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Another Supreme Court test seems likely

Attorney renews fight against 'under God' in pledge

By **BILL TAMMEUS**
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The children in Shauna Hammett's kindergarten class faced a small American flag hanging from a wall at Pawnee Elementary School in Overland Park one recent Monday morning.

Led by a child's voice over the loudspeaker, they recited the Pledge of Allegiance.

But if California atheist Michael Newdow gets his way, the Pledge of Allegiance no longer would include the phrase "under God." Newdow is pursuing another court case to remove those words. He formerly sued as a parent but now is representing other parents as an attorney.

The 9th Circuit Court of Appeals in San Francisco has set dates this spring and summer for briefs to be filed in the case. The same court ruled in 2002 that "under God" in the pledge is unconstitutional.

No matter what the court decides this time, it is almost certain the case will be appealed again to the U.S. Supreme Court, which dismissed the previous suit on procedural grounds. That dismissal left the core issue of the pledge's constitutionality unsettled.

Pawnee Principal Mark Kelly isn't worried about all of that. "I think it's a California thing," he said of the court fight, confident the pledge will remain intact.

When Newdow sued again last year, a senior judge of the Eastern District of California ruled in his favor, ordering the Rio Linda School District not to lead students in reciting the pledge. But he stayed his order pending appeals.

Why did Newdow sue again? "I can answer that in one word: equality," he said in a phone interview. "This is not a case of people who believe or don't believe in God but in people who believe in equality."

The Constitution says government should treat people equally, Newdow said, insisting it is unequal treatment of atheists to have "under God" in the pledge and "in God we trust" on money. He is suing to get that off, too. That case, filed in November, still is in federal court in California.

"Government isn't supposed to be in the religion business at all," he said.

Worried that courts may rule against "under God," U.S. Rep. Todd Akin, a Missouri Republican, is sponsoring the proposed Pledge Protection Act, which already has nearly 200 co-sponsors, including several from Missouri and Kansas.

"The words 'under God' are not just there for window dressing," Akin said in a phone interview, "but they address a central aspect of what America is all about: We believe there is a God, even though we don't agree on exactly what his name is. God grants basic rights to people and government's job is to protect those rights. That's why that phrase in our pledge is in need of defense."

Supporters hope Congress will pass it by late summer. They say the issue is not just the two words Congress added to the pledge in 1954 but, also is about what they see as too much power for the federal courts — power they hope to curb.

"The courts don't interpret law anymore, they simply make law," said William J. Murray, chairman of the Religion Freedom Coalition, a national advocacy group working to keep "under God" in the pledge. "That's the broad issue."

So the pledge protection bill, he said, would "tell the federal courts that this issue is none of your business."

Akin, too, said he is "concerned procedurally about a court that takes to itself the right to legislate." His bill, he said, "can't limit how they rule on a particular question but we can limit their jurisdiction."

Congress can do that because Article III of the Constitution gives Congress the right to limit the jurisdiction of the federal courts, Murray said. "Generally the Congress does not use this power on social issues," he added, which is one reason the pledge bill is controversial.

Other voices of faith see things quite differently.

The Rev. C. Welton Gaddy, president of the Interfaith Alliance, a national advocacy group that promotes religious tolerance, said the Pledge Protection Act would undermine the courts' "role of providing access to justice to those who are in the religious minority."

And Collin Hansen, an editor of *Christianity Today* magazine, has argued that Christians have no stake in keeping "under God" in the pledge because the word "God" when used in such public contexts is drained of nearly all its meaning.

"Even if the Supreme Court retains 'under God,' " he wrote, "the justices will do so only if they determine the phrase bears no genuine religious meaning" but only "serves to perpetuate American civil religion." Christians, Hansen said, "have no interest promoting civil religion.... When government co-opts religion in this way, genuine religious belief is cheapened."

To Murray, however, the issue is the power of the people, working through Congress, to get what they want.

"The Congress believed that an appropriate pledge to the flag would contain the words 'under God,' " he said of the decision to add the phrase. "It was so vastly and overwhelmingly passed that the president (Dwight D. Eisenhower) immediately signed it into law.

"But now the courts say someone is offended. It's not a church-state issue. It's an issue of the federal courts granting a new right — the right not to be offended. This is intolerable in a free society."

Added Akin: "Do you water a policy down so nobody is offended by anything? That puts you in a state of anarchy."

To Newdow, however, it has nothing to do with being offended. It has to do with government promoting religion, he said: "In 1954, they spoke about the creator and it was the Christian God and everyone knew it."

When the children in Shauna Hammett's class recited the pledge, one girl stayed seated and silent. But when the pledge ended she stood and joined her classmates in singing "America the Beautiful."

"We have some Jehovah's Witnesses and they just sit quietly" during the pledge, explained Kelly. It is against their religion to say such pledges because of concerns about idolatry, and in 1943 the U.S. Supreme Court ordered that they be allowed to skip the pledge rather than violate their religious beliefs.

If the current pledge continues to be constitutional, it will give one boy in Hammett's class time to practice so that he'll learn to put his right hand — not his left hand — over his heart.

On the Web

- *The text of the Pledge Protection Act:* tinyurl.com/kg237
- *The Religious Freedom Coalition, which supports the proposed Pledge Protection Act:* rfcnet.org
- *An Interfaith Alliance statement on why "under God" does not belong in the pledge:* tinyurl.com/g4eug

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