

High court sidesteps 'under God' ruling: The Newdow case

News in the [June 29, 2004](#) issue

The U.S. Supreme Court has sidestepped a dispute over the words “under God” in the Pledge of Allegiance, ruling that a California atheist had no standing to challenge the phrase on behalf of his daughter. The 8-0 decision was announced on Flag Day, June 14, which was also the 50th anniversary of the time the phrase was inserted into the pledge.

In dismissing the challenge, the justices said that Michael Newdow cannot act as his ten-year-old daughter’s legal representative because he does not have sole custody. Her mother, Sandra Banning, did not object to the pledge as it is now.

Chief Justice William Rehnquist, joined by Justices Sandra Day O’Connor and Clarence Thomas, issued a separate opinion supporting the ruling and said “under God” is not unconstitutional. Justice Antonin Scalia had recused himself after publicly saying he thought Newdow’s case had no merit.

The decision reverses a 2002 ruling by a San Francisco-based federal appeals court that found “under God” unconstitutional. In 1954, Congress added the words “under God” to the 1892 pledge to distinguish the U.S. from “godless” communist countries during the cold war.

Since the court’s decision was made on a procedural basis, it leaves the constitutional question unresolved unless or until it is dealt with in a future case.

Justice Thomas, in what the *Los Angeles Times* called “a most extraordinary opinion,” said he does not accept the common view that the First Amendment precludes the establishment of religion at all government levels. Thomas said the First Amendment should not prevent state governments from supporting religion. The *Times* also said that in a future 4-4 tie on the bench, Justice Anthony M. Kennedy might favor removal of “under God” inasmuch as he wrote the majority liberal opinion in 1992 that barred official invocations of God in school ceremonies.