IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No.

THE REV. DR. MICHAEL A. NEWDOW, IN PRO PER;

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
THE UNITED STATES OF AMERICA;
WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES;
THE STATE OF CALIFORNIA;
THE ELK GROVE UNIFIED SCHOOL DISTRICT ("EGUSD");
DAVID W. GORDON, SUPERINTENDENT, EGUSD;
THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT ("SCUSD");
DR. JIM SWEENEY, SUPERINTENDENT, SCUSD;

Defendants.

ORIGINAL COMPLAINT

Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action claiming violations of the First, Fifth and Fourteenth Amendments of the Constitution of the United States of America. As such, this Court has jurisdiction under 28 U.S.C. § 1331.

2. This action is founded upon the Constitution of the Unites States of America. As such, this Court has jurisdiction over Defendant United States of America under 28 U.S.C. § 1346(a)(2).

3. This action is in the nature of mandamus, and seeks to compel the Congress of the United States of America, the President of the United States of America, the United States of America, its agents and its officers to perform their duties owed Plaintiff[1] under the terms of the First and Fifth Amendments of the Constitution of the United States. As such, this Court has jurisdiction under 28 U.S.C. § 1361.

4. This action alleges that Defendants the State of California; the Elk Grove Unified School District; David W. Gordon, Superintendent, Elk Grove Unified School District; the Sacramento City Unified School District; and Dr. Jim Sweeney, Superintendent, Sacramento City Unified School District have deprived Plaintiff[1] of rights secured by the First, Fifth and Fourteenth Amendments to the Constitution of the United States of America. As such, this Court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343 (3).

5. Defendants the Congress of the United States of America; the United States of America; and William Jefferson Clinton, President of the United States; is each an officer or employee of the United States or an agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States. Plaintiff resides in this judicial district. Venue is therefore proper under 28 U.S.C. § 1391(e).

6. A substantial part of the events or omissions giving rise to this claim occurred, occur or will occur in the Eastern District of California. Venue is therefore proper under 28 U.S.C. § 1391(b)(2).

7. Defendants the State of California; the Elk Grove Unified School District; David W. Gordon, Superintendent, EGUSD; the Sacramento City Unified School District; and Dr. Jim Sweeney, Superintendent, SCUSD, reside in Sacramento County, California. Venue is therefore proper under 28 U.S.C. § 1391(b)(3).

PARTIES

8. Plaintiff Michael A. Newdow is a citizen of the United States, and a resident of the State of California.

9. Plaintiff's daughter, an unnamed plaintiff whom he represents as "next friend," is a citizen of the United States, and a resident of the State of California.

10. Defendant the Congress of the United States of America is the branch of government in which all legislative Powers are granted under Article I, Section 1 of the United States Constitution.

11. Defendant the United States of America is the constitutionally established government of the United States of America.

12. Defendant William Jefferson Clinton is the President of the United States, in whom is vested the executive Power under Article II, Section 1 of the United States Constitution. He is also the Commander in Chief of the Armed Forces of the United States under Article II, Section 2.

13. Defendant the State of California is one of the fifty sovereign United States. It has its own established government, subject to its own State Constitution. Both its government and its State Constitution are subject to the Constitution and the laws of the United States of America.

14. Defendant the Elk Grove Unified School District ("EGUSD") is the governing body responsible for operating, controlling and supervising all free public schools within the School District of Elk Grove, California.

15. Defendant David W. Gordon is the Superintendent of Schools for the Elk Grove Unified School District. He is responsible for the administration and management of the schools of the School District.

16. Defendant the Sacramento City Unified School District ("SCUSD") is the governing body responsible for operating, controlling and supervising all free public schools within the School District of the City of Sacramento, California.

17. Defendant Dr. Jim Sweeney is the Superintendent of Schools for the Sacramento City Unified School District. He is responsible for the administration and management of the schools of the School District.

CLAIM FOR RELIEF

18. This action is one of first impression, charging that the Congress of the United States of America violated the Religion Clauses of the First Amendment by altering the Pledge of Allegiance to include the words "under God." The pertinent facts follow.

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

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

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

21. Subsequently, the nation's schools adopted this pledge to be recited daily (by the students, led by their teachers).

22. As increasing numbers of immigrants flowed into the country, "my Flag" became somewhat ambiguous. Thus, in 1923, those two words were replaced by "the flag of the United States." The phrase "of America" was appended a year later.

23. In 1942, Congress sent a joint resolution regarding an official Code of Flag Etiquette to President Franklin D. Roosevelt. The president approved the resolution and Public Law No. 622, 56 Stat. 380 took effect on June 22 of that year. Section (7) of that law contained the Pledge of Allegiance to the Flag of the United States of America (hereinafter "the Pledge"). It read:

> I pledge 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.

24. It is to be noted that there is and was nothing religious in the 1942 version of the Pledge.

25. The First Amendment of the United States Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof …"

26. In 1951, the Board of Directors of the Knights of Columbus – a proselytizing Catholic group – inserted "under God" after "one Nation" for their members to recite when uttering the Pledge.

27. Subsequent lobbying by the Knights of Columbus and other religious parties persuaded the United States Congress to pass its Act of June 14, 1954, Pub. L. No. 396, 68 Stat. 249 (hereinafter "Act of 1954"). The sole legislative effect of that Act – as stated by Congress, itself – was to insert the two words "under God" into the previously secular Pledge.[2] As codified in 36 U.S.C. § 172, the Pledge of Allegiance to the Flag of the United States of America now reads:

> 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.

28. Any law that involves nothing but the endorsement of a religious ideal is unconstitutional on its face. ("A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context." Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 533 (1993).)

29. On its face, the Act of 1954 did nothing except insert the words "under God" into the Pledge of Allegiance. It was and is, therefore, facially unconstitutional.

30. A law violates the Constitution if it is promulgated for a religious purpose. ("If there is to be assurance that the Establishment Clause retains its force in guarding against those governmental actions it was intended to prohibit, we must in each case inquire first into the purpose and object of the governmental action in question." Rosenberger v. University of Virginia, 515 U.S. 819, 838-839 (1995).)

31. The religious motivation behind this act can be readily appreciated by reading Congress's own narrative:

> 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.
>
> H.R. 1693, 83rd Cong., 2nd Sess. (1954) (emphasis added).

32. Appendix B contains quotes from the Congressional Record.[3] These quotes further demonstrate that Congress's purpose in passing the Act of 1954 was incontrovertibly religious in nature.[4] Any governmental act passed with such a religious purpose is unconstitutional. ("Under the Lemon analysis, a statute or practice which touches upon religion, if it is to be permissible under the Establishment Clause, must have a secular

purpose." Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 592 (1989).)

33. In an attempt to publicize (and politicize) the passage of HJ Res 243 (the joint resolution that added the words "under God" to the Pledge of Allegiance), Congressman Oliver Bolton – a chief sponsor of the legislation – recommended that "a Protestant, a Catholic, and a Jew be in the group" picture of the principal sponsors of the bill as they joined President Eisenhower in his signing of the measure. (See Appendix C.) That only clergymen would be recommended to join these politicians provides further clear cut evidence that the purpose of the resolution was religious in nature.

34. The use of the words "under God" in the Pledge of Allegiance is nothing but a religious act. ("To invoke Divine guidance on a public body ... is nothing but a religious act." Marsh v. Chambers, 463 U.S. 783, 797 (1983) (Brennan, J, dissenting).)

35. Other than endorsing theistic religious belief, there can be no purpose in adding the words "under God" to any prose. ("[I]t is clear that religious belief is the … Act's 'reason for existence.'" Edwards v. Aguillard, 482 U.S. 578, 603 (1987) (Powell, J., concurring).)[5]

36. Engaging in a ritual that not only declares the existence of "God," but declares that this nation exists "under God" is – by definition, intent and general understanding – religious activity.

37. President Eisenhower, in his address marking the passage of the Act of 1954, stated

> 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.[6]

These words – by the President of the United States – demonstrate that the Act was not only promulgated for a religious purpose, but that it was intended to have a religious effect.

38. A law violates the Constitution if it has a religious effect. ("[A]n important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices." Grand Rapids School District v. Ball, 473 U.S. 373, 390 (1985).)

39. The effect of the insertion of the words "under God" into the Pledge of Allegiance has been for theistic Americans to perceive the Pledge as an endorsement of their theism, and for atheistic Americans, including Plaintiff, to perceive the Pledge as a disapproval of their atheism.

40. The view put forth in the Act of 1954 – that ours is a government that endorses a belief in God (especially one who exists as a "Creator") and that, as a nation, we "deny ... atheistic ... concepts" – has consistently been held to violate the First Amendment. Furthermore, not only is government expressly forbidden from endorsing any belief in God, but, under our Constitution, atheism is a religious belief system protected as strongly as theism. ("The idea, as I understand it, was to limit the power of government to act in religious matters, not to limit the freedom of religious men to act religiously nor to restrict the freedom of atheists or agnostics." McGowan v. Maryland, 366 U.S. 420, 563-564 (1961) (Douglas, J., dissenting); "What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government." Abington School District v. Schempp, 374 U.S. 203, 319-320 (1963) (Stewart, J., dissenting); "At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all." Wallace v. Jaffree, 472 U.S. 38, 52-53 (1985) (footnotes omitted). "A secular state establishes neither atheism nor religion as its official creed." Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 610 (1989); "This governmental preference for religion, as opposed to irreligion, is forbidden by the First Amendment." City of Boerne v. Flores, Archbishop of San Antonio, 521 U.S. 507, 537 (1997) (Stevens, J., concurring).)

41. In passing the Act of 1954, Congress not only had the purpose of endorsing theistic belief – a gross constitutional affront in its own right – but it actually explicitly denigrated the religious beliefs of the millions of American citizens that deny the existence of any supreme being. For those atheistic individuals to find that their "representatives" had placed such quotes as:

> An atheistic American … is a contradiction in terms,[7]
>
> [W]hen Francis Bellamy wrote this stirring pledge, the pall of atheism had not yet spread its hateful shadow over the world,[8] and

> 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[9]

into the Congressional record is a horror that exceeds even the most contemptible imaginable application of the First Amendment.

42. Plaintiff readily acknowledges that the majority of Americans – certain of their belief in the existence of a God – are completely blind to the offensiveness the words "under God" in the Nation's Pledge of Allegiance hold for Plaintiff and his religious brethren. Nonetheless, the rights of religious freedom are fundamental constitutional rights, and, as such, they must be examined from the perspective of those individuals whose rights are abridged. ("The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 894 (1992).)

43. Accordingly, with respect to the Religion Clauses, this "focus" is measured in terms of sectarianism, which – in constitutional terms – refers not only to beliefs held by any one religious sect, but to all religious beliefs that are not universal. In other words, any belief that is not adhered to by all is – from the point of view of the nonadherents – a sectarian belief.

44. Sectarianism – on the part of government – is forbidden by the First Amendment. ("[T]he *government's* use of religious symbols is unconstitutional if it effectively endorses sectarian religious belief." Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753, 765 (1995) (emphasis in original).)

45. The phrase "under God" expresses a religious belief that is not adhered to by a significant segment of the population.[10] Again, this phrase is constitutionally sectarian, especially in the current American society which has become increasingly religiously diverse. ("This Nation is heir to a history and tradition of religious diversity that dates from the settlement of the North American Continent. Sectarian differences among various Christian denominations were central to the origins of our Republic. Since then, adherents of religions too numerous to name have made the United States their home, as have those whose beliefs expressly exclude religion." Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 589 (1989).)

46. Sectarianism is often denied as such by legislators, scholars, "experts" and courts. Viewing themselves as broadminded because they have embraced religions and sects beyond their own, some such individuals fail to

see that they still are taking a limited view when they don't embrace all religions and sects. In colonial New Jersey, for instance, those who set forth:

> That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that 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.[11]

apparently felt themselves to be advocating nonsectarianism. New Jersey's Catholics likely felt otherwise. In Abington School District v. Schempp, 374 U.S. 203 (1963), it was noted that "Dr. Weigle stated that the Bible was non-sectarian." Id., at 210. Perhaps it was in response to Jewish objections that "[h]e later stated that the phrase 'non-sectarian' meant to him non-sectarian within the Christian faiths." Id. (quoting the trial court's summary). Similarly, when Representative Overton Brooks sponsored the introduction of a National Day of Prayer, he must have felt himself to be quite the liberal by encompassing "Catholics, Jewish and Protestants" in his definition of "all denominations." 98 Cong. Rec. 771 (1952). Would Muslim, Hindu and other Americans not take issue with that proclamation?

47. For atheists, of course, exclusion such as that noted in the preceding paragraph 46 is the norm. The endorsement of theism, as a religious belief system in opposition to atheism, involves sectarianism exactly as occurs when Catholics are excluded from other Christians, Jews are excluded from other Judeo-Christians, and non-Judeo-Christians are excluded from other theists. Justice Blackmun, in Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 615 (1989), addressed this exact idea when he wrote that "The simultaneous endorsement of Judaism and Christianity is no less constitutionally infirm than the endorsement of Christianity alone." And, similarly, the simultaneous endorsement of all theistic religions is no less constitutionally infirm than the endorsement of any one of those theistic religions alone.

48. Analogous sectarianism can be illustrated with regard to the Pledge. "One Nation under Jesus," for instance, is no different, constitutionally, from "One Nation under God."

49. In an effort to obscure the obvious, some have attempted to apply the rubric of "ceremonial deism" to phrases such as "under God." Even momentarily accepting this as a valid construct,[12] history shows that this was definitely not the case for the Act of 1954. In addition to the naked words of the legislators who passed this

law, we can look to House Report 1693,[13] which included an opinion from W.C. Gilbert, Assistant Director of the Legislative Reference Service of the Library of Congress. Mr. Gilbert was consulted in order to determine the appropriate placement of the words and punctuation, and he did this by determining "the exact meaning intended by the proposed insertion." Were "under God" to be used merely for ceremonial purposes, it would have been placed as a separate clause. Mr. Gilbert found that such placement was categorically **not** correct, and that "the insertion is intended as a general affirmance of the proposition that the United States of America is 'founded on a fundamental belief in God.'" That Congress chose to include Mr. Gilbert's opinion in its report proves unequivocally that any "ceremonial deism" claim is without any foundation.

50. Not only were the words "under God" in the Pledge viewed as religious when the Act of 1954 was passed, they have continued to be viewed in that manner ever since. In the current presidential election, for instance, potential candidates were interviewed by the Committee to Restore American Values, a part of the so-called "religious right." That committee specifically asked, "Would you support a removal of the words 'under God' from the Pledge of Allegiance?"[14] Joined by the executive director of the Christian Coalition, there can be no doubt as to the religious agenda the commission had in posing that question. This account further demonstrates the illusory notion behind any "ceremonial deism" claim.

51. Defendant William Jefferson Clinton, the President of the United States and Commander in Chief of the Armed Forces has been granted the power to modify the rules and customs of Patriotic Societies and Observances under 36 U.S.C. § 178. Despite swearing to "preserve, protect and defend the Constitution of the United States," he has permitted and continues to permit the now-sectarian Pledge of Allegiance to the Flag to remain as stated in paragraph 27.

52. Defendant The Congress of the United States of America not only violated the Religion Clauses in its Act of 1954, but has – under Article I, Section 1 of the United States Constitution – permitted and continues to permit the now-sectarian Pledge of Allegiance to the Flag to remain as stated in paragraph 27. Thus, by not returning the Pledge to a constitutional form, Congress continues daily to violate the Constitution.

53. Plaintiff is a minister, having been ordained more than twenty years ago. His ministry espouses the religious philosophy that the true and eternal bonds of righteousness and virtue stem from reason rather than mythology. It recognizes that it is never possible to prove that something does not exist, but finds that fact to be an absurd justification to accept the unproved. The bizarre, the incredible and the miraculous deserve not blind faith, but rigorous challenge. To plaintiff and his religious brethren, belief in a deity represents the repudiation of rational thought processes, and offends all precepts of science and natural law. Our religion

incorporates the same values of goodness, hope, advancement of civilization and elevation of the human spirit common to most others. We, however, feel that all these virtues must ultimately be based on truth, and that they are only hindered by reliance upon a falsehood, which we believe any God to be.

54. Pursuant to the beliefs noted in the preceding paragraph 53, Plaintiff and his ministry are grossly offended by the phrase "under God" in the Pledge of Allegiance to the Flag of the United States of America. In fact, our religious beliefs are completely to the contrary, and – were Plaintiff and his ministry forced to reference God in the nation's Pledge of Allegiance to the Flag – they would do so with the phrase, " … one nation, under no God, indivisible, with liberty and justice for all." However, firmly believing in the principle of religious freedom which underlies the Establishment and Free Exercise Clauses noted in paragraph 25 above, Plaintiff and his ministry would vehemently fight the inclusion of such a reference.

55. Plaintiff's religious views are protected under the Establishment and Free Exercise Clauses noted in paragraph 25 above.

56. The phrase "under God" (as used in our now-sectarian Pledge of Allegiance to the Flag) requires a belief in "God" and assumes or implies that "God" occupies some high position. As such, this phrase is religious and deals with a theological question as is forbidden under the Federal Constitution. ("[T]he First Amendment [requires] ... on the part of all organs of government a strict neutrality toward theological questions" Abington School District v. Schempp, 374 U.S. 203, 243 (1963) (Brennan, J., concurring).)

57. To tell Plaintiff and his daughter that there is a God and enroll them in a governmentally-sponsored theistic milieu is no less an affront that it is to tell a Buddhist there is no Buddha, a Christian there is no Jesus, a Muslim there is no Allah, and so on for every other faith.

58. The history, purpose and effect of the Act of 1954 was to endorse the ideas that (a) there is a God, and (b) that we are "one Nation under God." Such an endorsement violates the Federal Constitution. ("Government promotes religion as effectively when it fosters a close identification of its powers and responsibilities with those of any – or all – religious denominations as when it attempts to inculcate specific religious doctrines. If this identification conveys a message of government endorsement or disapproval of religion, a core purpose of the Establishment Clause is violated." Grand Rapids School District v. Ball, 473 U.S. 373, 389 (1985).)

59. The phrase "under God" is in direct conflict with the views expressed in paragraph 53, which represent the

religious views of Plaintiff and his ministry.

60. Views that deny the existence of a God are religious views, and are protected by the First Amendment as arduously as those views that are based on theism.

61. Plaintiff is a citizen of the United States. That a phrase offensive to the religious beliefs of Plaintiff and his ministry has been incorporated into the Pledge of Allegiance to the Flag of the United States of America – a nation whose Bill of Rights begins with the words "Congress shall make no law respecting an establishment of religion" – is a ludicrous and unconstitutional affront. It violates the Establishment Clause by endorsing theism, and it violates the Free Exercise Clause by interfering with Plaintiff's ability to practice his religion free from governmental intrusion.

62. Plaintiff is a citizen of the United States of America, often proud of his nation. When he wishes to join his fellow citizens and pledge allegiance to the country's flag – as he has done and will continue to do in the future – extraneous and offensive (to Plaintiff) religious dogma is imposed as the phrase "one Nation under God" is uttered (as scripted in 36 U.S.C. § 172). This impermissible interlarding violates the Establishment and Free Exercise Clauses of the very Bill of Rights underlying that pledge.

63. By way of the Fourteenth Amendment, the States are subject to the First Amendment of the Constitution. ("The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws." Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940)).

64. Article I (Declaration of Rights), Section 4 of the California State Constitution provides, in pertinent part:

> Free exercise and enjoyment of religion without discrimination or preference are guaranteed ... The Legislature shall make no law respecting an establishment of religion.

65. Article IX (Education), Section 8 of the California State Constitution provides, in pertinent part:

> No ... sectarian or denominational doctrine [shall] be taught, or instruction be permitted, directly or indirectly, in any of the common schools of this State.

66. The California State Education Code, Section 52720, states that:

> ... each day during the school year ... there shall be conducted appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy the requirements of this section."

67. By specifically suggesting that the now-sectarian Pledge of Allegiance may be used in the State's public schools, Defendant the State of California had promulgated a rule that violates the Establishment and Free Exercise Clauses of the First Amendment of the Federal Constitution, and Article I, Section 4 and Article IX, Section 8 of the California State Constitution.

68. It is understood that by adopting Section 52720 of the Education Code, California has attempted to foster patriotism, and has assumed that the United States Congress acted constitutionally in its passage of the Act of 1954. However, in view of the obvious Federal and State Religion Clause violations, the State has no more right to accept the federal legislature's Religion Clause transgressions than it does to accept those of its own legislature. (See, e.g., Walker v. Superior Court, 47 Cal. 3d 112, 253 Cal. Rptr. 1, 763 P.2d 852 (1988) (Mosk, J., concurring).)

69. If the State wishes to have a patriotic recitation, it can well recommend the secular, pre-1954 version of the Pledge or use some other nonsectarian prose altogether. In fact, under the strict scrutiny standard it must follow ("If a law effects a preference among religions, the governmental policy is presumptively suspect and subject to strict scrutiny." Walker v. Superior Court, 47 Cal. 3d 112, 145 (Mosk, J., concurring) (note 1)), the need to narrowly tailor legislation to meet any putative compelling interest mandates such a recommendation.

70. Defendant the Elk Grove Unified School District has promulgated its Rule AR 6115, which states in pertinent part that "Each elementary school class [shall] recite the pledge of allegiance to the flag once each day."

71. Due to the inclusion of the words "under God" in the Pledge of Allegiance to the Flag of the United States of America, Rule AR 6115 results in the daily indoctrination of the Elk Grove Unified School District's students – including Plaintiff's daughter – with religious dogma, as is expressly forbidden by the Constitution of the United States of America.

72. Defendant David W. Gordon, Superintendent of Schools, has permitted and continues to permit Rule AR 6115 to remain in force.

73. Defendant the Sacramento City Unified School District has promulgated its Rule AR 6115 (b), which states in pertinent part that "Each school shall conduct patriotic exercises daily. At elementary schools, such exercises shall be conducted at the beginning of each school day. The Pledge of Allegiance to the flag will

fulfill this requirement."

74. Due to the inclusion of the words "under God" in the Pledge of Allegiance to the Flag of the United States of America, Rule AR 6115 (b) results in the daily indoctrination of the Sacramento City Unified School District's students with religious dogma, as is expressly forbidden by the Constitution of the United States of America.

75. Defendant Dr. Jim Sweeney, Superintendent of Schools, has permitted and continues to permit Rule AR 6115 (b) to remain in force.

76. Plaintiff is the father of a five year old daughter, who – since August, 1999 – has been enrolled in kindergarten in a public school within the Elk Grove Unified School District. Current plans are for her to complete her primary and secondary school years in either that school district or the Sacramento City Unified School District.

77. Plaintiff is an atheist.

78. Plaintiff, under the Free Exercise Clause, has an unrestricted right to inculcate in his daughter – free from governmental interference – the atheistic beliefs he finds persuasive. The government's use of the words "under God" in the Nation's Pledge of Allegiance infringes upon this right. Such an infringement may not occur without a compelling state interest. No such compelling interest exists.

79. Plaintiff's daughter has been, currently is, and will in the future be subjected to the teacher-led recitation of the now-sectarian Pledge of Allegiance every day she attends the public schools. In other words, every school morning – under the aegis of the State – this child "of tender years" is compelled to watch and listen as her state-employed teacher in her state-run school leads her and her classmates in a ritual proclaiming that there is a God, and that ours is "one Nation under God." For the State to **ever** subject Plaintiff's daughter to such dogma – expressing and inculcating purely religious beliefs that are directly contrary to the religious beliefs of Plaintiff and the religious ideals he wishes to instill in his child – would be of questionable constitutionality. For it to do this every single school day for thirteen years – using Plaintiff's tax dollars, no less, to accomplish the affront – is an outrageous and manifest abuse of power in direct violation of the Religion Clauses of the constitutions of both the United States and the State of California. ("The State must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion." Lemon v.

Kurtzman, 403 U.S. 602, 619 (1971).)

80. Plaintiff at times has himself attended – and will in the future attend – class with his daughter. During such times, he has been – and will in the future be – exposed to the teacher-led recitation of the Pledge of Allegiance. For Plaintiff, himself, to be subjected to this religious dogma while exercising his right to participate in his child's education in the public schools also violates the Religion Clauses of the Constitutions of both the United States and the State of California.

81. Plaintiff is making no objection to the recitation of a patriotic Pledge of Allegiance. The government is certainly within its right to foster patriotism, and it may certainly make the determination that recitation of a Pledge of Allegiance serves that purpose. However, government may not employ or include sectarian religious dogma towards this end. ("[I]f a state passed legislation requiring the erection at every other street corner of a pole containing a stop sign with the word 'STOP' and a picture of Jesus Christ in the background, there is no doubt that a purpose of the statute would be to regulate the flow of traffic and require vehicles to stop. However, from a constitutional standpoint, the question that would have to be asked is: why the picture of Jesus Christ?" Cammack v. Waihee, 944 F.2d 466, 469 (9th Cir. 1991) (Reinhardt, Circuit Judge, dissenting from the denial of rehearing en banc).)

82. In 1998, the United States Department of Education issued a *Statement on Religious Expression in Public Schools*, which included a portion holding that "[t]eachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the Establishment Clause from soliciting or encouraging religious activity, and from participating in such religious activity with students." According to Secretary of Education Richard W. Riley's letter accompanying this statement, "schools may not endorse religious activity or doctrine." When teachers generally – and Plaintiff's daughter's teachers specifically in the case at bar – lead their students in a daily recitation that states in part that we are "one Nation under God," they endorse religious doctrine and inculcate a belief that not only is there a God, but that we are one nation "under" that entity. This is unconstitutional. ("As we have repeatedly recognized, government inculcation of religious beliefs has the impermissible effect of advancing religion." Agostini v. Felton, 521 U.S. 203, 223 (1997).)

83. On May 30, 1998, Defendant William Jefferson Clinton, President of the United States, broadcast to the nation his weekly radio address. The subject of that talk was "faith in our lives and in the education of our children." Mr. Clinton stated:

Our founders believed the best way to protect religious liberty was to first guarantee the right of everyone

> to believe and practice religion according to his or her conscience; and second, to prohibit our government from imposing or sanctioning any particular religious belief. That's what they wrote into the First Amendment. They were right then, and they're right now.

Read from the perspective of atheistic Americans (such as Plaintiff), this passage can only be interpreted as meaning that the current sectarian Pledge – especially as recited daily in our public schools – is unconstitutional.

84. The indoctrination of his child against his will – to occur continuously for thirteen consecutive years – with a religious viewpoint that Plaintiff feels is offensive is a violation of Plaintiff's fundamental constitutional privacy right of parenthood. Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992) ("Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." Id., at 851); Santosky v. Kramer, 455 U.S. 745 (1982) ("[F] reedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977); Moore v. East Cleveland, 431 U.S. 494, 499 (1977) (plurality opinion); Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640 (1974); Stanley v. Illinois, 405 U.S. 645, 651-652 (1972); Prince v. Massachusetts, 321 U.S. 158, 166 (1944); Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925); Meyer v. Nebraska, 262 U.S. 390, 399 (1923)." Id., at 753; "[T]he interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." Id., at 774 (Rehnquist, C.J., dissenting).)

85. Plaintiff has attended and will continue to attend meetings of EGUSD and SCUSD. During those meetings – in both locales – the now-sectarian Pledge of Allegiance is routinely recited.

86. The recitation of the now-sectarian Pledge of Allegiance at the EGUSD and SCUSD meetings – as is the case when Plaintiff is present during the Pledge recitations in the classrooms or anywhere else – makes Plaintiff feel like an "outsider" due to his religious beliefs. This is prohibited by the First Amendment. ("If government is to be neutral in matters of religion, rather than showing either favoritism or disapproval towards citizens based on their personal religious choices, government cannot endorse the religious practices and beliefs of some citizens without sending a clear message to nonadherents that they are outsiders or less than full members of the political community." Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 627 (1989) (O'Connor, J., concurring).)

87. The recitation of the now-sectarian Pledge of Allegiance at the EGUSD and SCUSD meetings – or in the

schools, or anywhere else, for that matter – endorses the religious view that there is a God. Such endorsement is prohibited by the First Amendment. ("Over the years, this Court has declared the invalidity of many noncoercive state laws and practices conveying a message of religious endorsement." Lee v. Weisman, 505 U.S. 577, 618 (1992) (Souter, J., concurring).)

88. Plaintiff wishes to serve on the School Board of either EGUSD or SCUSD. The data are clear that the voting public shuns atheists. Therefore, by making his atheism a key characteristic for which he will henceforth be known, Plaintiff's involvement in this lawsuit will essentially preclude him from obtaining elected office. This state of affairs results exclusively from the facts that (a) the Pledge now contains a sectarian religious component to which Plaintiff does not adhere, (b) the Pledge is routinely recited in Plaintiff's daughter's classes, and (c) the Pledge is routinely recited at the meetings of the School Boards of EGUSD and SCUSD.

89. Having the government place Plaintiff in the situation noted in the preceding paragraph 88 forces Plaintiff to choose between standing up for his constitutional rights or achieving political success. This unconstitutionally burdens his free exercise of religion. ("The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against [her] for her Saturday worship." Sherbert v. Verner, 374 U.S. 398, 404 (1963).)

90. Having the government place Plaintiff in the situation noted in paragraph 88 affects the political standing of Plaintiff. Such an effect violates the Establishment Clause. ("What is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion. It is only practices having that effect, whether intentionally or unintentionally, that make religion relevant, in reality or public perception, to status in the political community." Lynch v. Donnelly, 465 U.S. 668, 692 (1984) (O'Connor, J., concurring)).

91. The daily, governmentally mandated recitation, in the public schools, of any pledge containing a religious statement such as "under God" is a blatant violation of the Establishment Clause. Abington School District v. Schempp, 374 U.S. 203 (1963) ("[P]ublic schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort – an atmosphere in which children may assimilate a heritage common to all American groups and religions. This is a heritage neither theistic nor atheistic, but simply civic and patriotic." Id., at 241-242 (cites omitted) (Brennan, J.,

concurring))

92. The daily, governmentally mandated recitation, in the public schools, of any pledge containing a religious statement such as "under God," inflicted upon a child who holds religious beliefs offended by such a statement is a blatant violation of the Free Exercise Clause. Abington, 374 U.S. 203 (1963) ("In consequence, even devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or nonconformists simply on the basis of their request." Id., at 290. (Brennan, J., concurring)).

93. The Constitutional requirement that religion be kept separated from government is especially strict in the public schools. ("Our public school … is organized on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion." Everson v. Board of Education, 330 U.S. 1, 23-24 (1947) (Jackson, J., dissenting); "We start down a rough road when we begin to mix compulsory public education with compulsory godliness." Zorach v. Clausen, 343 U.S. 306, 325 (1952) (Jackson, J., dissenting); "The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice." McCollum v. Board of Education, 333 U.S. 203, 216-217 (1948) (Frankfurter, J., concurring); "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." Shelton v. Tucker, 364 U.S. 479, 487 (1960); "[Academic freedom is] … a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom." Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967)).

94. Plaintiff's position as the father of a child attending the State's public schools grants him standing in this matter in his own right and on behalf of his daughter. Abington, 374 U.S. 203 (1963) ("First, the parent is surely the person most directly and immediately concerned about and affected by the challenged establishment, and to deny him standing either in his own right or on behalf of his child might effectively

foreclose judicial inquiry into serious breaches of the prohibitions of the First Amendment – even though no special monetary injury could be shown." (Id., n. 30) (Brennan, J., concurring).)

95. Plaintiff has had contact with officials of his child's elementary school and the Elk Grove Unified School District, including Defendant David W. Gordon, Superintendent. Superintendent Gordon has written that "[o]ur attorneys have advised us that federal law allows the recitation of the Pledge of Allegiance including the phrase 'under God.'" Plaintiff's disagreement with that assessment is the crux of this action.

96. Superintendent Gordon also wrote that "that there is no establishment clause violation as long as students are free not to participate." This issue of "coercion" is certain to be raised repeatedly by the defendants. In anticipation, Plaintiff will state here and now that (a) coercion in not a necessary element for an Establishment Clause violation, and (b) there is coercion when elementary school students are led by their teachers in the daily recitation of the Pledge.

97. The Supreme Court has unequivocally stated that coercion is unnecessary to show an Establishment Clause violation. ("The absence of any element of coercion … is irrelevant to questions arising under the Establishment Clause. In School District of Abington Township v. Schempp … it was contended that Bible recitations in public schools did not violate the Establishment Clause because participation in such exercises was not coerced. The Court rejected that argument." Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756, 786 (1973).)

98. Defendant William Jefferson Clinton, in the radio address noted in paragraph 83, *supra*, also stated that students "have the right to be free from coercion to participate in any kind of religious activity in school."

99. Even if coercion were a necessary element to show an Establishment Clause violation, the Supreme Court has ruled that coercion exists even when an individual is not forced to actively participate in an activity. In Lee v. Weisman, 505 U.S. 577 (1992), high school students were found to be coerced as a matter of law when a benediction was held at their high school graduation ceremonies. If coercion was present in that situation, it certainly must be present during recitations of the Pledge of Allegiance where each coercive element is even more forcefully present. (Please see Appendix D.) ("[W]ithout exception we have invalidated actions that further the interests of religion through the coercive power of government. Forbidden involvements include compelling or coercing participation **or attendance at** a religious activity." Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 660 (1989) (Kennedy, J., dissenting in part, concurring in part) (citations

omitted) (emphasis added).)

100. That this coercion exists provides proof, on its own, that the Establishment Clause has been violated. ("Although our precedents make clear that proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient. Government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion. Lee v. Weisman, 505 U.S. 577, 604 (1992) (Blackmun, J., concurring).)

101. It is not an answer to maintain that Plaintiff and his daughter can "opt out" of the Pledge. To begin with, requiring any citizen to alter his/her behavior in order to avoid a governmental abridgment of his/her constitutional rights is itself a violation of those rights. Secondly, Plaintiff has met with his daughter's teacher and the school principal to discuss this option. It was found that it is not possible to accomplish such an "opt out" without his daughter and her classmates realizing that she is "an outsider," in direct violation of the Religion Clauses.

102. Atheists are a disenfranchised minority in this nation. National polls have revealed that 93-96% of Americans believe in God – only 3% to 4% do not.[15],[16] In 1946, 57% of Americans felt that atheists should be denied the opportunity to even broadcast their religious views on radio.[17] In the 1950's, three quarters of the population stated they would not vote for an atheist running for president even if he[18] were otherwise qualified.[19] In 1965, 27% of the population stated that they didn't think atheists should even be allowed to vote![20]

103. The numbers given in the preceding paragraph 102 do not just reflect an "unenlightened" populace from years past; current data reveal that still only a third of the population would vote for an atheist candidate.[21]

104. Incredibly, the constitutions of at least six states[22] still have clauses denying to atheists the right to hold public office and/or testify in a court of law! Although these clauses are now legal nullities, the fact that they remain – unchanged for all the world to see – on the most vital document in each of those states, powerfully demonstrates the extreme political disenfranchisement of atheists.[23]

105. Each of the Defendants William Jefferson Clinton, the President of the United States; David W. Gordon, Superintendent, EGUSD; and Dr. Jim Sweeney, Superintendent, SCUSD has a sworn duty to uphold and/or

abide by the Constitution of the United States. Specifically, each must act to prevent the creation, execution or perpetuation of laws which endorse any form of religion – including theism – in violation of the Establishment Clause; and each must act to prevent the creation, execution or perpetuation of laws which interfere with the ability of Plaintiff and his daughter in practicing their religion(s) free from governmental intrusion. By the actions and the circumstances enumerated above, in addition to other actions and circumstances, each of these Defendants has failed to perform and continues to fail to perform his sworn duty.

106. Each of the Defendants the Congress of the United States of America; the United States of America; the State of California; the Elk Grove Unified School District; and the Sacramento City Unified School District is a governmental entity obligated to ensure that the Constitution of the United States of America is upheld. By the actions and the circumstances enumerated above, in addition to other actions and circumstances, each of these Defendants has failed to maintain and continues to fail to maintain its obligation.

107. Each of the Defendants the State of California; the Elk Grove Unified School District; and the Sacramento City Unified School District is a governmental entity obligated to ensure that the Constitution of the State of California is upheld. By the actions and the circumstances enumerated above, in addition to other actions and circumstances, each of these Defendants has failed to maintain and continues to fail to maintain its obligation.

108. Each of the Defendants David W. Gordon, Superintendent, Elk Grove Unified School District; and Dr. Jim Sweeney, Superintendent, Sacramento City Unified School District has an obligation to ensure that the Constitution of the State of California is upheld. By the actions and the circumstances enumerated above, in addition to other actions and circumstances, each of these Defendants has failed to maintain and continues to fail to maintain his obligation.

109. Plaintiff pays taxes to the United States, to the State of California and to the County of Sacramento.

110. Numerous federal, state and local governmental employees – using governmental facilities – recite the now-sectarian Pledge of Allegiance while being paid from the government coffers. These employees include, but are not limited to, members of the United States Senate, members of the United States House of Representatives, and the school board members and teachers of the Elk Grove and Sacramento City Unified School Districts.

111. The recitation of the now-sectarian Pledge of Allegiance by any of the above-referenced governmental employees while performing their duties involves the use of Plaintiff's tax money in a religious exercise as prohibited by the First Amendment.

112. The tax moneys noted in paragraph 109 are used in the education of the County's, the State's and the Nation's schoolchildren. Presently included in that "education" is the repeated recitation of the now-sectarian Pledge of Allegiance, which indoctrinates all the schoolchildren – including Plaintiff's daughter – with the religious dogmas that (a) there exists a god, and that (b) we are "one Nation under God." The aforementioned tax moneys are used to pay for (i) the teachers' salaries, (ii) the flags and other items, (iii) the physical plant (including the classrooms), and (iv) the utilities of the classrooms. ("[I]t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" James Madison, *Memorial and Remonstrance against Religious Assessments*, II Writings of Madison 183, at 185-186.)

113. Federal tax money is used to print the United States Code (including 36 U.S.C. § 172) as well as pamphlets, etc., that contain the Pledge of Allegiance.

114. Federal, California State and Sacramento County tax moneys are used when the Pledge is recited at federal, state and county governmental functions.

115. Federal tax money is used to support the "Pause for the Pledge of Allegiance" (Pub. L. 99 Stat. 97) annual festivities.[24]

116. The preceding examples show that Plaintiff's tax moneys are used for governmental functions designed to bolster the use and status of the Pledge of Allegiance to the Flag. The taking by the government of Plaintiff's (and the rest of the citizenry's) personal wealth to be used to advocate a Pledge that places the government's imprimatur on a religious belief to which Plaintiff does not adhere is a violation of both the Establishment and Free Exercise clauses.

117. Some (if not all) of the federal dollars spent in the activities noted in paragraphs 110 through 115 are

apportioned under the taxing and spending clause of Article I, Section 8 of the Constitution of the United States. ("[F]ederal taxpayers have standing to raise Establishment Clause claims against exercises of congressional power under the taxing and spending power of Article I, 8, of the Constitution." Bowen v. Kendrick, 487 U.S. 589, 618 (1988).)

118. Article XVI (Public Finance), Section 5 of the California State Constitution provides in pertinent part, that:

> Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, ... nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever.

119. By allowing – and encouraging – the continued use of the now-sectarian Pledge, and by utilizing tax money as noted above, the State of California is making appropriations in aid of theistic religious belief, thereby violating California State Constitution Article XVI, Section 5.

120. Plaintiff has considered teaching elementary school students in the EGUSD public schools. Were he to take such a position, Rule #6115 would require that he violate either that rule or his conscience. Placing Plaintiff in this untenable position is exactly the type of harm the Establishment and Free Exercise Clauses are designed to preclude. Thus, those Clauses are violated by Rule #6115. Sherbert v. Verner, 374 U.S. 398 (1963).

121. Were he to take a job teaching elementary school students in either the EGUSD or the SCUSD, Plaintiff's religious beliefs would preclude him from following Rule #6115 or 6115 (b). Thus, those charged with school administration – government actors – would become entangled in a religious conflict by monitoring Plaintiff's activities. This entanglement is forbidden under the First Amendment. ("[S]urveillance creates an entanglement of government and religion which the First Amendment was designed to avoid." Tilton v. Richardson, 403 U.S. 672, 694 (1971) (Douglas, J., concurring in part and dissenting in part).)

122. Establishment Clause restrictions are especially austere in elementary schools. Thus, even if there were some non-religious justification for the placement of the words "under God" into the Pledge and the daily recitation of those words – which, it must be repeated, there is not – that justification would never meet the burden necessary to warrant the abridgment of fundamental Religion Clause liberties. ("The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary

schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary." Edwards v. Aguillard, 482 U.S. 578, 583-584 (1987).)

123. There is an overwhelming amount of dicta that supports Plaintiff's position in this case. Appendix E (revealing quotes from twenty-six separate justices), Appendix F (yielding more than fifty separate statements from Lee v. Weisman alone), and Appendix G (providing two hundred instances) all demonstrate that the current Pledge is inconsistent with the Constitution's guarantees.

124. Plaintiff expects that Defendants will make attempts to deflect his challenge by pointing to the exceedingly rare instances of what, in fact, only appear to be contrary Supreme Court dicta. It should be appreciated right off that none of those dicta – as opposed to the myriad quotes that Plaintiff has provide in his Pleading (including appendices) here – are based on reason, logic or principle, and Plaintiff will specifically respond to these attempts at the appropriate time. For now, however, it should be noted that the Ninth Circuit has recently addressed the issue of insufficient dicta in Batjac Prods. Inc. v. Goodtimes Home Video Corp., 160 F.3d 1223 (9th Cir. Cal. 1998). In Batjac – a case that (unlike the case at bar) did **not** involve fundamental constitutional rights – Supreme Court dicta were deemed not to be controlling. Endorsing the approach taken by the Seventh Circuit in United States v. Crawley, 837 F.2d 291 (7th Cir. 1988), the Court looked at four "reasons for rejecting dicta." Plaintiff anticipates that each of those reasons will be present in every instance of dicta brought by Defendants,

125. The mountain of reasoned and principled dicta supporting Plaintiff's claim stands in stark contrast to the pimple of opposing statements, and any just analysis of the issue will easily demonstrate that Plaintiff must prevail in this action. The phrase "under God" as it exists in the Pledge of Allegiance to the Flag of the United States of America is violative of the Religion Clauses of the First Amendment.

126. Precluding Plaintiff from making his claims in this case by following the minimal and poor-quality dicta that Defendants are likely to present would violate the Due Process Clauses of the Fifth and Fourteenth Amendments.

127. In contrast to the questionable deference to be accorded the ancillary dicta Defendants will likely present, on-point holdings are of the utmost precedential value. The Supreme Court has ruled in three similar

instances involving public school students, each time finding that the states' involvement with religion violated the First Amendment. Engel v. Vitale, 370 U.S. 421 (1962) (daily prayer), Abington School District v. Schempp, 374 U.S. 203 (1963) (daily Bible-reading) and Lee v. Weisman, 505 U.S. 577 (1992) (annual graduation benedictions by clergy) provide unequivocal evidence that the recitation of the words "under God" in the Pledge – as with prayer, Bible-readings and benedictions – cannot be countenanced under our Constitution.

128. The differential treatment of atheists as compared with theists as it relates to the use of the words "under God" in the now-sectarian Pledge violates the guarantees of Equal Protection inherent in the Fifth and Fourteenth Amendments.

129. In addition to its constitutional infirmities, the placement of the words "under God" into the Pledge of Allegiance is void as against public policy. The very purpose of the Pledge of Allegiance to the Flag – as can be appreciated from the legislative history behind the initial Act of 1942 – is to provide a means of demonstrating patriotism and engendering national unity. By placing the religious words "under God" into the Pledge, Congress not only interfered with the patriotism and national unity the Pledge was meant to engender, but it actually fostered divisiveness ... in a manner expressly forbidden by the Constitution.

130. In the fall of 1998, a few months after her fourth birthday, Plaintiff's daughter came to his side. Pondering the Pledge's possible effects, Plaintiff recited it to her in its pre-1954 form. After hearing "... one Nation, indivisible, with liberty and justice for all," that child – without a second's pause – immediately shouted "under God"! Plaintiff at the time didn't even know she had ever even heard the Pledge before. Yet, apparently from her days in pre-school, she **immediately** recognized that her father had "left out" those two words.

131. The occurrence noted in the preceding paragraph 130 clearly demonstrates the adverse effect the daily recitation of the Pledge has on the ability of atheists in general, and Plaintiff in particular, to raise their children free from religious governmental interference.

132. The occurrence noted in paragraph 130 clearly demonstrates the adverse effect the daily recitation of the Pledge has on the ability of Plaintiff's daughter to receive the message of atheism Plaintiff wishes to instill – and has the right to instill free from religious governmental interference – in her.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

I. To declare that Congress, in passing the Act of 1954, violated the Establishment and Free Exercise Clauses of the United States Constitution;

II. To declare that by including "under God" in the Pledge of Allegiance to the Flag of the United States of America, 36 U.S.C. § 172 violates the Establishment and Free Exercise Clauses of the United States Constitution;

III. To demand that Defendant the Congress of the United States of America immediately act to remove the words "under God" from the Pledge of Allegiance to the Flag as now written in 36 U.S.C. § 172;

IV. To demand that Defendant William Jefferson Clinton, the President of the United States of America, alter, modify or repeal the Pledge of Allegiance to the Flag by removing the words "under God" as required under 36 U.S.C. § 178 in conjunction with his oath to defend and uphold the Constitution of the United States of America;

V. To demand that Defendant the State of California immediately act to alter, modify or repeal Education Code § 52720 so that the use of the now-sectarian Pledge of Allegiance is forbidden in the public schools.

VI. To demand that Defendants the Elk Grove Unified School District; David W. Gordon, Superintendent, EGUSD; the Sacramento City Unified School District; and Dr. Jim Sweeney, Superintendent, SCUSD forbid the use of the now-sectarian Pledge of Allegiance in the public schools within their jurisdictions;

VII. To allow Plaintiff to recover costs, expert witness fees, attorney fees, etc. as may be allowed by law; and

VIII. To provide such other and further relief as the Court may deem proper.

Respectfully submitted,

Michael Newdow, Plaintiff
First Amendmist Church of True Science
PO Box 233345
Sacramento CA 95823

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was/will be mailed on this 8th day of March, 2000, to:

CONGRESS OF THE UNITED STATES
C/O DENNY HASTERT, SPEAKER
HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515

THE STATE OF CALIFORNIA
AG PUBLIC INQUIRY UNIT
PO BOX 944255
SACRAMENTO CA 94244-2550

JANET RENO, ATTORNEY GENERAL
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DAVID GORDON, SUPERINTENDENT
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ELK GROVE CA 95624

WILLIAM JEFFERSON CLINTON
PRESIDENT OF THE UNITED STATES
THE WHITE HOUSE
WASHINGTON DC 20500

DR. JIM SWEENEY, SUPERINTENDENT
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_____

Rev. Dr. Michael Newdow
FACTS
PO Box 233345
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[1] And his daughter, whom he represents as "next friend".

[2] "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.

[3] There were no fewer than eighteen separate resolutions introduced in Congress – all with the purpose of inserting the religious words "under God" into the Pledge of Allegiance. These quotes are from the sponsors and supporters of those resolutions.

[4] The single, detestable and abhorrent quote that ""An atheistic American … is a contradiction in terms" – provided by the Congressman who was credited as being the chief sponsor of the resolution – should, by itself, be sufficient to invalidate the

Act.

[5] In Aguillard, where the Court struck down a law that required the teaching of "creation science," the statute did "not contain explicit reference to its religious purpose." Id., at 604. In the instant case, the religiosity comprised the entire legislation!

[6] 100 Cong. Rec. 7, 8618 (June 22, 1954) (Statement by President Dwight D. Eisenhower, as reported by Sen. Ferguson.)

[7] 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.)

[8] 100 Cong. Rec. 18 (Appendix), A3448 (May 11, 1954) (Letter entered into the record by Rep. George H. Fallon in support of the resolution to amend the previously secular Pledge of Allegiance.)

[9] 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.)

[10] It is estimated that approximately 3-4% of Americans are atheists. This is double the percentage of the population that is Jewish (or a multitude of other non-Christian religions. For references, please see at footnotes 15 and 16.) The reader might then wonder what, constitutionally, would be the difference between "One Nation under Jesus" (endorsing a religious belief adhered to by 86% of the population) as opposed to "One Nation under God") (where the endorsed religious belief is adhered to by 94-96% of the population).

[11] Constitution of the State of New Jersey (1776), Section XIX.

[12] Which, as Plaintiff will demonstrate in a future submission, it is not. The reader, in the meantime – as in footnote 10 above – might contemplate a First Amendment with "ceremonial Christianity," "ceremonial Catholicism," "ceremonial Buddhism," or any other "ceremonial" religious subcategory.

[13] H.R. 1693, 83rd Cong., 2nd Sess. (1954)

[14] *Religious Right Queries GOP Rivals*, Washington Post, Thursday, February 4, 1999; page A4.

[15] Louis Harris and Associates, August 12, 1998; Opinion Dynamics, December 5, 1997.

[16] Pew Research Center for the People and the Press, May 31 through June 9, 1996.

[17] Gallup Poll – A.I.P.O. (December 18, 1946).

[18] The poll did not, apparently, consider women as potential candidates: "If your party nominated a generally well-qualified man for president and he happened to be an atheist, would you vote for him?" Gallup Poll – A.I.P.O. (September 15, 1958).

[19] The poll looked into other religions and race as well. The results are revealing: Would not vote for a: Baptist (4%), Catholic (27%), Jew (29%), Negro (54%), Atheist (77%). Id.

[20] Gallup Poll – A.I.P.O. (July 21, 1965). In contrast, when asked if "people who have quit school and never completed high school" should be allowed to vote, only 6% of the population felt that group should be excluded.

[21] Jelen T and Wilcox C. Public Attitudes Toward Church and State (M.E. Sharpe, Armonk, NY 1995), page 45.

[22] Arkansas, Maryland, North Carolina, South Carolina, Tennessee, Texas.

[23] If this point needs to more strongly be made, one need only ponder how long phrases such as "No [Jew] shall hold any office under this Constitution" (South Carolina State Constitution, Article XVII, Section 4) or "No [African-American] shall hold any office in the civil department of this state" (Tennessee State Constitution, Article IX, Section 2) would persist in today's society.

[24] Sponsored by The National Flag Day Foundation, this event involves the participation of thousands of Maryland school children, a high school choir, use of governmental buildings, a concert given by the 229th Maryland Army National Guard band, and a "Fly-over" by jets of the 175th Wing Maryland Air National Guard. The estimated cost to taxpayers of the Fly-over, alone, is on the order of $10,000.00.