



June 29, 2011

SENT VIA FEDERAL EXPRESS AND EMAIL

Eugene Mayor and City Council
City of Eugene
777 Pearl Street, Room 105
Eugene, Oregon 97401

RE: Public Expression of the Pledge of Allegiance

Dear Mayor Piercy and Members of the City Council:

It has recently come to the attention of the American Center for Law and Justice that you have decided to open your council meetings with the Pledge of Allegiance only four times during the year. This letter is meant to assuage any concerns you may have regarding the Constitutionality of reciting the Pledge.

By way of introduction, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. Our organization exists to educate the public and the government about the right to freedom of speech, particularly in the context of the expression of religious sentiments. Jay Sekulow, ACLJ Chief Counsel, has argued and participated as counsel of record in numerous cases involving constitutional issues before the Supreme Court of the United States. *See, e.g., Pleasant Grove City v. Sumnum*, 555 U.S. 460 (2009); *Scheidler v. NOW*, 126 S. Ct. 1264 (2006); *McConnell v. FEC*, 540 U.S. 93 (2003); *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987).

This informational letter addresses the constitutionality of opening government-sponsored meetings with the Pledge of Allegiance. ***Please note that this letter is for informational purposes only and does not constitute legal advice or representation by the ACLJ.*** Municipalities and other governmental bodies considering opening their meetings with the Pledge of Allegiance should consult their own attorney(s) directly for legal advice specific to their situation.



1000 Regent University Drive, RH-422
Virginia Beach, Virginia 23464
(757) 226-2489
(757) 226-2836 (Facsimile)
www.aclj.org

The First Amendment to the United States Constitution does not forbid voluntary recitation of the Pledge of Allegiance, regardless of whether it is by a student, government employee, or private citizen. While no person may be forced to recite the Pledge or other statements against his or her will, freely allowing such recitations to occur voluntarily does not raise any First Amendment concerns.

The Supreme Court has unequivocally recognized that “the Pledge of Allegiance evolved as a common public acknowledgement of the ideals that our flag symbolizes. Its recitation is a patriotic exercise designed to foster national unity and pride in those principles.” *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 6 (2004). Congress first approved the Pledge in 1942, and in 1954 it amended the Pledge to its current version by adding the words “under God.”

As the Ninth Circuit Court of Appeals recently noted, in upholding the constitutionality of the Pledge:

The Pledge of Allegiance serves to unite our vast nation through the proud recitation of some of the ideals upon which our Republic was founded and for which we continue to strive: *one Nation under God*--the Founding Fathers' belief that the people of this nation are endowed by their Creator with certain inalienable rights; *indivisible*--although we have individual states, they are united in one Republic; *with liberty*--the government cannot take away the people's inalienable rights; *and justice for all*--everyone in America is entitled to "equal justice under the law" (as is inscribed above the main entrance to our Supreme Court).

Newdow v. Rio Linda Union Sch. Dist., 597 F.3d 1007, 1012 (9th Cir. 2010). As a first principle, the First Amendment does not impose an amorphous “separation of church and state” standard but rather prohibits the establishment of an official church and similar coercive action. The Supreme Court has repeatedly held that the Constitution “affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984); *see also Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947). Moreover, the Court has cautioned against “preferring those who believe in no religion over those who do believe.” *Zorach v. Clauson*, 343 U.S. 306, 314 (1952).

While the Supreme Court has not directly ruled on the constitutionality of the Pledge of Allegiance, it has recognized that public expressions of patriotism, including the phrase “under God” in the Pledge of Allegiance, pose no Establishment Clause concerns. *Allegheny County v. ACLU*, 492 U.S. 573, 602-03 (1989) (“Our previous opinions have considered in dicta the motto and the pledge, characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief.”). In *Lynch v. Donnelly*, the Court recognized the “unbroken history of official acknowledgment by all three branches of government of the role of religion in American life.” 465 U.S. at 674. 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. *Id.* at 676-77.

While the most recent Supreme Court case to address the Pledge, *Elk Grove Unified School District v. Newdow*, was decided on standing grounds (finding that the individual who challenged the Pledge did not have standing to sue), three Justices wrote at length to expressly acknowledge the constitutionality of public Pledge recitation. 542 U.S. 1 (2004).

Former Chief Justice Rehnquist wrote that “‘under God’ in the Pledge seems, as a historical matter, to sum up the attitude of the Nation’s leaders, and to manifest itself in many of our public observances. Examples of patriotic invocations of God and official acknowledgments of religion’s role in our Nation’s history abound.” *Id.* at 26 (Rehnquist, C.J., concurring). Justice O’Connor has repeatedly supported the constitutionality of the Pledge because it “commemorate[s] the role of religion in our history” and “some references to religion in public life and government are the inevitable consequence of our Nation’s origins.” *Id.* at 36 (O’Connor, J., concurring); see also *Wallace v. Jaffree*, 472 U.S. 38, 78 n.5 (1985) (O’Connor, J., concurring).

In addition to the Supreme Court’s pronouncements, several federal appellate courts have held that even teacher-led recitation of the Pledge of Allegiance in public school is constitutional. See *Rio Linda*, 597 F.3d 1007; *Myers v. Loudoun County Pub. Schs.*, 418 F.3d 395 (4th Cir. 2005); *Sherman v. Cmty. Consol. Sch. Dist. 21 of Wheeling Twp.*, 980 F.2d 437 (7th Cir. 1992), *cert. denied*, 508 U.S. 950 (1993). The Ninth Circuit Court of Appeals, in a case in which the ACLJ submitted a key *amicus curia* brief, recently ruled directly that “the Pledge is constitutional.” *Rio Linda*, 597 F.3d at 1012.

In sum, while no one may be required to recite the Pledge if he or she objects to doing so, everyone has a right to recite the Pledge in public settings, including in city council meetings and in teacher-led recitations in public schools. Such displays of patriotism do not raise First Amendment concerns. The Pledge is a constitutionally permissible reference to this nation’s rich religious heritage. The First Amendment affords atheists complete freedom to disbelieve; it does not compel the government to censor the phrase “under God” from the Pledge of Allegiance in order to suit those who are intolerant of expressions with which they disagree. The ACLJ will continue to vigorously defend challenges to the Pledge of Allegiance and our nation’s religious heritage.

It is our hope that this informational letter has helped to clarify the current state of the law with regard to the opening of public meetings with the Pledge of Allegiance. The ACLJ is committed to ensuring that America’s rich history and heritage are not stripped from the public arena.

Respectfully,

AMERICAN CENTER FOR LAW AND JUSTICE

cc: George Brown
Betty Taylor
Alan Zelenka
George Poling
Mike Clark
Pat Farr
Andrea Ortiz
Chris Pryor