert their belief, like that of their fathers and their fathers before them, in the all-present, all-knowing, all-seeing, all-powerful Creator.”⁶

“[I]n times like these when Godless communism is the greatest peril this Nation faces, it becomes more necessary than ever to avow our faith in God and to affirm the recognition that the core of our strength comes from Him.”⁷

“Hence it is fitting that those two profoundly meaningful words “under God” should be included in the pledge of allegiance so that we and our children, who recite the pledge far more often than adults, may be reminded that spiritual strength derived from God is the source of all human liberty.”⁷

“[The] principles of the worthwhileness of the individual human being are meaningless unless there exists a Supreme Being.”⁸

“It is the Nation itself which was born and lives ‘under God.’”⁸

“[T]he one fundamental issue which is the unbridgeable gap between America and Communist Russia is belief in Almighty God.”⁸

“More importantly, the children of our land, in the daily recitation of the pledge in school, will be daily impressed with a true understanding of our way of life and its origins. . . . Fortify our youth in their allegiance to the flag by their dedication to ‘one Nation, under God.’”⁸

“He is the God, undivided by creed, to whom we look, in the final analysis, for the well-being of our Nation. Therefore, when we make our pledge to the flag I believe it fitting that we recognize by words what our faith has always been.”⁹

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

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

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

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

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

It is a “fundamental truth ... that a government deriving its powers from the consent of the governed must look to God for divine leadership.”¹⁰

“We are asking that only two words be added to the Pledge of Allegiance, but they are very significant words.”¹¹

“[T]he Pledge of Allegiance to the Flag which stands for the United States of America should recognize the Creator who we really believe is in control of the destinies of this great Republic.”¹¹

“It is true that under the Constitution no power is lodged anywhere to establish a religion. This is not an attempt to establish a religion; it has nothing to do with anything of that kind. It relates to belief in God, in whom we sincerely repose our trust.”¹¹

“Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God’s province over the lives of our people and over this great Nation.”¹¹

“[The Pledge] is not only a pledge of words but also of belief.”¹¹

“[B]elief in God is part of our very lives.”¹¹

“The United States is one of the outstanding nations of the world standing foursquare on the principle that God governs the affairs of men.”¹²

“Billy Graham [said,] ‘We have dropped our pilot, the Lord Jesus Christ, and are sailing blindly on without divine chart or compass.’”¹²

“[I]t is well that when the pledge of allegiance to the flag is made by every loyal citizen and by the schoolchildren of America, there should be embodied in the pledge our allegiance and faith in Almighty God. The addition of the words ‘under God’ will accomplish this purpose.”¹²

“[W]hen Francis Bellamy wrote this stirring pledge, the pall of atheism had not yet spread its hateful shadow over the world, and almost everyone acknowledged the dominion of Almighty God.”¹³

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

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

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

¹³ 100 Cong. Rec. 18 (Appendix), A3448 (May 11, 1954) (Letter entered into the record by Rep. George H. Fallon. This was “[p]assed without a single dissenting vote, and later adopted by the DAR,

“[N]ow that the militant atheistic Red menace is abroad in our land, it behooves us to remind the free people of these United States that they are utterly at the mercy of God.”¹³

“Now that pagan philosophies have been introduced by the Soviet Union, there is a necessity for reaffirming belief in God.”¹⁴

“I appear here today in support of any and all bills that would serve to recognize the power and universality of God in our pledge of allegiance.”¹⁵

“The inclusion of God in our pledge would acknowledge the dependence of our people, and our Government upon the moral direction and the restraints of religion.”¹⁵

“The significant import of our action today ... is that we are officially recognizing once again this Nation’s adherence to our belief in a divine spirit, and that henceforth millions of our citizens will be acknowledging this belief every time they pledge allegiance to our flag.”¹⁶

“How fitting that we here today should take action to once more affirm our belief in ... the guidance of a divine spirit.”¹⁶

“Once again we are proclaiming to the world that ... the flag which flies over our land is a symbol of a nation and of a people under God.”¹⁶

“[T]his measure is more than one of passing importance. It goes to the very fundamentals of life and creation. It recognizes that all things which we have in the way of life, liberty, constitutional government, and rights of man are held by us under the divine benediction of the Almighty. There is a hope and a hereafter in these two words and they, of course, should be included in the pledge of allegiance to Old Glory.”¹⁷

“One thing separates free peoples of the Western World from the rabid Communist, and this one thing is a belief in God. In adding this one phrase to our pledge of allegiance to our flag, we in effect declare openly that we denounce the pagan doctrine of communism and declare ‘under God’ in favor of free government and a free world.”¹⁷

“Fortify our youth in their allegiance to the flag by their dedication to ‘one nation under God.’”¹⁸

the Flag House Association, the VFW, the DAV, sections of the American Legion ..., incorporated in the pledge at the ‘I Am An American Day’ ... etc., etc.”)

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

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

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

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

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

“Regaining our reverence for God we in America in this 20th century can rediscover our own value and the solid basis on which it rests.”¹⁹

“The first sentence of section 7 of the joint resolution (36 U.S.C. sec. 172), as amended, ‘one Nation indivisible under God,’ is a realistic recognition of the theological and philosophical truth – the existence of a Supreme Being.”²⁰

“When the forces of anti-God and antireligion so persistently spread their dangerous and insidious propaganda, it is wholesome for us to have constantly brought to our minds the fact that, mighty and essential as armed strength may be, it is the strength of the spirit and the moral force generated by the righteousness of our cause and the purity of our motives to which we must ultimately look for salvation from destruction and for triumph over the evil forces that best us.”²¹

“Faith in God ... has never been misplaced. House Joint Resolution 243 is a proclamation to all the world and to ourselves, ever to keep us mindful and prayerful, that the United States of America is in truth and in the acknowledged fact, a ‘Nation under God.’”²²

“This [is a] victory for God and country.”²²

“[The joint resolution] seems to have struck a note of universal approval, indicating an underlying acknowledgement of our indebtedness to God and our dependence upon Him.”²³

“At this moment of our history the principles underlying our American Government and the American way of life are under attack by a system that does not believe in God. A system that denies the existence of God.”²³

“Thus, the inclusion of God in our pledge of allegiance rightly and most appropriately acknowledges the dependence of our people and our Government upon that divinity that rules over the destinies of nations as well as individuals.”²³

“The God of nations who helped in bringing to a successful conclusion the war of independence, has never ceased to control the destiny of this great Nations, and I trust He never will.”²³

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

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

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

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

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

“[O]ne of the greatest differences between the free world and the Communists [is] a belief in God. The spiritual bankruptcy of the Communists is one of our strongest weapons in the struggle for men’s minds and this resolution gives us a new means of using that weapon.”²³

“The use of the phrase ‘under God’ in the pledge of allegiance to the flag sets forth in a mere two words, but, very strong and meaningful words, the fundamental faith and belief of America in the overruling providence of God and our dependence at all times upon Him.”²³

“The recitation of this acknowledgement that God is the foundation of our Nation will be of incalculable value, all through the years, of ever keeping vividly before our people, including our children who from earliest childhood, pledge their allegiance to the flag, that the real source of our strength in the future, as in the past, is God.”²³

“[T]he Government and people of America have recognized the necessity of doing the will of God as we see it, and of relying for our strength and welfare on the protection of His divine providence.”²⁴

“To insert these two words in the pledge ... would be the most forceful possible defiance of the militant atheism and ‘dialectical materialism’ that are identified with Russian and international communism.”²⁴

“[W]e wish now, with no ambiguity or reservation, to place ourselves under the rule and care of God.”²⁴

“We Members of Congress ... felt and acted on the popular urge to give expression to the conviction that our deliberations should be publicly and tangibly submitted to the guidance of God.”²⁴

“[W]e do well to once more publicly and officially affirm our faith.”²⁵

“[O]ur citizenship is of no real value to us unless our hearts speak in accord with our lips; and unless we can open our souls before God and before Him conscientiously say, ‘I am an American.’”²⁶

“God is the symbol of liberty to America.”²⁶

“The amendment to the pledge of allegiance to the flag, by inserting the words ‘under God,’ is a simple device by which we can verbally proclaim our intense desire to continue this land as ‘one Nation, under God, indivisible.’”²⁶

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

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

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

“[L]iberty, justice, and human equality ... are man’s own heritage from God.”²⁶

“Never before in our national history have so many diverse groups enjoyed such a complete measure of religious freedom as exists in the United States today. But it is even more inspiring to realize that these religious groups are all working ‘under God’ in their own ways, to help solve the problems which characterize our troubled era.”²⁶

“A child’s belief in spiritual values is beautiful to behold.”²⁶

“I believe it to be of great importance that we as a Nation recognize a higher power than ourselves in the guidance of our existence. This joint resolution recognizes that we believe there is a Divine Power, and that we, our children, and our children’s children should always recognize it.”²⁷

“I believe we should trust in God and we should recognize that God is guiding our destiny and the hopes and aspirations of this Nation.”²⁷

“It is so fitting that we declare to the world, in our position as leader among the sister nations of the earth, our dependence upon Almighty God.”²⁸

“In my experience as a public servant and as a Member of Congress I have never seen a bill which was so noncontroversial in nature or so inspiring in purpose.”²⁹

“I am proud to have been associated with this effort that produced this legislation which recognizes the importance of divine guidance in our national affairs.”²⁹

“We see the pledge, as it now stands, as a formal declaration of our duty to serve God and our firm reliance, now as in 1776, on the protection of divine providence.”³⁰

“To put the words ‘under God’ on millions of lips is like running up the believer’s flag as the witness of a great nation’s faith.”³¹

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

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

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

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

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

“[A]s the flag was raised a bugle rang out with the familiar strains of ‘Onward, Christian Soldiers!’”³¹

“From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our Nation and our people to the Almighty.”³²

“It is my belief that an extensive circulation of these printed copies of the Pledge of Allegiance to the Flag will imprint, indelibly, upon the minds of those who read them, whether they be young or old, that their great Nation, these United States, exists and endures purposefully ‘Under God.’”³³

“Freedom in a world faced with this interminable conflict between communism and Christianity will survive only so long as freemen are willing to fight for that precious principle.”³⁴

“You have learned that you live in a free nation composed of free men and women who are willing to sacrifice all they possess, as did their forefathers, to preserve the Christian principles of a free nation under God.”³⁴

“Today we express ... our national dependence upon almighty God by pledging, as a nation, our allegiance to the Stars and Stripes.”³⁵

“Wherever this banner is unfurled there is hope in the hearts of men who believe that God created man and destined him to be free.”³⁵

“[T]he need now is for the Christian ideas to neutralize the preponderance of material know-how. ... We cannot afford to capitulate to the atheistic philosophies of godless men – we must strive to ever remind the world that this great Nation has been endowed by a creator.”³⁵

“The sordid records of the divorce courts, of the juvenile delinquency case histories, the tragedy of broken homes, wandering families, of the cheap price put on human life, the old heads on young children, the disrespect for authority, the contempt for law, the chiseling among those in authority, the lack of honor among the citizenry – all of this is the shame of America, the open sores of her secularist spirit.”³⁶

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

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

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

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

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

“If we have no rights under God, then America has no purpose of existence. For America is all that she is simply because she recognizes our rights under God.”³⁶

“The further men move from God and His principles, the worse it will be for America.”³⁶

“Our people without God would be a people reading the death warrant to real American freedom.”³⁶

“[The] right to profess God-given principles, to practice God-given commandments, and to live God-ordered lives ... is America and will always be America. There is no other pattern of life that can bear this trademark.”³⁶

“It is time that we really be neighbors in the Christian sense, that we live as neighbors, and have trust one for the other. This is the American way; this is God’s way.”³⁶

“Only God-fearing men can guarantee to America her greatness, her survival, and her continued blessings.”³⁶

“As these words are repeated, ‘one Nation, under God, indivisible, with liberty and justice for all,’ we are reminded not only of our dependence upon God but likewise the assurance of security that can be ours through reliance upon God.”³⁷

“These words, ‘under God,’ ... can be taken as evidence of our faith in that divine source of strength that has meant and always will mean so much to us as a nation.”³⁷

“Let us never forget that recognition of God by this and the other nations of the free world will mean victory and security against the forces of evil that deny God. May we, as a nation under God, ever recognize Him as the source of our refuge and strength.”³⁷

“These principles of the worthwhileness of the individual human being are meaningless unless there exists a Supreme Being.”³⁸

“‘Under God’ in the pledge of allegiance to the flag expresses, aptly and forcefully, a grateful nation’s attitude of dependence upon Almighty God.”³⁸

“For under God this Nation lives.”³⁸

“Our political institutions reflect the traditional American conviction of the worthwhileness of the individual human being. That conviction, in turn, is based on our belief that the human person is important because he has been created in the image and likeness of God and that he has been endowed by God with certain inalienable rights.”³⁸

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

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

COERCION WITH PLEDGE VERSUS WITH THE GRADUATION PRAYER RULED UNCONSTITUTIONAL IN LEE V. WEISMAN

ACTOR: GRADUATION: Individual who is clearly not a governmental official.
PLEDGE: Teacher who is clearly a governmental official

STUDENT AGE: GRADUATION: 16-18 year olds, on the brink of adulthood
PLEDGE: Impressionable children, as young as age 5

FREQUENCY: GRADUATION: Once a year for the school.
Once per lifetime for the student.
PLEDGE: Every day for the school.
Approximately 2000 times per lifetime for the student.

SUBJECT MATTER: GRADUATION: Religious belief accorded to individual speaker
PLEDGE: Religious status accorded to government (i.e., we are “one Nation under God”)

STUDENT ACT: GRADUATION: Passive listening
PLEDGE: Active affirmation of belief

NONPARTICIPATION: GRADUATION: Does not reveal outsider status to peers
PLEDGE: Reveals outsider status to peers.

ATTENDANCE: GRADUATION: Voluntary under the law
PLEDGE: Mandatory under the law

PARENTS: GRADUATION: There to protect/support
PLEDGE: Not there to protect/support



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No. 93

House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (Ms. HIRONO).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC.

June 11, 2007.

I hereby appoint the Honorable MAZIE K. HIRONO to act as Speaker pro tempore on this day.

NANCY PELOSI,
Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 2007, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from New Mexico (Mr. UDALL) for 5 minutes.

IN MEMORIAM OF ARMY SERGEANT JAMES AKIN

Mr. UDALL of New Mexico. Madam Speaker, I rise today to honor Army Sergeant James Akin, a true American hero who lost his life while serving his country in Iraq. James was one of four soldiers killed near Baghdad on Sunday, June 3, 2007 when a roadside bomb detonated alongside the Humvee he was driving. He was killed less than a month before his 24th birthday.

James was a successful businessman who sold his retail cell phone company

at an age when most Americans are just beginning their professional career. But he was always more interested in serving the public than himself. James felt that a public servant is effective through action and experience rather than rhetoric. To that end, he enlisted in the Army and was deployed to Iraq in the fall of 2004. He was honored to serve his country, and, envisioning a future political life, he wanted to understand issues of military conflict from the perspective of a war veteran.

I regret that I did not know James personally, for those who did describe him with love, and they do so passionately. The many messages posted on his personal web page by those who knew him convey the tremendous admiration they had for him, and illustrate the caring, influential and thoughtful man that he was. They describe a father figure, a brotherly adviser and a considerate, deeply loving and equally loved husband.

A current member of my staff, Sarah Cobb, who worked with James on a congressional campaign in Albuquerque, said of him: "He truly was what is said of him—gregarious, outgoing and effervescent."

The love James had for his country and his countrymen was infectious. He openly and honestly told anyone he met of his future desire to run for President of the United States. He encouraged those he knew, and those he did not, to stay informed and to be involved in government and the electoral process. From what I have learned of James, I believe that if his life had not been cut short, he may indeed have addressed the Nation from the floor of this great Chamber.

Today, there is a void in the lives of all who knew him, and New Mexico is a lesser place for having lost him. Yet James will live on in the hearts and minds of those he touched, and New Mexico is lucky to call him a native son.

In 2004, James managed the New Mexico State senate campaign of my friend Victor Raigoza. Though they did not win that tough political battle, James showed the true measure of his character when he sent the following words of wisdom and encouragement to Mr. Raigoza: "Live life to serve, because you can. Dissent, because you can. Enjoy freedom, because you can. Remember always that the measure of our progress is not whether we can provide more for those who have plenty, but whether we can provide enough for those who have little."

My heartfelt condolences go out to James' family and James' wife Syreeta, his father and namesake James, and the large number of friends, extended family members and fortunate individuals whose lives he touched.

I spoke to Syreeta last Friday and told her how much the Nation appreciates James' service to his country. To Syreeta and James' family, thank you for your sacrifice.

I believe I speak for all New Mexicans when I say our Nation will always maintain a priceless debt of gratitude and the utmost respect for the service and sacrifice of Army Sergeant James Akin. He will be missed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 12 o'clock and 35 minutes p.m.), the House stood in recess until 2 p.m.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Ms. BALDWIN) at 2 p.m.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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H6185

Today, Lake Lanier provides power production, flood control, water supply, navigation, fish and wildlife management, and recreational activities to members of the surrounding communities and businesses. This week in June is a suitable time to recognize Lake Lanier's contributions to the area and accomplishments. As summer heat begins to spread across the Nation, both water supply and cooling water recreational activities are on many minds.

More than 60 percent of the population of the State of Georgia relies on water stored in Lake Lanier or down the Chattahoochee River. Similarly, properties around the lake and down the river rely on its banks and dam for flood control.

Nearly 8 million visitors come annually to appreciate the scenery and leisure opportunities provided by the lake. In fact, Lake Lanier holds the title of the most-visited Army Corps lake in the entire country. Facilities include 10 marinas and 57 parks for swimming, boating, fishing and picnicking. In 1996, Lake Lanier hosted the paddling and rowing competitions for the Summer Olympics in Atlanta.

And several years ago, the Marine Trade Association of Metro Atlanta found that Lake Lanier has an economic impact of \$5.5 billion.

I urge my colleagues to join with me and the gentleman from Georgia (Mr. DEAL) in supporting House Resolution 354 to honor the impacts, accomplishments and continuing success of Lake Lanier on its 50th anniversary.

Madam Speaker, I reserve the balance of my time.

Mr. LATOURETTE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, today we recognize the 50th anniversary of Lake Sidney Lanier, an Army Corps of Engineers facility located in the State of Georgia.

Lake Lanier is one of 464 lakes in 43 States constructed and operated by the U.S. Army Corps of Engineers.

Our Nation is blessed with considerable water resources that support our Nation's economy and quality of life. We need water for our homes, farms and factories. Water also supports navigation, generates power and sustains our environment.

Congress authorized the Buford Dam Project in 1946 just after the end of the Second World War. Groundbreaking for the project began in 1950. Constructed by the U.S. Army Corps of Engineers, Lake Lanier is a multipurpose, 38,000-acre lake that provides flood protection, power production, water supply, navigation, recreation, and fish and wildlife management.

Nestled in the foothills of the Georgia Blue Ridge Mountains, Lake Sidney Lanier is one of America's favorite lakes. Over 7.5 million people a year choose to visit Lake Lanier. With over 692 miles of shoreline, the lake is well known for its aqua-blue colored water, spectacular scenery and variety of recreational activities.

When completed, the total cost of construction, including land acquisition, was almost \$45 million. When the gates of the dam were closed in 1956, it took more than 3 years for the lake to reach its normal elevation of 1,070 feet above sea level.

The lake is named for one of the Nation's most famous poets, Sidney Lanier. Born in Georgia in 1842, Mr. Lanier entered Oglethorpe College at 14 years of age, graduating at the top of his class in 1860.

While serving on the blockade runner "Lucy" during the Civil War, Mr. Lanier was captured and contracted tuberculosis while imprisoned in Maryland. Following the Civil War, Mr. Lanier played the flute for the Peabody Symphony and lectured at Johns Hopkins University.

While he is known for works like "The Harlequin of Dreams," "In Absence," "Acknowledgement," and "Sunrise," he is best remembered for "The Song of the Chattahoochee," an enduring legacy for the native Georgian.

I urge all of our Members to support this legislation.

Mr. OBERSTAR. Madam Speaker, I rise in support of H. Res. 354, recognizing the year 2007 as the official 50th anniversary celebration of the beginnings of marinas, power production, recreation, and boating on Lake Sidney Lanier, Georgia.

Lake Lanier is named after Sidney Clopton Lanier, a poet and musician who was born in Macon, Georgia, in 1842. After participating in battle during the Civil War, and being captured and imprisoned in Point Lookout, Maryland, Mr. Lanier contracted tuberculosis, which would affect him for the rest of his life.

Mr. Lanier's life was one of practicality and beauty: while he practiced law to support his wife and four children, he was also the first flutist in the Peabody Orchestra in Baltimore, Maryland, and an accomplished poet. The Lake was named after Mr. Lanier because of the way he positively portrayed the Chattahoochee River in his poetry.

In fact, Lake Lanier itself is a symbol of both practicality and beauty. It provides crucial flood control, protecting approximately \$2 billion worth of property in the surrounding area. Similarly, on June 16, 1957—50 years ago this week—Buford Dam began producing power for the first time. Hydropower continues to flow from these waters to this day.

Although the lake is one of 464 lakes constructed and operated by the U.S. Army Corps of Engineers, it has won the annual award for "best operated lake" for three separate years: 1990, 1997, and 2002.

While the flood control, water supply, and power production role of Lake Lanier may be critical to the continuing livelihood of the communities in the surrounding area, the lake also provides beautiful scenery and recreational opportunities that local citizens and visiting tourists enjoy. The U.S. Army Corps of Engineers estimates that more than 7.5 million people visit the 692 miles of lake shoreline each year.

I urge my colleagues to join with me in recognizing the 50th anniversary of Lake Lanier.

Mr. LATOURETTE. Madam Speaker, I yield back the balance of my time.

Mr. ALTMIRE. Madam Speaker, I urge passage of the resolution, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. ALTMIRE) that the House suspend the rules and agree to the resolution, H. Res. 354.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

RECOGNIZING 40TH ANNIVERSARY OF LOVING V. VIRGINIA LEGALIZING INTERRACIAL MARRIAGE

Ms. BALDWIN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 431) recognizing the 40th anniversary of Loving v. Virginia legalizing interracial marriage within the United States.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 431

Whereas the first anti-miscegenation law in the United States was enacted in Maryland in 1661;

Whereas miscegenation was typically a felony under State laws prohibiting interracial marriage punishable by imprisonment or hard labor;

Whereas in 1883, the Supreme Court held in Pace v. Alabama that anti-miscegenation laws were consistent with the equal protection clause of the 14th Amendment as long as the punishments given to both white and black violators are the same;

Whereas in 1912, a constitutional amendment was proposed in the House of Representatives prohibiting interracial marriage "between negroes or persons of color and Caucasians";

Whereas in 1923, the Supreme Court held in Meyer v. Nebraska that the due process clause of the 14th Amendment guarantees the right of an individual "to marry, establish a home and bring up children";

Whereas in 1924, Virginia enacted the Racial Integrity Act of 1924, which required that a racial description of every person be recorded at birth and prevented marriage between "white persons" and non-white persons;

Whereas in 1948, the California Supreme Court overturned the State's anti-miscegenation statutes, thereby becoming the first State high court to declare a ban on interracial marriage unconstitutional and making California the first State to do so in the 20th century;

Whereas the California Supreme Court stated in Perez v. Sharp that "a member of any of these races may find himself barred from marrying the person of his choice and that person to him may be irreplaceable. Human beings are bereft of worth and dignity by a doctrine that would make them as interchangeable as trains";

Whereas by 1948, 38 States still forbade interracial marriage, and 6 did so by State constitutional provision;

Whereas in June of 1958, 2 residents of the Commonwealth of Virginia—Mildred Jeter, a black/Native American woman, and Richard Perry Loving, a Caucasian man—were married in Washington, DC;

Whereas upon their return to Virginia, Richard Perry Loving and Mildred Jeter Loving were charged with violating Virginia's anti-miscegenation statutes, a felonious crime;

Whereas the Lovings subsequently pleaded guilty and were sentenced to 1 year in prison, with the sentence suspended for 25 years on condition that the couple leave the State of Virginia;

Whereas Leon Bazile, the trial judge of the case, proclaimed that "Almighty God created the races white, black, yellow, Malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.";

Whereas the Lovings moved to the District of Columbia, and in 1963 they began a series of lawsuits challenging their convictions;

Whereas the convictions were upheld by the State courts, including the Supreme Court of Appeals of Virginia;

Whereas the Lovings appealed the decision to the Supreme Court of the United States on the ground that the Virginia anti-miscegenation laws violated the Equal Protection and Due Process Clauses of the 14th Amendment and were therefore unconstitutional;

Whereas in 1967, the U.S. Supreme Court granted certiorari to Loving v. Virginia and readily overturned the Lovings' convictions;

Whereas in the unanimous opinion, Chief Justice Earl Warren wrote: "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. . . . To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law.";

Whereas the opinion also stated that "the Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.";

Whereas in 1967, 16 States still had law prohibiting interracial marriage, including Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia;

Whereas Loving v. Virginia struck down the remaining anti-miscegenation laws nationwide;

Whereas in 2000, Alabama became the last State to remove its anti-miscegenation laws from its statutes;

Whereas according to the U.S. Census Bureau, from 1970 to 2000 the percentage of interracial marriages has increased from 1 percent of all marriages to more than 5 percent;

Whereas the number of children living in interracial families has quadrupled between 1970 to 2000, going from 900,000 to more than 3 million; and

Whereas June 12th has been proclaimed "Loving Day" by cities and towns across the country in commemoration of Loving v. Virginia: Now, therefore, be it

Resolved, That the House of Representatives—

(1) observes the 40th Anniversary of the U.S. Supreme Court decision in Loving v. Virginia; and

(2) commemorates the legacy of Loving v. Virginia in ending the ban on interracial marriage in the United States and in recog-

nizing that marriage is one of the "basic civil rights of man" at the heart of the 14th Amendment protections.

The SPEAKER pro tempore (Mr. ALTMIRE). Pursuant to the rule, the gentlewoman from Wisconsin (Ms. BALDWIN) and the gentleman from Iowa (Mr. KING) each will control 20 minutes.

The Chair recognizes the gentlewoman from Wisconsin.

GENERAL LEAVE

Ms. BALDWIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Wisconsin?

There was no objection.

Ms. BALDWIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of H. Res. 431, a resolution I introduced along with the gentleman from Georgia (Mr. LEWIS), commemorating the 40th anniversary of Loving v. Virginia, the landmark Supreme Court decision legalizing interracial marriages within the United States.

I thank Chairman CONYERS for expedition consideration of this resolution so it could be brought to the floor before the actual date of the anniversary which is tomorrow, June 12.

In June of 1958, two residents of the Commonwealth of Virginia, Mildred Jeter, a black Native American woman, and Richard Perry Loving, a Caucasian man, were married in Washington, D.C. Upon their return to Virginia, Richard Perry Loving and Mildred Jeter Loving were charged with violating Virginia's anti-miscegenation statutes, which made their marriage a felony.

□ 1415

They challenged their convictions, culminating in the June 12, 1967, U.S. Supreme Court opinion in Loving v. Virginia, striking down the remaining anti-miscegenation laws that were still in effect in 16 States.

In the unanimous opinion, the Supreme Court rejected bigotry against interracial relations, recognizing an individual's right to marry under the 14th amendment. Chief Justice Earl Warren wrote: "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. . . . To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the 14th amendment, is surely to deprive all the States' citizens of liberty without due process of law."

The opinion also stated that "the 14th amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person

of another race resides with the individual and cannot be infringed by the State."

The Loving decision marked a critical step forward in our Nation's struggle toward equal rights for all, particularly full marriage equality. According to the U.S. Census Bureau, from 1970 to the year 2000 the percentage of interracial marriages has increased from 1 percent of all marriages to more than 5 percent. The number of children living in interracial families has quadrupled between 1970 and 2000, going from 900,000 to more than 3 million. Because of the decision's profound impact in our society, numerous cities and towns across this country have already proclaimed June 12 Loving Day in commemoration of this decision.

Indeed, the Supreme Court's opinion forcefully rejected the argument employed by Leon Bazile, the trial judge of the case, who defended his decision convicting the Lovings as part of God's plan. Unfortunately, after 40 years, similar types of arguments are still being employed by a few to deny full marriage equality to everyone.

In commemorating the legacy of Loving v. Virginia in ending the ban on interracial marriage in the United States, H. Res. 431 reaffirms the Loving court's recognition that marriage is one of the "basic civil rights of man" at the heart of the 14th amendment protections.

I strongly urge my colleagues to support this timely resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. KING of Iowa. Mr. Speaker, I yield myself such time as I may consume.

I want to thank the gentlewoman from Wisconsin for presenting this resolution to this Congress, and I notice that many of the statements that she has made have laid out I think the history of this Loving case very well to the Congress, and so what I will seek to do is perhaps just add and fill in perhaps some of the blanks that may have been left, although I'm not convinced that there are many.

And that is the emphasis on equal protection and due process clause of the 14th amendment. I think it was clear when a unanimous decision in the Supreme Court in the Loving case, and it isn't often that you see an issue that has been traditionally rooted from the time of our Founders up until 1967, have a unanimous decision of the Supreme Court, even though it met that resistance at every step of the way throughout the entire appeals process until it got to the Supreme Court.

Today, it looks like a clear decision. It looks easy; it's simple. None of us would have any trouble with this Loving decision; but, in fact, then it was a matter of an idea whose time had finally come.

But the Supreme Court laid out very clear language in their decision that legislative classifications based on race

were "odious to a free people whose institutions are founded upon the doctrine of equality," and further condemned Virginia's interracial marriage statute. And then the Court concluded: "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the equal protection clause."

I just appreciate the privilege to emphasize those things, and then I'd like to add then some other thoughts to this record, Mr. Speaker, and that is that we rightfully celebrate the anniversary of the landmark decision here today. The institution of marriage between one man and one woman is older than the Nation itself. It predates government itself, and it also limits the power of government because traditional families are the fundamental units of our society.

Through them, we pour through that crucible our values from a father and a mother into the children and the values of our patriotism, our faith, our work ethic, our culture. The things we eat and the things we do, every component of our culture and civilization is concentrated through those values of those children that we have and that we're so well-blessed with; and without marriage, government would be bound to expand to take its place and would try lamely to do so.

But marriage embraces only one principle, and that is the marriage of a union between a man and a woman, and the further distinction of that and to have government draw a distinction between people based upon their ethnicity should be abhorrent to a free people.

And I stand here, Mr. Speaker, before you this afternoon, and I take this position that I believe we are all created in God's image, and what He has created, I believe it's an insult to Him if we draw distinctions between His creation. He has also seen to bless us with some specific characteristics that help us identify one another. And because He has seen to bless us with those characteristics, and in this case it was skin color, it doesn't mean it still isn't a reflection of God's image.

And I recall stepping into a church in Port Gibson, Mississippi, the Catholic church there that was built in 1848 by the hands of some of the family of Jim Bowie, and the priest in that church was Father Tony Pudenz, and he showed me in the church that this church that was built in 1848, the floor of the church was built for whites, the balcony was built for blacks. And just a week before that, they had buried the editor of the newspaper who had in 1967 taken his white family from the floor of the church and walked his five children and his wife up there where they sat in the balcony with the African Americans, thereby sending a statement where half of the congregation walked across the street to the Episcopal church where they go to church to this very day. But the balance of

that congregation is an integrated congregation.

And so I would say we can't be for equality if we're not in support of intermarriage. God has created us all equally, and based upon that, I support this resolution. I think it's appropriate that we bring it today.

Mr. Speaker, I yield back the balance of my time.

Ms. BALDWIN. Mr. Speaker, the Loving v. Virginia decision was a milestone in our continuing efforts to fulfill the original promises of our Constitution, fulfilling the blessings of liberty for all Americans. It is highly fitting that we remember and honor the decision on its 40th anniversary. I urge my colleagues to support this bill.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Wisconsin (Ms. BALDWIN) that the House suspend the rules and agree to the resolution, H. Res. 431.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

ENCOURAGING DISPLAY OF THE FLAG ON FATHER'S DAY

Ms. BALDWIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2356) to amend title 4, United States Code, to encourage the display of the flag of the United States on Father's Day.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2356

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL OCCASSION FOR DISPLAY OF THE FLAG OF THE UNITED STATES.

Section 6(d) of title 4, United States Code, is amended by inserting after "Flag Day, June 14;" the following: "Father's Day, third Sunday in June;"

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Wisconsin (Ms. BALDWIN) and the gentleman from Iowa (Mr. KING) each will control 20 minutes.

The Chair recognizes the gentlewoman from Wisconsin.

GENERAL LEAVE

Ms. BALDWIN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks on H.R. 2356 and include extraneous materials in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Wisconsin?

There was no objection.

Ms. BALDWIN. Mr. Speaker, I yield myself such time as I may consume.

As part of our Nation's bicentennial celebration in 1976, Congress passed a

joint resolution re-emphasizing existing rules and customs pertaining to the display and use of the flag, especially recommending its display on a number of different holidays, including Mother's Day, the second Sunday in May.

Omitted from the list was Father's Day. H.R. 2356 would amend the Federal flag code to include Father's Day, the third Sunday in June, among important holidays on which to fly the American flag.

The law now provides that, in addition to the important occasions listed in the flag code, "the flag should be displayed on all days." I know that this is the custom in every community in the United States.

Still, I think that it is important for the flag code to recognize both mothers and fathers, who raise the next generation, inculcate them with the values they need to be good citizens and good neighbors.

I want to thank our colleague, the gentleman from Georgia (Mr. SCOTT) for his efforts to enact this worthwhile legislation.

And I urge my colleagues to join me in supporting this legislation to honor fathers in the flag code, just as we now honor mothers.

Mr. Speaker, I reserve the balance of my time.

Mr. KING of Iowa. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of this legislation which would add Father's Day, the third Sunday in June, to the list of holidays listed in the U.S. flag code on which it's particularly appropriate to fly the American flag.

It's altogether appropriate that Father's Day be added to the list of holidays on which the flag should be flown. Both fathers and mothers are essential elements to the basic family unit that has made America so strong. And so the flag should be flown proudly on both Father's Day, as provided by this bill, and on Mother's Day, as already provided in existing law, as a sign of respect for both mothers and fathers and the essential role the traditional family plays in raising new citizens in our democracy.

I would add, I want to also thank Congressman TODD TIAHRT for bringing this initiative to Congress. It's interesting to note that there was a class in his district that when they were studying the history and studying the days that the Federal Government encourages display of the flag, they noticed that Father's Day was missing. They had written a letter to Congressman TIAHRT asking that he take action on this, and he has introduced a bill and it complements this bill before us.

So I thank him for that and I wanted to emphasize how important it is for citizens to weigh in and to reach out and communicate with Members of Congress because here's a perfect example of how young people saw a gap, had their voice heard, and we have an opportunity here now to fill that gap.

ANTI-ATHEISTIC STATE CONSTITUTIONAL PROVISIONS, 2008

Arkansas State Constitution: Article 19, Section 1

No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court.

Maryland State Constitution: Article 37

That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God.

Mississippi State Constitution: Article 14, Section 265

No person who denies the existence of a Supreme Being shall hold any office in this state.

North Carolina State Constitution: Article 6, Section 8

The following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God.

Pennsylvania State Constitution: Article 1, Section 4

No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

South Carolina State Constitution: Article 17, Section 4

No person who denies the existence of a Supreme Being shall hold any office under this Constitution.

Tennessee State Constitution: Article 9, Section 2

No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.

Texas State Constitution: Article 1, Section 4

No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

CASE NO. 09-2473

FFRF, et al. v. Hanover School District, et al.

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2010, I emailed electronic copies of the **APPENDIX TO THE BRIEFS** to:

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Counsel for Defendant - Appellee Muriel Cyrus, et al.

Each of the above individuals (or their representative) has consented in writing to accept email service. FRAP 25(c)(1)(D).

On 11/23/2009, Counsel for the School District Defendants, David Bradley, requested that he “be removed from the service list.” Document 00115982637. That request was apparently granted by the Court’s Order dated 01/22/2010.

/s/ - Michael Newdow

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