

# Federal court finds pledge illegal—again: Newdow case refiled

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A federal judge in California has ruled that the Pledge of Allegiance is unconstitutional, deciding a case that had been refiled by an atheist whose previous challenge to the phrase “under God” reached the Supreme Court.

Judge Lawrence K. Karlton of the U.S. District Court in Sacramento came to much the same conclusion September 14 as the higher Ninth U.S. Circuit Court of Appeals did in 2002 in a decision that was widely criticized.

Observers are already predicting that the pledge case could end up back at the nation’s highest court, which dismissed the case on technical grounds last year.

“The court concludes that it is bound by the Ninth Circuit’s previous determination that the school district’s policy with regard to the pledge is an unconstitutional violation of the children’s right to be free from a coercive requirement to affirm God,” Karlton ruled.

The case was brought by Michael Newdow, an atheist whose daughter attends school in the Elk Grove (California) Unified School District, and two other sets of atheist parents with children in the same district. Karlton ruled that Newdow “lacks prudential standing” in the case but found that the other parents did have standing.

In June 2004 the U.S. Supreme Court dismissed Newdow’s earlier case, saying that he did not have proper parental standing. Newdow has joint legal custody with the child’s mother, but the mother has said her daughter is a Christian who has no objection to the pledge.

The court ruling prompted a swift response from defenders of the pledge, including the Washington-based Becket Fund for Religious Liberty, which had sought a dismissal of the new case. “To protect the right for every child to say the pledge, we will immediately appeal this decision to the Ninth Circuit,” said Derek Gaubatz, director of litigation for the Becket Fund.

The 2002 ruling by the Ninth Circuit prompted an outcry from the public, and the Bush administration asked the nation's highest court to keep the pledge constitutional.

In the last footnote in his 30-page decision, Karlton continued the line of reasoning that had been used by the Ninth Circuit. "As preposterous as it might seem, given the lack of boundaries, a case could be made for substituting 'under Christ' for 'under God' in the pledge," he said, "thus marginalizing not only atheists and agnostics, as the present form of the pledge does, but also Jews, Muslims, Buddhists, Confucians, Sikhs, Hindus and other religious adherents who not only are citizens of this nation, but in fact reside in this judicial district." -*Religion News Service*