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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Civil Action No. 1:07-cv-356-JM

THE FREEDOM FROM RELIGION FOUNDATION;
JAN DOE AND PAT DOE, PARENTS; DOECHILD-1, DOECHILD-2 and
DOECHILD-3, MINOR CHILDREN;

Plaintiffs,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
THE UNITED STATES OF AMERICA;
THE HANOVER SCHOOL DISTRICT (“HSD”);
THE DRESDEN SCHOOL DISTRICT (“DSD”);
SCHOOL ADMINISTRATIVE UNIT 70 (“SAU #70”);

Defendants.

ORIGINAL COMPLAINT

Plaintiffs allege as follows:

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1 **JURISDICTION AND VENUE**

2 1. This is a civil action claiming (among others) violations of the First, Fifth and
3 Fourteenth Amendments of the Constitution of the United States of America.

4 As such, this Court has jurisdiction under 28 U.S.C. § 1331.

5 2. This is a civil action claiming violations of 42 U.S.C. §§ 2000bb et seq.
6 (Religious Freedom Restoration Act (RFRA)). As such, this Court has
7 jurisdiction under 42 U.S.C. §§ 2000bb-1(c) and 28 U.S.C. § 1331.

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

11 4. This action is in the nature of mandamus, and seeks to compel the Congress of
12 the United States of America, the United States of America, its agents and its
13 officers to perform their duties owed Plaintiffs under the terms of the First and
14 Fifth Amendments of the Constitution of the United States and under 42 U.S.C.
15 § 2000bb et seq. As such, this Court has jurisdiction under 28 U.S.C. § 1361.

16 5. This action alleges that Defendants Hanover School District (“HSD”), Dresden
17 School District (“DSD”), and School Administrative Unit 70 (“SAU #70”) have
18 deprived and/or will deprive Plaintiffs of rights secured by the First, Fifth and
19 Fourteenth Amendments to the Constitution of the United States of America. As

1 such, this Court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §
2 1343 (3).

3 6. Defendants the Congress of the United States of America and the United States
4 of America are each an officer or employee of the United States, an agency of
5 the United States, or the United States. All Plaintiffs reside in this judicial
6 district. Venue is therefore proper under 28 U.S.C. § 1391 (e)(1) and §
7 1391(e)(3).

8 7. A substantial part of the events or omissions giving rise to this claim occurred,
9 occur or will occur in the District of New Hampshire. Venue is therefore proper
10 under 28 U.S.C. § 1391(b)(2) and § 1391(e)(2).

11 8. Defendants Hanover School District (“HSD”), Dresden School District
12 (“DSD”), and School Administrative Unit 70 (“SAU #70”) reside in New
13 Hampshire. Venue is therefore proper under 28 U.S.C. § 1391(b)(3).

14
15 **PARTIES**

16 9. Plaintiff Freedom From Religion Foundation (FFRF) is a national association
17 of freethinkers (atheists and agnostics), established as a 501(c)(3) educational
18 group in 1978, which works to keep church and state separate. The Foundation,
19 based in Madison, Wisconsin, has members in every state, including New
20 Hampshire. Current total membership is approximately 11,000, of which

1 approximately 60 are from New Hampshire. Members of FFRF – in addition to
2 plaintiffs Doe – live in, pay taxes in, and have children (or are children) who
3 attend public schools in this judicial district. Those other (non-Doe) members
4 suffer the same or similar harms as alleged in this Complaint.

5 10. Plaintiffs Jan Doe and Pat Doe are residents and citizens of the United States,
6 of the State of New Hampshire and of Hanover, New Hampshire. They own
7 property situated in Hanover, New Hampshire. Accordingly, they pay taxes that
8 are used to fund HSD, DSD, SAU #70 and their schools. They are the parents
9 of DoeChild-1, DoeChild-2 and DoeChild-3, with full legal custody of those
10 children.

11 11. Plaintiffs DoeChild-1, DoeChild-2 and DoeChild-3 are residents and citizens of
12 the United States, of the State of New Hampshire, and of Hanover, New
13 Hampshire. All three of these DoeChildren are currently enrolled in one of the
14 HSD's schools, and will subsequently attend one or more of DSD's/SAU #70's
15 schools. The three DoeChildren are all siblings and children of Jan and Pat
16 Doe.

17 12. Defendant the Congress of the United States of America is the branch of
18 government in which all legislative Powers are granted under Article I, Section
19 1 of the United States Constitution.

1 13. Defendant the United States of America is the constitutionally established
2 government of the United States of America.

3 14. Defendant the Hanover School District (“HSD”) is the governing body
4 responsible for operating, controlling and supervising free public elementary
5 schools in Hanover, New Hampshire.

6 15. Defendants Dresden School District (“DSD”) and School Administrative Unit
7 70 (“SAU #70”) are the two governing bodies responsible for operating,
8 controlling and supervising free public middle and high schools in Hanover,
9 New Hampshire.

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RELEVANT LAW

13

A. CONSTITUTIONAL PROVISIONS

14 16. The First Amendment to the Constitution of the United States of America
15 states, in pertinent part, that “Congress shall make no law respecting an
16 establishment of religion or prohibiting the free exercise thereof. ...”

17 17. The Fifth Amendment to the Constitution of the United States of America
18 states, in pertinent part, that “No person shall be ... deprived of life, liberty, or
19 property, without due process of law.” The Supreme Court has read an Equal

1 Protection component into this Due Process Clause. Adarand Constructors, Inc.
2 v. Mineta, 534 U.S. 103, 105 (2001).

3 18. The Fourteenth Amendment to the Constitution of the United States of America
4 states, in pertinent part, that:

5 No State shall make or enforce any law which shall
6 abridge the privileges or immunities of citizens of the
7 United States; nor shall any State deprive any person of
8 life, liberty, or property, without due process of law; nor
9 deny to any person within its jurisdiction the equal
10 protection of the laws.¹

11
12 19. Article 6 (Morality and Piety) of the New Hampshire Constitution provides, in
13 pertinent part:

14 [N]o person shall ever be compelled to pay towards the
15 support of the schools of any sect or denomination. And
16 every person, denomination or sect shall be equally under
17 the protection of the law; and no subordination of any one
18 sect, denomination or persuasion to another shall ever be
19 established.

20 21 22 **B. STATUTES**

23 20. Pursuant to 4 U.S.C. § 4, the Pledge of Allegiance to the Flag of the United
24 States of America reads:

¹ 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).

1 I pledge allegiance to the flag of the United States of
2 America, and to the Republic for which it stands, one
3 Nation under God, indivisible, with liberty and justice for
4 all.

5
6 21. 42 U.S.C. §§ 2000bb et seq. (Religious Freedom Restoration Act (RFRA))

7 states, in pertinent parts:

8 § 2000bb(a)(3): “The Congress finds that governments
9 should not substantially burden religious exercise
10 without compelling justification.”

11 § 2000bb(b)(1) and (b)(2): “The purposes of this chapter
12 are to restore the compelling interest test ... and to
13 guarantee its application in all cases where free
14 exercise of religion is substantially burdened; and
15 to provide a claim or defense to persons whose
16 religious exercise is substantially burdened by
17 government.”

18 § 2000bb-1(b)(1) and (b)(2): “Government may
19 substantially burden a person’s exercise of religion
20 only if it demonstrates that application of the
21 burden to the person is in furtherance of a
22 compelling governmental interest; and is the least
23 restrictive means of furthering that compelling
24 governmental interest.”

25 § 2000bb-2(4): “[T]he term “exercise of religion”
26 [includes any exercise of religion, whether or not
27 compelled by, or central to, a system of religious
28 belief.]”

29 § 2000bb-3(a): “This chapter applies to all Federal law,
30 and the implementation of that law, whether
31 statutory or otherwise, and whether adopted before
32 or after November 16, 1993.”

33 § 2000bb-3(c): “Nothing in this chapter shall be
34 construed to authorize any government to burden
35 any religious belief.”
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1 22. RSA § 194:15-c (New Hampshire School Patriot Act) states:

2 I. As a continuation of the policy of teaching our
3 country's history to the elementary and secondary
4 pupils of this state, this section shall be known as the
5 New Hampshire School Patriot Act.

6 II. A school district shall authorize a period of time
7 during the school day for the recitation of the pledge
8 of allegiance. Pupil participation in the recitation of
9 the pledge of allegiance shall be voluntary.

10 III. Pupils not participating in the recitation of the pledge
11 of allegiance may silently stand or remain seated but
12 shall be required to respect the rights of those pupils
13 electing to participate. If this paragraph shall be
14 declared to be unconstitutional or otherwise invalid,
15 the remaining paragraphs in this section shall not be
16 affected, and shall continue in full force and effect.

17
18 23. RSA § 169-D:23 (Religious Preference) states (in pertinent part):

19 No child under the supervision of any state institution
20 shall be denied the free exercise of his religion or that of
21 his parents.
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23

24 **CLAIM FOR RELIEF**

25 24. Plaintiff FFRF represents its members, including others besides the Does, who
26 suffer the same or similar injuries that the Doe Plaintiffs endure (as listed in
27 the following paragraphs).

28 25. Plaintiff Jan Doe is an Atheist, who denies the existence of a God.

29 26. Plaintiff Pat Does is agnostic, who doubts the existence of a God.

- 1 27. Plaintiffs Jan and Pat Doe are the parents of Plaintiffs DoeChild-1, DoeChild-2
2 and Doe-Child-3, who currently attend public school run by Defendant HSD.
- 3 28. The Pledge of Allegiance has been recited in the classrooms of DoeChild-1,
4 DoeChild-2 and DoeChild-3.
- 5 29. After completing elementary school in HSD, Plaintiffs DoeChild-1, DoeChild-
6 2 and Doe-Child-3 will attend public schools run by DSD and SAU #70.
- 7 30. The Pledge of Allegiance is recited in the classrooms of the public schools run
8 by DSD and SAU #70.
- 9 31. Plaintiffs Jan and Pat Doe have written to the principal of their children's
10 school, asking for assurance that the Pledge will no longer be recited in their
11 children's classes. The principal has not provided that assurance.
- 12 32. Plaintiffs DoeChild-1, DoeChild-2 and DoeChild-3 are all students at a public
13 school administered by Defendant HSD.
- 14 33. Plaintiffs DoeChild-1, DoeChild-2 and DoeChild-3 are all Atheists or
15 agnostics, who specifically deny/doubt the existence of God.
- 16
- 17 34. Pursuant to RSA § 194:15-c (New Hampshire School Patriot Act), Defendants
18 HSD, DSD and SAU #70 have their teachers and/or other government agents
19 lead their public school students in reciting the Pledge of Allegiance during
20 school hours.

1 35. Of note is that the Pledge of Allegiance, as codified in 4 U.S.C. § 4 (and as
2 recited by the students in HSD, DSD and SAU #70), makes the purely
3 religious claim that we are “one Nation under God.”

4 36. Plaintiffs, generally, deny that God exists, and maintain that their constitutional
5 and statutory rights are abridged when the school district Defendants
6 participate in making the purely religious, Monotheistic claim that the United
7 States is “one Nation under God.”

8 37. Plaintiffs all acknowledge and stipulate to the fact that none of them are or
9 have been actually compelled to say the words, “under God,” in the Pledge of
10 Allegiance. Due to the setting and peer pressures, however, the three
11 DoeChildren have all been coerced.² Thus, they have all suffered a violation of
12 their rights to the Free Exercise of their religion (as provided both in the First
13 Amendment and in RFRA).

14 38. Additionally, they have suffered the specific harm that the Establishment
15 Clause seeks to prevent – i.e., they have been degraded from the equal rank of
16 citizens on account of their religious beliefs.³ In other words, as a result of the

² “I think there is a clear difference between compulsion (Barnette) and coercion (Lee).” Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2328 n.4 (2004) (Rehnquist, C.J., concurring).

³ “It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority.” Madison, James. *The writings of James Madison : comprising his public papers and his private correspondence*,

1 Defendants' endorsement of Monotheism, Plaintiffs have suffered the
2 stigmatic injury of being turned into "outsiders, not full members of the
3 political community." Lynch v. Donnelly, 465 U.S. 668, 688 (1984)
4 (O'Connor, J., concurring).

5 39. In addition to breaching their constitutional and statutory duties to protect
6 Plaintiffs against this harm under federal law, Defendants HSD, DSD and SAU
7 #70 have also breached their constitutional duties under Article 6 (Morality
8 and Piety) of the New Hampshire Constitution.⁴

9 40. In addition to the just-mentioned stigmatic injury of being turned into "political
10 outsiders," as a result of Defendants' acts, Plaintiffs have suffered harms
11 related to their rights of familial association laws as well.

12 41. The Doe Plaintiff parents, for instance, have had their parental rights abridged.

13 42. Specifically, the rights of the Doe Plaintiff parents to instill in their children
14 the religious beliefs they find persuasive – free from governmental influence –
15 has been abridged by Defendants' practices.

16 43. Furthermore, the respect due the Doe Plaintiff parents is tarnished as the
17 government – with its "power, prestige and financial support," Engel v. Vitale,

including numerous letters and documents now for the first time printed. Gaillard
Hunt, ed. 9 vols. (New York: G.P.Putnam's Sons; 1901), Vol. II, p. 188.

⁴ To preclude unnecessary repetition, Article 6 (Morality and Piety) of the New
Hampshire Constitution will not be mentioned further. However, Plaintiffs assert

1 370 U.S. 421, 431 (1962) – tells their children, in essence, “Your parents’
2 religious beliefs are wrong.”

3 44. In addition, the Doe Plaintiff children have their rights to acquire religious
4 upbringing by their parents, free from governmental influence, abridged as
5 well.

6 45. Plaintiffs DoeChild-1, DoeChild-2 and DoeChild-3 have all been forced to
7 confront the government’s claim that this is “one Nation under God” as their
8 public school teachers have repeatedly led them and their classmates in reciting
9 the now-religious Pledge of Allegiance in their classrooms and at school
10 assemblies.

11
12 46. By endorsing the religious notion that God exists, the now-religious Pledge
13 creates a societal environment where prejudice against Atheists – and, thus,
14 against Plaintiffs here – is perpetuated. Accordingly, in addition to the Religion
15 Clause violations, the governmental use and advocacy of the now-religious
16 Pledge of Allegiance⁵ violates the requirements of Equal Protection as found in
17 the Fifth and Fourteenth Amendments to the United States Constitution.

that each of the relevant claims made pursuant to the federal constitutional provisions likewise apply to the State Constitution.

⁵ The Pledge of Allegiance, as originally created in 1892, had no religious component. In fact, it remained secular for sixty-two years. It wasn’t until 1954

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47. The above harms are especially onerous because the affirmation is made part of a patriotic ritual, thus calling Plaintiffs’ patriotism into question in front of their neighbors and peers.

48. On top of all this is the fact that the procedure involves standing, facing the Flag of the United States of America, and placing one’s hand over one’s heart.

49. For government to impose an adverse religious burden upon adults in such a setting is unquestionably in violation of the Religion Clauses of the First Amendment.

50. For the government to impost an adverse religious burden upon children in the public schools is incomprehensible under the First Amendment’s Religion Clauses.

51. In fact, it is inevitable that children will suffer harm as a result of this practice. Accordingly, Defendants actually engage in child neglect (if not child abuse).⁶

that, pursuant to an act of Congress that did nothing but add the phrase, “under God,” purely religious dogma became part of its message.
Act of June 14, 1954, ch. 297, § 7, 68 Stat. 249.

⁶ 42 U.S.C. § 5106g(2) states, “[T]he term ‘child abuse and neglect’ means, at a minimum, any recent act or failure to act on the part of a ... caretaker, which results in ... serious physical or emotional harm ... or an act or failure to act which presents an imminent risk of serious harm.”

1 52. Plaintiffs Jan and Pat Doe are the owners of real property located in Hanover,
2 and pay the associated local property taxes. A portion of those taxes go to the
3 HSD, DSD and SAU #70. They earn income in New Hampshire, and pay the
4 associated federal and state income taxes. They purchase items in New
5 Hampshire and pay the associated federal and state sales taxes.

6 53. Some of the federal tax dollars paid by Plaintiffs and utilized in connection
7 with Defendants' maintenance and utilization of the Pledge of Allegiance are
8 apportioned under the taxing and spending clause of Article I, Section 8 of the
9 Constitution of the United States.

10 54. Portion of these tax dollars are used to fund the Pledge (with its espousal of
11 Monotheism).

12 55. For instance, some of Plaintiffs' tax dollars are used to directly fund the
13 governmental agents who lead the students (including the three DoeChildren
14 here) and others in recitations of the now-religious Pledge.

15 56. Additionally, numerous federal, state and local governmental employees –
16 using governmental facilities – recite the now-sectarian Pledge of Allegiance
17 while being paid from the government coffers. These employees include, but
18 are not limited to, members of Defendant Congress (including members of
19 both the House of Representatives and the Senate), and the school board
20 members and teachers of HSD.

1 57. The recitation of the now-sectarian Pledge of Allegiance by any of the above-
2 referenced governmental employees while performing their duties involves the
3 use of Plaintiffs tax monies in an expression of religious belief as prohibited by
4 the First Amendment.

5 58. These tax moneys are also used to perpetuate the notion that “real Americans”
6 believe in God, and those who do not believe in God are second-class citizens,
7 to be “tolerated” by our society.

8 59. That these tax moneys are also used in the education of the schoolchildren of
9 Hanover, of New Hampshire, and of the Nation is especially egregious. The
10 repeated recitation of the now-sectarian Pledge of Allegiance indoctrinates
11 schoolchildren – including the Plaintiff children here – with the religious
12 dogmas that (a) there exists a god, and that (b) we are “one Nation under God.”

13 60. Federal tax money is also used for the printing and distribution of the United
14 States Code (including 4 U.S.C. § 4) as well as pamphlets, etc., that contain the
15 Pledge of Allegiance.

16 61. Federal, State and County tax moneys are used when the Pledge is recited at
17 federal, state and county governmental functions.

1 62. Federal tax money is also used to support the “Pause for the Pledge of
2 Allegiance” (Pub. L. 99 Stat. 97) annual festivities.⁷

3 63. The preceding examples show that Plaintiffs’ tax monies are used for
4 governmental functions designed to bolster the use and status of the Pledge of
5 Allegiance to the Flag, including its religious claim that there exists a God and
6 that we exist under that God. The taking by the government of Plaintiffs’ (and
7 the rest of the citizenry’s) personal wealth to place the government’s
8 imprimatur on religious beliefs to which those Plaintiffs do not adhere is a
9 violation of both the Establishment and Free Exercise clauses.

10
11 64. By interlarding the Pledge of Allegiance with the purely religious words,
12 “under God,” the Congress of the United States – by passing the Act of 1954 –
13 has violated the Establishment Clause of the First Amendment to the Federal
14 Constitution.

15
16 65. Congress has also violated RFRA. The Free Exercise of religion for each
17 Plaintiff is “substantially burdened” when government requires an affirmation

⁷ 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 the A-10 “Thunderbolt” jets of the 104th Fighter

1 of religious belief (contrary to each Plaintiff's religious beliefs) in order to
2 exercise their rights as citizens to join with their neighbors in reciting the
3 Nation's Pledge of Allegiance to the Flag.

4 66. As the ultimate party responsible for upholding the Constitution, Defendant
5 United States of America has violated its duty to protect Plaintiffs'
6 fundamental liberties by permitting the Congress to further (Christian)
7 Monotheistic dogma.

8 67. By requiring that its public schools use the Pledge of Allegiance (with the
9 purely religious words, "under God") as a patriotic exercise, Defendants HSD,
10 DSD and SAU #70 – by following RSA § 194:15-c (New Hampshire School
11 Patriot Act) – have violated the Establishment and Free Exercise Clauses of the
12 First Amendment to the Federal Constitution; and Article 6 of the New
13 Hampshire Constitution (requiring that "no subordination of any one sect,
14 denomination or persuasion to another shall ever be established").

15 68. Similarly, HSD, DSD & SAU #70 have violated RSA 169-D:23, which states,
16 in pertinent part, that "No child under the supervision of any state institution
17 shall be denied the free exercise of his religion or that of his parents." One
18 cannot freely exercise Atheism when being coerced to countenance the notion
19 that his own land is "one Nation under God."

Squadron 175th Wing Maryland Air National Guard. The estimated cost to

1 69. In other words, both the Federal and the School District Defendants have
2 violated the rights of each of the Plaintiffs to have their government and its
3 agents:

- 4 (1) Remain neutral with respect to religion, so that their religious beliefs are
5 afforded the same respect as others,
- 6 (2) Not have rules that have religious effects, so that their religious beliefs
7 are not shown disrespect,
- 8 (3) Not turn them into “political outsiders” based on their religious beliefs,
- 9 (4) Not endorse religious ideas, so that their religious ideas are not
10 denigrated,
- 11 (5) Not indoctrinate them with any religious dogma, much less dogma with
12 which they disagree,
- 13 (6) Not coerce them to unwillingly confront religious doctrine,
- 14 (7) Not place the given school’s imprimatur upon religious ideals with which
15 they disagree, and
- 16 (8) Not spend their tax dollars to further religious ideals with which they
17 disagree.

18
19 70. It should be noted that Plaintiffs are making no objection to the recitation of a
20 patriotic Pledge of Allegiance. The government is certainly within its right to
21 foster patriotism, and it may certainly make the determination that recitation of
22 a Pledge of Allegiance serves that purpose. However, government may not
23 employ or include sectarian religious dogma towards this end.

24
25 71. In addition to its constitutional infirmities, the placement of the words “under
26 God” into the Pledge of Allegiance is void as against public policy. The very
27 purpose of the Pledge of Allegiance to the Flag – as can be appreciated from its

taxpayers of the Fly-over, alone, is on the order of \$10,000.00.

1 legislative history – is to provide a means of demonstrating patriotism and
2 engendering national unity. By placing the religious words “under God” into
3 the Pledge, Congress not only interfered with the patriotism and national unity
4 the Pledge was meant to engender, but it actually fostered divisiveness ... in a
5 manner expressly forbidden by the Constitution.

6

PRAYER FOR RELIEF

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, 4 U.S.C. § 4 violates the Establishment and Free Exercise Clauses of the First Amendment, the Equal Protection component of the Fifth Amendment, and RFRA;
- III. To declare that by having their agents leading Plaintiffs and their peers in reciting the Pledge of Allegiance, HSD, DSD, and SAU #70 violate the Establishment and Free Exercise Clauses of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, RFRA, Article 6 of the New Hampshire Constitution, New Hampshire RSA § 194:15-c , and RSA § 169-D:23.
- IV. 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 4 U.S.C. § 4;
- V. To demand the Defendant United States of America act to ensure compliance with the noble principles of the Religions Clauses of the First

1 Amendment and use its power to remove the words “under God” from the
2 United States Code as now written in 4 U.S.C. § 4;

3 VI. To demand that Defendants HSD, DSD, and SAU #70 cease and desist in
4 using the now-sectarian Pledge of Allegiance in the public schools within its
5 jurisdictions;

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

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

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12 Respectfully submitted,

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14 /s/ - Michael Newdow

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⁸ Application pending.