

**LIBERTY AND JUSTICE FOR THE MAJORITY**  
**Is Religious Abstention Really a Choice In American Patriotism?**  
**The Pledge of Allegiance in the Public Schools**

*By Elaine McDermott*

"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"

-The Pledge of Allegiance

Each day across the United States, public school children recite these words as an introduction to their academic day. Yet few of them and few adults who grew up reciting the same Pledge know its colorful history or have considered the real meaning behind this act of symbolic patriotism. This changed in June of 2002, when the nation was forced to look more closely at this ritual and its implications when a Ninth Circuit Appellate Court ruled it unconstitutional.

Francis Bellamy, a socialist, originally wrote the Pledge of Allegiance in 1892 for a popular family magazine called *Youth's Companion*. The magazine owners also were in the business of selling American flags to the schools, having sold about 26,000 between 1888 and 1892. Bellamy had been hired onto *Youth's Companion* to write and to assist with the public relations campaign to sell flags after he was barred from preaching by his church, the Bethany Baptist Church in Boston, MA, for preaching anti-capitalist propoganda in sermons such as "Jesus as Socialist." (Lucas).

The magazine produced the Pledge as part of a Columbus Day program that it distributed to the public schools. On October 12, 1892, 12 million children across America recited the Pledge of Allegiance to honor the 400<sup>th</sup> anniversary of Columbus's arrival on the continent. (Lucas).

But the original text of the Pledge did not contain the words "under God". These were added in 1954 at the urging of President Eisenhower and the Knights of Columbus, a Catholic organization. The purposes of adding these words are undeniable when reading the words of Congress connected with the decision:

"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." (Baer).

In 2002, the case of Newdow vs. Congress openly challenged the inclusion of this wording as a possible violation of the United States Constitution.

The facts of the case are straightforward. Michael Newdow's daughter attended the Elk Grove Unified School District in California where she was subjected to daily recitation of the United States Pledge of Allegiance in order to fulfill a California Education Code requiring "appropriate patriotic exercises" at the start of the school day. Newdow, an atheist, brought suit challenging the constitutionality of this practice, contending that his daughter is injured even though she is not required to recite the pledge because she is being "compelled to 'watch and listen as her state-run school leads her classmates in a ritual proclaiming there is a God.'" (*Newdow v. Congress*).

The Ninth Circuit Appellate Court was faced with the decision of whether or not Newdow has a valid claim that the addition of the words "under God" to the Pledge by federal statute in 1954 and the daily recitation thereof in his daughter's public school are a violation of the Establishment Clause of the First Amendment of the United States Constitution.

To arrive at a decision, the Court employed The "*Lemon*" test. The "*Lemon*" test is a triple pronged test that the court has used since the 1971 decision *Lemon v Kurtzman* (403 U.S. 602, 612-13) to determine violations of the Establishment Clause in public education. The conduct called into question, to survive the scrutiny of the "*Lemon*" test must (1) have a secular purpose, (2) have a principal or primary effect that neither advances nor inhibits religion, and (3) not foster excessive governmental entanglement with religion. In *Newdow*, the Appellate Court primarily applied the "*Lemon*" test, but with consideration also to two other tests of Establishment Clause violation; the "endorsement" test which was adopted by the Court in *County of Allegheny v ACLU*, 492 U.S. 573 (1989) and the "coercion" test outlined in *Lee v. Wiseman*, 505 U.S. 577, 580 (1992).

First, the Court applied the "endorsement" test and concluded that the Pledge's use of the phrase "under God" does endorse religion and specifically monotheistic belief. Citing *Barnette*, 319 U.S. 624, the Court states there is a precedent to judicial opinion that the Pledge compels students "to declare a belief." Further, in *Allegheny*, Justice Kennedy's dissenting opinion is that "it borders on sophistry to suggest that the reasonable atheist would not feel less than a full member of the political community every time his fellow Americans recited, as part of their expression of patriotism (sic) a phrase he believed to be false (*Allegheny* 672)."

Next, the Court applied the "coercion" test and failed the Pledge's phrasing and recitation once again on the grounds that "the mere fact that a pupil is required to listen every day to the statement 'one nation under God' has a coercive effect." Finally and most significantly, the Court applied the "*Lemon*" test and found that the 1954 Act adding "under God" to the Pledge failed at the first prong in that it's "sole purpose was to advance a religious belief ." The Court then turned the "*Lemon*" test on the issue of recitation and found that though the school district's intent in this exercise passed the first prong as it was meant for a secular,

patriotic purpose, it does fail the second prong because "within the confined environment of the classroom, the policy is highly likely to convey an impermissible message of endorsement to some and disapproval to others of their beliefs regarding the existence of a monotheistic God." (*Newdow v. Congress*).

The Court vacated the district court's dismissal on both the claim against the 1954 Act adding "under God" to the Pledge and also the claim against the school district for the policy and practice of daily recitation of the Pledge, stating that both were in violation of the Establishment Clause. The case was then remanded for further proceedings. In June of 2004 the case finally appeared before the Supreme Court where this particular case was dismissed on a technicality, the Court voting that the case could not be taken into the court because Michael Newdow did not have legal standing while in a custody dispute with his daughter's mother. The issue is sure to return to the courts eventually, and in fact Michael Newdow himself is continuing his attempt to challenge the Pledge, as you can follow on his website at <http://www.restorethepledge.com/> .

Judicial history is rich with challenges to references to God and religion in public school settings. The *Newdow* case will doubtlessly take its place among often quoted decisions in support of the elimination of ceremonial religious taint in public life in America, at least within the confines of its educational system.

After the public outcry that ensued after the issuing of this decision, the Judge willingly stayed the decision, passing the buck to the Supreme Court to make the final decision. In conservative times it is unlikely that this extremely progressive and liberal decision will be upheld by a Supreme Court, particularly one that leans so heavily toward the Right. Nevertheless, *Newdow* strikes an important blow toward tolerance of religious and nonreligious diversity in the schools.

In his partially dissenting opinion, Circuit Judge Fernandez, speaking of the Establishment Clause, states that "we should recognize that those clauses were not designed to drive religious expression out of public thought; they were written to avoid discrimination." Nevertheless, discrimination does occur when one belief system is held in esteem over others in ritual public behavior. Unable to participate with a whole heart in an exercise that is meant to foster a sense of cultural pride, individuals who fail to believe in a monotheistic God are left on the outside of public life, struggling for an identity within a system that does not recognize their contributions to our national strength. Atheists also died on battlefields to maintain our national defense. Pagans and Muslims pay taxes right beside Christians. Why should "public thought" erase them from participation in the symbols we cherish and call patriotic?

Judge Fernandez goes on to state that "the danger that phrase presents to our First Amendment freedoms is picayune at most but when he speaks of **our** freedoms, whom does he mean? For surely he does not speak for Michael

Newdow or his daughter, who felt sufficiently injured as to go through the extremely painstaking process of bringing this suit to the Courts? And surely he does not speak for the countless Americans who dissented with the media-reported majority opinion that the Pledge should remain as it is?

Regarding the addition of the phrase, "under God" to the Pledge in 1954, President Eisenhower wrote, "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."

Anna Quindlen, in a July 2002 article for Newsweek suggests that the real meaning behind the addition of the terminology was that "the pledge has become another cold-war litmus test. The words 'under God' were a way to indicate that America was better than other nations-- we were, after all, under the direct protection of the deity-- and adding them to the Pledge was another way of excluding, of saying that believers were real Americans and skeptics were not." (Quindlen 64).

In post 9/11 America, just as in Eisenhower's cold war, red-scare America, such symbolic proofs of complicity with a religious ideal are just as important as they were under the weight of McCarthyism. Real threats to our way of life are once again poured into the butter churn of our national ideology and brought out as a lump of solid "dedication of our nation and our people to the Almighty" as Eisenhower described. As Senator Bob Smith of New Hampshire said, "If you don't believe there's a God, that's your privilege but it is still a nation under God." In other words, the Establishment Clause is, in the court of public opinion, meant only to protect those who believe with the majority that we are "under the direct protection of the deity."

Richard Dunham, a reporter for Business Week Online, makes the point that the court of public opinion is exactly where this case will truly win or lose. He states that the Ninth Circuit judges in making this decision, "may have just handed the right wing its biggest public-relations victory since the flag-burning decision more than a decade ago. And it will likely give President Bush carte blanche to stack the federal bench with all the conservative judges he wants."

Certainly, Congresspersons and politicians of all types immediately placed themselves in front of the news media, attacking this case as though it were an assault on the very nature of Americanism. Unlike many tricky issues, it was easy to make a stand in favor of a Pledge that indoctrinated most current voters throughout their entire youth.

In fact, politicians would have no trouble choosing where to stand if basing their decision on public opinion polls. According to a CNN summary of a Newsweek poll, "Asked if the Pledge should contain the phrase "under God," 87 percent of those polled by Newsweek said yes and only 9 percent said no. Asked if the

government should avoid promoting religion in any way, 36 percent said yes, but 54 percent said no, and 60 percent of poll respondents said they think it is good for the country when government leaders publicly express their faith in God." (CNN.com). Yet does majority opinion overrule the Bill of Rights? Should it?

Another article in Newsweek by writer Howard Fineman states "the furor over the Pledge gave the country a crash civics lesson in the balance between church and state and a moment to grapple anew over what beliefs it takes to be an American." That is the hidden motivation behind proponents of keeping the Pledge as is as well as for those trying to remove the "under God" phraseology: conflicting ideas about what it means to be patriotic. Is it necessary to bend the knee and submit to civic religion to be deemed a true American?

The intent behind stating the Pledge each morning in the public schools is to fulfill the pedagogical desire to inject symbolic patriotism into the daily life of American children. The idea that American public schools are there to create good citizens is not a radical or new one, and so such an ideal is not without merit. However, the choice of reciting the Pledge in its current incarnation over perhaps the Bill of Rights, some portion of the Declaration of Independence, the singing of the National Anthem or some other expression, seems to have originally been the result of good marketing on the part of the *Youth Companion*. Why are these words now sacred to us? Words originally penned, not by one of our great patriotic heroes, but adapted by Congressional Act from an article written by a disenfranchised Christian socialist who was trying to sell flags and copies of magazines. Why is the inclusion of the phrase "under God" more important to American patriotism than the discomfort of a percentage, however small, of its population that are unable to participate in a ritualized patriotic expression such as this in good conscience?

As long as any Americans are failing to feel represented by a document meant to foster national pride, that document fails in fact and in law to fulfill its purpose. Instead, it destroys the fabric of the one nation it divides...with liberty and justice for the majority.

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