

ACLJ POSITION PAPER ON THE PLEDGE OF ALLEGIANCE

Recitation of the Pledge of Allegiance in public schools is fully consistent with the Establishment Clause of the First Amendment to the United States Constitution. The words of the Pledge echo the conviction held by the Founders of this Nation that our freedoms come from God. Congress inserted the phrase “One Nation Under God” in the Pledge of Allegiance for the express purpose of reaffirming America’s unique understanding of this truth, and to distinguish America from atheistic nations who recognize no higher authority than the State.

The Founders of this Nation based a national philosophy on a belief in Deity. The Declaration of Independence and the Bill of Rights locate inalienable rights in a Creator rather than in government, precisely so that such rights cannot be stripped away by government. In 1782, Thomas Jefferson wrote, ‘Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath?’¹

The Father of the Country, George Washington, acknowledged on many occasions the role of Divine Providence in the Nation’s affairs. His first inaugural address is replete with references to God, including thanksgivings and supplications.² In Washington’s Proclamation of a Day of National Thanksgiving, he wrote that it is the “duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor.”³ George Washington used the phrase “under God” in several of his orders to the Continental Army. On one occasion he wrote that “The fate of unborn millions will now depend, under God, on the courage and conduct of this army.”⁴ The Founders may have differed over the contours of the relationship between religion and government, but they never deviated from the conviction that “there was a necessary and valuable moral connection between the two.”⁵ Thus, the phrase, “one nation under God” in the Pledge of Allegiance simply describes an indisputable historical fact.

¹ Thomas Jefferson, *Notes on Virginia* Q.XVIII (1782).

² George Washington’s First Inaugural Address, available at http://www.archives.gov/exhibit_hall/american_originals/inaugtxt.html.

³ Jared Sparks, *The Writings of George Washington*, Vol. XII, p. T19 (1833-1837).

⁴ Kerby Anderson, *Pledge of Allegiance*, available at http://www.pointofview.net/ar_pledge1111.htm. On another occasion, Washington encouraged his army, declaring that “the peace and safety of this country depends, under God, solely on the success of our arms.” Edwin S. Davis, *The Religion of George Washington: A Bicentennial Report*, AIR UNIV. REV. July-Aug. 1976, available at <http://www.airpower.maxwell.af.mil/airchronicles/aureview/1976/jul-aug/edavis.html> (quoting 3 *The Writings of George Washington* 301 (John C. Fitzpatrick ed., 1931-1944)).

⁵ Philip Hamburger, *Separation of Church and State* 480 (2002).

The Supreme Court of the United States has recognized the primacy of religion in the Nation's heritage, stating "We are a religious people whose institutions presuppose a Supreme Being."⁶ Moreover, the Court has cautioned against "preferring those who believe in no religion over those who do believe."⁷ Most significantly, however, the Supreme Court repeatedly has stated that the phrase "under God" in the Pledge of Allegiance poses no Establishment Clause problem. In *Lynch v. Donnelly*,⁸ the Court recognized the "unbroken history of official acknowledgment by all three branches of government of the role of religion in American life."⁹ "Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders."¹⁰ The Court listed many examples of our "government's acknowledgment of our religious heritage," and included among those examples Congress' addition of the words "under God" in the Pledge of Allegiance in 1954.¹¹

In *Wallace v. Jaffree*,¹² Justice O'Connor stated explicitly that the words "under God" in the Pledge do not violate the Constitution because they "serve as an acknowledgment of religion with 'the legitimate secular purpose of solemnizing public occasions, and expressing confidence in the future.'"¹³ Again, in *Allegheny County v. American Civil Liberties Union*,¹⁴ a majority of the Court stated the reference to God in the Pledge of Allegiance is consistent with the Establishment Clause.¹⁵ In fact, every Justice on the current Supreme Court that has expressed any opinion about the constitutionality of the Pledge of Allegiance has stated that it poses no Establishment Clause problems.

The First Amendment affords atheists complete freedom to disbelieve; it does not compel the federal courts to censor the phrase "under God" from the Pledge of Allegiance in order to suit atheistic tastes.

⁶ *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

⁷ *Id.* at 314.

⁸ 465 U.S. 668 (1984).

⁹ 465 U.S. at 674.

¹⁰ *Id.* at 675.

¹¹ *Id.* at 676-77.

¹² 472 U.S. 38 (1985).

¹³ 472 U.S. at 78 n.5 (O'Connor, J., concurring) (quoting *Lynch*, 465 U.S. at 693) (O'Connor, J., concurring)).

¹⁴ 492 U.S. 573 (1989).

¹⁵ 492 U.S. at 602-603.

