

# The Pledge on the Verge of Lawfulness

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In many public schools across the United States, children are expected to recite the Pledge of Allegiance every morning before the class begins. The Constitution of the United States separates church and state, but “one nation under God,” as it is phrased in the Pledge of Allegiance, suggests that the nation is more a result of divine manifestation and predestination than a product of legal, historic, cultural, economic, military, and technical development. During the last sixty years, many thinkers and truth-seekers have rightly raised the legal question of whether the phrase violates the Constitution. Alongside them, many parents and educators have raised the following questions: Why are children instructed in their schools to recite the Pledge? When was the Pledge introduced to public schools, and what was the historical context? How do children feel about repeating the Pledge every morning? Do they understand the meaning of the words in the Pledge and what they are confessing? How should the “one-nation-under-God” statement be understood? Does it suggest that the USA is a kind of theocratic nation governed by clergymen? It is not clear under *whose* God (or gods) the nation stands. The vast majority of Americans are Christian. How should atheist parents feel about their children confessing that there is a divine power acting in the life of politics? Is there a way to remove the phrase from the Pledge? Is it possible? Is it necessary?

Not long ago, Michael Newdow, one of the most persistent adversaries of the phrase, attracted a lot of public attention with his legal case *Newdow v. Elk Grove Unified Dist.* 542 U.S. \_\_\_ (2004). No. 08-205. Supreme Court of the United States. (Sep. 30th, 2004). Newdow was suing his daughter’s public school for imposing on her, through the Pledge, the belief that God exists. In 1998, Newdow, an American attorney and emergency medicine physician, began his campaign to have the phrase “under God” removed from the Pledge of Allegiance. As an atheist, he felt it as a “personal injury” that in his daughter’s public school in Elk Grove, California, the Pledge was recited daily; in his view, this constituted religious indoctrination, leading his daughter to believe that her father’s religious views were wrong. Between 1998 and 2004, Newdow’s claim undertook a long journey through three courts before it arrived at the Supreme Court. The Magistrate and the District Courts found, against Newdow, that the Pledge was constitutional. The Ninth-Circuit Court of Appeals in San Francisco reversed it, holding that the school district’s policy violated the Establishment Clause, and enabled Newdow to bring his claim to the federal court. When the case became publicized in the media, Sandra Banning, the child’s mother, filed a motion to intervene or dismiss, declaring that “she had exclusive legal custody under a state-court order and that, as her daughter’s sole legal custodian, she felt it was not in the child’s interest to

be a party to Newdow's suit." Newdow never married his daughter's mother and in the time when he filed his claim, they did not have a common-law marriage. After that intervention, the Supreme Court concluded that the California law deprived Newdow of the right to sue the school district as "next friend," i.e. as a noncustodial parent on behalf of his daughter, and dismissed his claim as an issue of domestic relations that should be brought to the state court.

In his article "Pledging Allegiance To My Daughter," Newdow shares his bitter disagreement with that decision, and says, "nothing I requested was a family law matter." By the Supreme Court's dismissal, Newdow concludes, the atheists of the USA were turned into second-class citizens who are not treated equally with the nation's majority. Newdow writes:

Our Constitution is the rule book that is supposed to guarantee to every citizen that each branch of government will do its duty and uphold his or her rights. In this case, Congress broke the rule that says government may not take a position on questions of religious belief. Then the state court system broke the rule that says that fit parents have a fundamental constitutional right to love and protect their children (as might be appreciated by the fact that no reasonable justification for my loss of legal custody has ever been presented). And now— in the highest court in the land—the federal courts have broken the rule that says they will adjudicate any claim of injury that is properly brought before them.

In a nutshell, Newdow's article shares with readers of *The New York Times* his deep dissatisfaction with the Supreme Court's decision. He sees it as an expression of the reluctance of the federal judiciary to agree that the "one-nation-under-God" phrase is unconstitutional, and interprets it as a violation of his rights as a citizen.

The next opinion indirectly supports Michael Newdow's daughter and her mother, rather than him. It is that of M.H., a special education teacher at a public school in Fort Lee, New Jersey. In a phone interview, she reflected on her experience teaching a class of special education first and second graders. She said, "The school accommodates children from kindergarten to 6th grade. All children in our school not only recite the Pledge of Allegiance daily, but also sing the American Anthem." When M.H. joined the school five years ago, this morning ritual was already an unavoidable overture of the school day. The children became used to it and grew to love it. M.H. said, "Whenever, for some reason, I forgot the Pledge and the Anthem, the kids would beg for it, and not stop begging until we did it. It's not a free choice between yes or no anymore. That's a 'must'." She neither witnessed any child refusing to say the Pledge nor experienced any parent questioning the constitutionality of it. She thinks that

several factors may combine to explain why sharing the two national symbols in the school has never provoked an incident in her class: the children's cognitive disabilities as well as their young age make them less likely to analyze the content of the Pledge, and fact that most of the children in the class are Christian causes them to not question the content. (This fact may also make the few non-Christian children loyal and silent.) During M.H.'s time at the school, she has worked as a

substitute teacher in other classes, too, which gave her more opportunities to witness the recitation of the Pledge and singing of the Anthem. M.H. never noticed any sign of revolt against participating in them. However, she remembers that once one of the students mangled the first six words of the Pledge, “I pledge allegiance to the flag,” by saying, “I led the pigeons to the flag.” Another time, instead of declaring “one nation under God, indivisible,” a student pressed his chest proudly and said “one naked individual.” M.H. found it charming, but also wondered how well the children in those classes really understand the historical, ideological, patriotic, and theological meaning of these symbols.

In “A Christian Nation? Since When?” Kevin M. Kruse tells us that in the years of its founding, America was not established as a Christian nation. It started to be viewed as such in the 1950s, and this practice has continued. America has never been declared a Christian nation, either at its birth or subsequently, although more than half of the American population thinks that it has always been. Kruse writes: “Religious language has been written into our political culture in countless ways. It is inscribed in our pledge of patriotism, marked on our money, carved into the walls of our courts and our Capitol.” People’s everyday contact with these biblical symbols and phrases made them believe that America was established as a Christian nation by the founding fathers. The implantation of the idea of the nation’s Christian origin into the minds of millions of Americans began in the collapsing economy of the 1930s, as Kruse explains. In opposition to President F. D. Roosevelt’s relief programs, collectively known as the New Deal, a largely influential group of corporate leaders promoted the idea that capitalism is the handmaiden of Christianity. The New Deal was labeled as “creeping socialism.” The corporate leaders propagated a new ideology that combined elements of Christianity with an anti-federal libertarianism. To influence the public on a large scale, these prominent businessmen turned skilled reverends into their voices and missionaries. Three of them were more ferocious than others: The Rev. James W. Fifield, who dismissed New Testament warnings about the corrupting nature of wealth, paired capitalism and Christianity, and attacked President Roosevelt’s relief programs, labeling them as “pagan statism.” He founded an independent Christian-libertarian company promoting his views, called Spiritual Mobilization, Inc. He promoted “freedom under God,” and his group preached the gospel of faith and free enterprise. An even more ferocious voice was that of the Rev. Abraham Vereide, who created a national network of prayer groups, whose influence spread to Washington. “He persuaded the House and Senate to start weekly prayer meetings,” Kruse writes, so that America would become a God-directed and God-controlled nation. The most eloquent and influential supporter of Christian capitalism was the Rev. Billy Graham, “who made Congress his congregation.” At his urging, Congress established an annual National Day of Prayer. Dwight D. Eisenhower’s religious rhetoric of “back to God, back to Christ, back to the Bible” strengthened the image of the nation as Christian. Once elected, Eisenhower parted ways with Christian libertarian groups. He employed Jews, Catholics, and Protestants to work together, granting them all freedom under God. However, he instituted the first opening prayers at a cabinet meeting. The Pentagon, State

Department, and other executive agencies quickly instituted prayer services of their own. In 1954, Congress added “under God” to the previously secular Pledge of Allegiance, “In God We Trust” to postage and in 1955 to paper money, and in 1956 the phrase became the nation’s official motto. So the idea that America is and always was a Christian nation under God became the largely accepted truth.

In “One God and the Flag,” William Safire, who is not an atheist, agrees with Newdow that those who believe in God don’t need to inject their faith into a patriotic affirmation and impose it upon all schoolchildren. In his op-ed, Safire admits that “the insertion (of the words “one nation under God”) was a mistake then,” but “knocking the words out long afterward, offending the religious majority, would be a slippery-slope mistake now,” and suggests, as an alternative to Newdow’s effort to have the phrase removed, that courts should require teachers to inform students that they have the right to remain silent for the few seconds during which others recite “under God.”

In his article “One Nation, Enriched by Biblical Wisdom,” David Brooks does not specifically mention Michael Newdow’s hearing at the Supreme Court, although it is obvious he has it in his mind, but rather prefers speaking about the constitutionality of the one-nation-under-God phrase more generally. Arguing for the positive role of religion in political life, he uses one period of American history as an illustration. He learned the lesson from David L. Chappell, author of *A Stone of Hope*, a monograph about the Civil Rights Movement. Chappell, Brooks says, argues that the Civil Rights Movement was a religious movement with a political element. Chappell identified two major groups of the movement that struggled to gain equal civil rights for all Americans: 1. Secular white mainstream liberals from the North (writers, activists), and 2. Religious blacks from the South. The former believed in achieving social changes for blacks by education and economic development, which they, as a secular force, could not accomplish; the latter by religious revival, which proved to be much more successful. Brooks quotes Chappell saying, “Because the experience of the Hebrew prophets had taught them to be pessimistic about humanity, the civil rights leaders knew they had to be spiritually aggressive if they wanted to get anything done.” From that, Brooks draws his thesis that biblical wisdom is deeper and more accurate than the wisdom offered by secular social sciences, regardless of the reader’s religious views. The Bible and its commentaries could be read (and taught in school) to enlarge children’s understanding about what human beings are like, and how they are likely to behave. His thesis leads him to suggest that “prayer should not be permitted in public schools, but maybe theology should be mandatory. Students should be introduced to the prophets, to the Old and New Testaments, to the Koran, to a few of the commentators who argue about these texts.” That would help students understand the phrase “one nation under God” as a tool to strengthen their sense of citizenship.

I admire Newdow’s crusade to have the words “one nation under God” removed from the Constitution because I, like him, find them unconstitutional. But I also agree with Safire, who admits that putting them in the Pledge was a mistake then, and that it would be another mistake now to take them out. Students in public

schools have the freedom to stay silent during the recitation of the Pledge. They are even free not to be in the classroom if their parents officially ask their teacher to allow them to leave during the Pledge recitation. The problem I see with reciting the Pledge lies somewhere else: in mispronouncing its words and misunderstanding its meaning. A student should never say “I led the pigeons to the flag” or “one naked individual,” thinking that is what s/he is supposed to say, believe, and confess. It turns the sense of the daily morning patriotic ritual into a mere mental exercise. I am sure that the ritualized recitation of the two national symbols may serve to calm the students’ behavior, but it can hardly cultivate their sense of citizenship. David Brooks’ suggestion to read the Pledge in the spirit of the Old Testament prophets seems to provide the right answer to that. A sensible and respectful patriotic sentiment strengthened by the spirit of religious hope may make the nation strong and resistant. Therefore, as Brooks suggests, theology, or religious studies, should be a mandatory subject not only in private, religious schools but in public schools too. I find but one difficulty with his proposal: alongside the Bible, he also suggests that students be introduced to the Koran, and I imagine our Muslim brothers and sisters projecting Allah into the Pledge, saying “one nation under Allah.” Because this phrase may not be acceptable to all, I feel inclined to advocate, as Newdow does, that the phrase “one nation under God” be removed from the Pledge.

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