

Does atheist jeopardize church-state separation?

by [Kimberly Winston](#) in the [January 25, 2011](#) issue

He is the most famous—and perhaps the loneliest—atheist in the country. For 14 years, Michael Newdow, an emergency room doctor and an attorney, has challenged what he sees as violations of the First Amendment's prohibition against governmental endorsement and support of organized religion—the so-called church-state separation clause.

Newdow

works alone from his Sacramento, California, home. His only tools are a computer, a printer and a razor-sharp sense of injustice. He has sued to have "In God We Trust" removed from U.S. currency, to bar prayer at presidential inaugurations and most famously—or infamously—to strike the phrase "under God" from the Pledge of Allegiance.

To date, Newdow has never won a single case. Yet he remains undeterred.

He

has plans to ask the U.S. Supreme Court early this year to hear his "In God We Trust" case, which he lost last March at the California-based Ninth U.S. Circuit Court of Appeals. After that, he said, he may revive his pledge case, this time on behalf of other families who feel harmed by the pledge's religious reference.

"I don't think there is any question that I am right," said Newdow, 57, who was raised in a nominally Jewish home but told the *Brown Alumni Magazine* that he was "born" as an atheist. "I am going to keep fighting, hopefully winning, and getting the government to do what it is supposed to do, which is [provide] equal protection for all religious views."

Constitutional

scholars and religious liberty activists agree with Newdow that the

First Amendment protects against a government establishment of religion. But many disagree with his choice of battles.

The

greatest fear, even among those who share Newdow's views, is that if he were to win, Congress could pass a constitutional amendment that changes the First Amendment's Establishment Clause and possibly erode the separation of church and state.

"There is a deep concern on the separationist side that some of their major fights could be weakened if they spend their resources and squander public opinion on fights they are not going to win anyway," said Charles Haynes, director of the Religious Freedom Education Project at the Newseum in Washington. "They have to pick their battles and use their resources strategically. I think that is why he is not getting full-throated support."

The

president of American Atheists, David Silverman, said, "Newdow is a good man with good ideas and too little patience." American Atheists was founded by the late Madalyn Murray O'Hair, who successfully sued to ban teacher-led prayer in public schools in 1963.

"When his suits

fail, they can make matters worse by setting a precedent that can be used against us in other lawsuits," said Silverman.

Newdow fights

his uphill battles alone from his kitchen table, where he does most of his work. He says he has never received financial assistance from church-state separationist groups and has paid for his filing and printing costs with private donations.

Newdow's court battles

recently shifted into a bid to challenge family statutes he considers unfair. The father of a 16-year-old daughter, he does not have equal custody with the girl's mother, to whom he was never married.

Newdow

graduated from the University of Michigan's law school in 1988 but returned to his career as an emergency room doctor. In 2002, he sued his daughter's California school district for leading students in the Pledge of Allegiance, which since 1954 has included the phrase "under God."

No one in the legal community gave Newdow much attention until he won on appeal in the Ninth Circuit. A number of organizations filed amicus briefs in support of his case, including the Freedom From Religion Foundation, Americans United for the Separation of Church and State and American Atheists.

Newdow, who had never argued a case before, represented himself before the U.S. Supreme Court in 2004 and by all accounts held his own. The court rejected his claim, however, after justices decided that as a noncustodial parent, he lacked standing to bring the case on his daughter's behalf.

So far, he has lost all of his cases on either their merits or because of a lack of legal standing. But the losses may only be a part of Newdow's legacy.

"Win

or lose, without these fights there is no public awareness of the plight of nonbelievers," said Dan Barker, copresident of the Freedom From Religion Foundation. "If you are right about this—and he is—it's worth it to fight because even when you lose, someone is educated. Mike is putting us on the map."

Haynes of the Freedom Forum agreed. "I think he has put a face on the contemporary reality that many Americans do not have a religious affiliation," Haynes said. "For any cause to advance and for any voice to be heard, someone needs to be the face of that movement and give voice to those concerns. In that sense, Michael Newdow has been very successful."

For his part, Newdow seems unfazed by his legacy or his popularity. He says he remains focused on

his fight, which he says actually has little to do with religion. "I've said it is not a case of people who believe in God versus people who don't believe in God," he said. "It is about people who believe the government should treat us all equally and those who want their view favored above others. You can't do that. That is what our Constitution says." —RNS