

One Nation “Under God”

Questions & Answers

In 2002, the U.S. 9th Circuit Court of Appeals in California ruled 2-1 that public schools may not sponsor recitation of the Pledge of Allegiance, due to its religious content through the inclusion of the phrase "under God." This ruling sparked much comment in the media and was denounced by many political leaders. The U.S. Supreme Court later announced that it will hear an appeal of the decision. The high court's ruling is expected by late June or early July 2004.

Q. Why did the 9th Circuit Court rule the way it did?

A. The First Amendment to the U.S. Constitution mandates the separation of church and state. Under this time-tested arrangement, government is given no authority to meddle with religion or religious matters. The 9th Circuit Court of Appeals ruled that public school sponsorship of the Pledge furthers religion. Thus, the court declared the action unconstitutional.

The court noted , "A profession that we are a nation 'under God' is identical...to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' a nation 'under Zeus,' or a nation 'under no god,' because none of these professions can be neutral with respect of religion. The coercive effect of this policy is particularly pronounced in the school setting given the age and impressionability of schoolchildren, and their understanding that they are required to adhere to the norms set by their school, their teacher and their fellow students."

Q. Isn't this a radical ruling?

A. Not at all. The court simply applied the constitutional principle that government has no business promoting religion. Courts have been particularly vigilant when it comes to public schools. The U.S. Supreme Court has repeatedly ruled that religious instruction is up to parents, not government officials or public school personnel. Public schools serve children of many different religious perspectives (and some who practice no religion at all). Thanks to the protections of the Constitution, students cannot be pressured to participate in prayer or other forms of worship at public schools. The appellate court's ruling on the Pledge is simply a logical continuation of that wise judicial precedent. Furthermore, the 9th Circuit judge who wrote the opinion, Alfred Goodwin, could hardly be called a radical. He is a Presbyterian elder, a World War II combat veteran and was appointed to his position by President Richard M. Nixon.

Q. Did the court declare the Pledge of Allegiance unconstitutional?

A. No. The court ruled that public schools may not sponsor daily recitation of the current Pledge of Allegiance because of its religious content. If the Supreme Court upholds the 9th Circuit ruling, public schools could continue to recite the pre-1954 version.

Q. What did the Pledge say before 1954?

A. Students used to end the Pledge, "one nation, indivisible, with liberty and justice for all." Despite the controversy surround the 9th Circuit's ruling, many Americans thought the Pledge was just fine as a patriotic ritual without religious references. After all, America survived the Great Depression and won two world wars with a secular Pledge, and neither religious devotion nor patriotism suffered.

Q. How did "under God" get into the Pledge of Allegiance?

A. The Pledge of Allegiance was written in 1892 by Francis Bellamy, a Baptist minister. Bellamy crafted the Pledge for a magazine called *The Youth's Companion* as part of a patriotic exercise to mark the 400th anniversary of Columbus' voyage to the New World. Bellamy, who was an advocate of church-state separation, did not include religious references in his Pledge. In 1954, Congress inserted the phrase "under God" into the Pledge after a lobbying campaign led by the Knights of Columbus. This was during the McCarthy era, and the change was seen as a blow against "godless communism" in the Soviet Union.

Q. Does the ruling mean that public schools can no longer open the day by reciting the Pledge of Allegiance?

A. The ruling currently affects only those states in the 9th Circuit -- California, Oregon, Washington, Nevada, Arizona, Idaho, Alaska and Hawaii and is currently on hold while the Supreme Court considers the matter. If the high court upholds the lower court ruling, it will apply that decision nationwide. Public schools would have to stop sponsoring recitation of the Pledge or use the pre-1954 version.

Q. What's wrong with a generic reference to God in the Pledge? Who does it hurt?

A. The Pledge was a purely patriotic exercise until Congress in 1954 made it a patriotic and religious exercise. Millions of Americans who have no religious beliefs or who object to religious-political entanglement were alienated by that change. When it altered the Pledge, Congress sent the signal that in order to be a patriotic American, one must also be religious. Many Americans disagree with this assertion.

Not all religious people agree with so-called "generic" references to God. These references tend to reflect Judeo-Christians understandings of God that may not be shared by Buddhists, Hindus and others. Other believers oppose phrases like "under God" because it is a form of watered-down spirituality. They note that religion has thrived in America due to the separation of church and state and do not want to violate that principle.

Q. Haven't some courts said that references to God in the Pledge are permissible because they are ceremonial and don't really promote religion?

A. Some courts have said this and have even asserted that such usages are acceptable because they are merely "ceremonial deism" -- the practice of government co-opting generic religious

language for ceremonial purposes. Religious believers ought to be appalled by such statements. The phrase "under God" has obvious religious meanings. It is not drained of its religious meaning merely because of frequent repetition. In addition, religion is not some prop designed to give heft to government functions. For believers, faith is to be taken seriously. It demeans religion to claim that phrases like "under God" are no longer religious because they have been so frequently used by government.

Q. How have politicians reacted to this controversy?

A. Many overreacted. There were immediate calls to amend the Constitution, even though the Supreme Court has not issued its decision yet. Both houses of Congress have also passed resolutions condemning the 9th Circuit's ruling and expressing support for "under God" in the Pledge. Some political strategists have also recommended using the decision for partisan purposes. President George W. Bush and his allies in the Senate said they would use the ruling to press for confirmation of Bush's judicial nominees.

Bush himself said that the decision shows that "we need common-sense judges who understand that our rights were derived from God. And those are the kinds of judges I intend to put on the bench." Bush's statement implies that he has a type of "religious test" in mind for judges, a violation of Article VI of the Constitution, which forbids religious tests for public office.

Q. What about Religious Right groups -- how did they react?

A. Several Religious Right groups used the controversy to raise money, foment hysteria and attack the separation of church and state. Many groups also hoped the ruling furthers their far-right political agenda and urged President Bush to use the decision to argue for more judges who oppose church-state separation.

TV preacher Jerry Falwell, for example, sent a message to his supporters telling them that he believes it is "time to go to war" over this issue. TV preacher Pat Robertson said the Pledge ruling may cause more terrorist attacks, concluding, "[I]f something much more terrible than September 11th befalls our beloved nation, the answer to the question 'Where was God in all of this?' may well be 'He was excluded by the 9th Circuit.'" Ultra-conservative newspaper columnist Cal Thomas suggested that the Pledge ruling may have been even worse than the Sept. 11 terrorist attacks. Thomas wrote, "On the eve of our great national birthday party and in the aftermath of Sept. 11...the 9th Circuit Court of Appeals in San Francisco has inflicted on this nation what many will conclude is a greater injury than that caused by the terrorists."

Q. What happens now?

A. The Supreme Court will issue its decision most likely by the end of June or early July. The high court could uphold the 9th Circuit's decision or overturn it. The court could also dismiss the case and rule that the man who brought it, Michael Newdow, lacks "standing" (the right to sue) because he does not have full custody of his daughter, a public school student who is exposed to Pledge in school.

Q. Could this case result in a tie ruling? What would happen then?

A. It is possible that the Supreme Court's decision could be a 4-4 tie. Justice Antonin Scalia made public comments about the case in January of 2003. Justices are not supposed to pre-judge cases, and Scalia was asked to remove himself from the deliberations. He later recused himself from the case. If the court splits 4-4, the decision will still apply to the states in the 9th Circuit but will not be extended nationwide.

If you would like to learn more about religious liberty, please contact:

*Americans United for Separation
of Church and State
518 C Street N.E.
Washington, D.C. 20002
Phone: (202)466-3234 Fax: (202)466-2587
e-mail: americansunited@au.org
website: www.au.org*