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The Pledge and the Court: Will 'Under God' Survive?

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The case arrived at the U.S. Supreme Court on appeal by the California School District after the United States Court of Appeals for the Ninth Circuit ruled that the words "under God" in the Pledge of Allegiance constituted governmental coercion of religious observance. The case had been filed by Michael Newdow, an emergency room physician and lawyer, who argued that the Pledge of Allegiance violated his own conscience as an atheist. Nevertheless, Newdow had filed the case on behalf of his daughter, arguing that she had been forced to recite the words "under God" in the pledge in a way that violated her own conscience as well.

In a notorious ruling, the Ninth Circuit agreed with Newdow, and by a narrow margin ruled that the words "under God" would have to be removed from the Pledge of Allegiance within the states covered by its western jurisdiction.

The Ninth Circuit is the nation's most notoriously liberal federal court—and the court most reversed in its decisions by the U.S. Supreme Court. A cadre of liberal jurists cited with Newdow, agreeing that the words "under God" represented a breach in the notorious [and imaginary] "wall of separation between church and state."

The Supreme Court heard oral arguments in the case on Wednesday, and observers noted that, though Newdow was treated with respect, the justices did not appear to buy his argument. In a breach of the Court's etiquette—and against the advice of other attorneys—Newdow argued the case himself. "Every school morning in the Elk Grove Unified School District's public schools, government agents, teachers, funded with tax dollars, have their students stand up, including my daughter, face the flag of the United States of America, place their hands over their hearts and affirm that ours is a nation under some particular religious entity, the appreciation of which is not accepted by numerous people, such as myself," Newdow asserted. "We cannot in good conscience accept the idea that there exists a deity."

Newdow did not hide his atheism. "I am an atheist. I don't believe in God. And every school morning my child is asked to stand up, face that flag, put her hand over her heart, and say that her father is wrong."

The crucial role of Newdow's daughter in this case was evident when at least one justice questioned whether Newdow even had standing to bring this case before the court. Newdow is not married to the girl's mother, who is a professing Christian. Both the mother and the daughter deny that they are in any way offended by the words "under God" in the pledge. Associate Justice Anthony Kennedy raised the issue of standing in the course of oral arguments. As Justice Kennedy twice asserted, "I have a serious problem about your daughter's standing." Nevertheless, Chief Justice William Rehnquist argued that the case should be decided on its constitutional merits, and not on the less significant question of Newdow's custody of the child.

In an impassioned statement, Newdow focused his argument on his daughter: "I am saying I as her father have a right to know that when she goes into the public schools she's not going to be told every morning to be asked to stand up, put her hand over her heart, and say your father is wrong, which is what she's told every morning."

The questions posed by several of the justices seem to counter Newdow's claims. Chief Justice Rehnquist asserted that Newdow was in error when he claimed that the Pledge of Allegiance constituted something like a prayer. "What you say is, I pledge allegiance to the flag of the United States of America and to the Republic for which it stands," Rehnquist reminded. "So that certainly doesn't sound like anything like a prayer."

Newdow also claimed that the inclusion of the words "under God" in the Pledge of Allegiance now serve to divide the nation. The words were inserted in 1954 by an act of Congress. The Pledge of Allegiance had been adopted 62 years previously, and the two new words were inserted at the height of the Cold War in order to distinguish America's limited government from godless Communism and its deification of the state.

In convoluted language, Newdow argued that "the Pledge of Allegiance did absolutely fine and . . . got us through two world wars, got us through the Depression, got us through everything without God, and Congress stuck God in there for that particular reason, and the idea that it's not divisive I think is somewhat, you know, shown to be questionable, at least by what happened in the result of the Ninth Circuit's opinion." Newdow went on to describe the aftermath of the Ninth Circuit's decision: "The country went berserk because people were so upset that God was going to be taken out of the Pledge of Allegiance." He got at least that much right.

Chief Justice Rehnquist addressed a question to Newdow: "Do we know—do we know what the vote was in Congress apropos of divisiveness to adopt the under God phrase?" Newdow correctly answered that Congress had adopted the phrase unanimously. "There was no objection. There's no count of the vote." The Chief Justice then countered, "Well, that doesn't sound divisive." Newdow, claiming the only moment of comic relief in the session, responded, "That's only because no atheist can get elected to public office." When laughter erupted in the gallery, the Chief Justice threatened to clear the room.

In the course of their questions and assertions, most of the eight justices hearing the case seemed to draw a direct connection between Newdow's insistence that the words "under God" must be removed from the Pledge of Allegiance to the fact that the nation's currency includes the statement, "In God We Trust." Furthermore, the logic of Newdow's argument would require that all references to deity must be removed from America's public life.

The justices appeared to recoil from that assertion. After all, each session of the U.S. Supreme Court begins with the words, "God save this honorable court." How can the Supreme Court remove "under God" from the Pledge of Allegiance and continue to call upon God's help as they open for business each morning?

"We have so many references to God in our daily lives today," said Justice Sandra Day O'Connor. The forced removal of all references to deity would be an imposition, she argued. Indeed, it would be close to impossible. Even legal documents are routinely dated with the phrase, "in the year of our Lord." That, too, would be ruled out of bounds by the logic of Newdow's argument.

Solicitor General Theodore Olson presented the government's case. "It is an acknowledgement of the religious basis of the framers of the Constitution, who believe not only that the right to revolt, but that the right to vest power in the people to create a government . . . came as a result of religious principles," he asserted. Olson went on to argue that the Pledge of Allegiance is a "ceremonial, patriotic exercise."

Atheist organizations and groups pushing a secular agenda have championed Newdow's cause—but with reservations. One prominent atheist has described the Newdow case as "the case we can't afford to win." Many atheists fear that a backlash from a decision in Newdow's favor would actually be injurious to their cause.

The ambivalence among some atheists is reflected in the thinking of some Christians as well. If the Supreme Court rules against Newdow, it is likely to decide that the words "under God" amount to nothing more than what the Court has previously described as "ceremonial deism," referring to no God in particular and certainly not to the God of the Bible. According to this logic, such language does not violate the establishment clause of the Constitution only because citizens are left free to define "God" as each sees fit.

Serious Christians can scarcely take this as comfort in terms of sincere religious expression. We are not so deluded as to believe that all persons who recite the Pledge of Allegiance are making a statement or confession of faith in the God of

the Bible. But is it therefore irrelevant? That pushes the argument too far.

In essence, the effort to remove these two critical words represents an arrogant assault by secularists on all references to God in public life. Thus, the stakes in this case are high. A decision against Newdow will most likely lead to very little change in the status quo. On the other hand, a decision in Newdow's favor would be potentially catastrophic as future cases will arrive to the Court, bringing new opportunities for references to God to be banned from the public square. Can a ban on public expressions of piety be far behind?

The Christian concern in this case should not be so much for the "ceremonial deism" involved in the recitation of the Pledge of Allegiance, but the danger represented by a secularist assault that sees even those two simple words as an imposition of governmentally mandated prayer.

Beyond all this, the concern of Congress in 1954 remains alive and well. Those who sponsored the insertion of "under God" in the Pledge of Allegiance in 1954 did so because they wanted to make the point that America's constitutional system of government assumes a reality higher than the government itself—higher even than the will of the people. This same confidence is reflected in the Declaration of Independence and in the nation's most foundational documents and traditions. Do we now reject this affirmation as well? Let's sincerely hope not.

Michael Newdow and his allies will not rest until America is fully secularized with its government committed to official atheism. Much will now depend on how eight justices rule on the question of two simple words in the Pledge of Allegiance. Stay tuned.

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