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The Pledge of Allegiance Controversy: Is America "One Nation Under God"?

By Alex Colvin

On June 26, 2002, a three-judge panel of the federal 9th Circuit Court in California ruled that school policy requiring recitation of the Pledge of Allegiance was an unconstitutional "endorsement of religion" because of the inclusion of the phrase "under God" by a 1954 act of Congress. The ruling came in a 2-1 decision in the case of *Newdow v. U.S. Congress*. It will not take effect until ruled upon by the full 9th Circuit, and probably the Supreme Court as well.

Michael Newdow is an atheist whose daughter attends public school in Elk Grove Unified Public School District near Sacramento. California law requires that public schools begin each school day with "appropriate patriotic exercises" and that the Pledge would be sufficient to comply. Elk Grove policy states: "Each elementary school class [shall] recite the pledge of allegiance to the flag once each day."

Newdow contended that his rights as a parent to oversee

the religious education of his daughter were being infringed by state-sponsored infusion of religion into the classroom. The United States Congress, the State of California, two school districts, and their officials were named as defendants.

The Court found that "Newdow has standing as a parent to challenge a practice that interferes with his right to direct the religious education of



his daughter." It then proceeded to determine whether or not the Pledge of Allegiance contains a strong enough religious component to constitute an endorsement of religion and thus violate the Establishment Clause of the First Amendment.

The panel applied three tests developed by the Supreme Court. They determined that

the policy failed the Endorsement Test developed by Justice O'Connor in *Lynch v. Donnelly* (1983) because the phrase "under God" was normative, endorsing religious values and creating a sense of exclusion toward non-believers. They found that the school policy requiring recitation of the pledge violated the Coercion Test used in *Lee v. Weisman* (1991) because it placed students in a position of either participating in a religious exercise or protesting.

Finally, the Court applied the three-pronged Lemon Test articulated in *Lemon v. Kurtzman* (1971). To pass this test, a law must: (1) have a secular purpose, (2) have a principal effect that neither advances nor inhibits religion, and (3) not foster an excessive government entanglement with religion. The Court found that the school's recitation of the Pledge failed the first two criteria, stating that the legislative history of the 1954 law that added "under God" to the Pledge was clearly religious in intent and

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Belarus' Religion Law: A Throwback to the Dark Days of Authoritarianism

Dan Fefferman

An unholy alliance between the Orthodox Church, nationalists and former communists succeeded in implementing Europe's most repressive religious law November 16 in Belarus.

President Alexander Lukashenko, who reportedly describes himself as a "Russian Orthodox Atheist" justified the law as necessary to control "non-traditional" faiths. "It is aimed to prevent religious expansion of destructive sects and occultism," Lukashenko explained in an official statement.

Catholicism, Protestantism, Judaism, and Islam are recognized as "traditional" faiths. But leaders of Belarus' protestant, Jewish and other minority faith communities fear a wave of repression.

In August, the Lukashenko regime shocked the world when it sent bulldozers to demolish a newly constructed Belarusian Autocephalous Church just as parishioners were preparing for its consecration. The church, although Orthodox in liturgy, does not recognize the authority of the Russian Orthodox Church, which under the new law has a "determining role" in Belarus.

Pentecostal Christians in the Frunze district of Minsk, the capital of Belarus, received orders from authorities November 14 not to pray in tongues. According to the Keston News Service, which monitors religious freedom in former Soviet countries, officials told Pentecostal pastor Aleksandr Ruskevich that believers of his church "were not allowed to pray in tongues, only in Russian."



President Alexander Lukashenko

Pentecostals regard speaking, praying and singing in tongues as a manifestation of the Holy Spirit. The Pentecostal Union unites 64 Pentecostal congregations in Belarus, making it the second largest faith after the Orthodox Church in terms of numbers of registered congregations.

Pastor Lyavon Lipen of Minsk's registered protestant Reformed Church told Keston he regarded the new law as "highly discriminatory." He said he expected "very negative consequences."

Pentecostals and Reformed Church members are not alone in expressing concern for the future of religious freedom under Lukashenko's policy. Belarus' Chief Rabbi, Sender Uritsky, said the new law could create "serious problems" for Jews, the Associated Press reported.

Especially troubling is a government-owned printing house's publication of the infamous "Protocols of the Elders of Zion," which was used throughout Eu-

rope to justify anti-Semitic acts and policies during the mid-20th Century. Jews in Belarus have reported an increase in anti-Semitic acts, including the firebombing of synagogues and other properties.

The new law bans public meetings by religious communities of fewer than 20 citizens and prohibits religions that have been in Belarus for less than 20 years from publishing literature or setting up missions. This means that religious organizations that were forbidden or unable to operate in

Belarus' New Religion Law

- outlaws public religious activity by unregistered religious organizations
- refuses registration to groups not officially active in Belarus for 20 years
- requires all religious groups to apply for re-registration within two years
- bans regularly scheduled small religious meetings in private homes
- recognizes the "determining role" of the Orthodox Church in Belarus' "state traditions"
- requires prior censorship for all religious literature
- bans foreign citizens from leading religious organizations
- restricts religious education to faiths that have ten registered communities
- empowers courts to liquidate groups deemed subversive to state "sovereignty" of destructive to "family duties"

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State Department Report Hits European 'Stigmatization' of Minority Religions

The US Department of State, in its annual Report on International Religious Freedom, criticized several European nations for "stigmatizing certain religions" by calling them dangerous "cults" or "sects." Among those countries specifically mentioned are Belgium, France and Germany.

The criticism came in the context of the department's congressionally mandated duty to report on religious freedom throughout the world, as mandated in the International Religious Freedom Act of 1998.

"There continues to be a trend in Western Europe regarding discriminatory legislation or policies that stigmatize certain expressions of religious faith by wrongfully associating them with dangerous 'sects' or 'cults,'" says the current Report on International Religious Freedom issued by Ambassador-At-Large John V. Hanford last September.

"Other nations are adopting similar laws and policies that are based in part on those of Western Europe," Hanford reported.

"In countries that lack a tradition of commitment to human rights and rule of law, such 'anti-cult' laws are prone to be implemented in ways that result in the persecution of people of faith."

The report was particularly harsh in its criticism of France:

"The [French] government continues to monitor 'sects' through the Interministerial



U.S. Secretary of State Colin L. Powell

Mission in the Fight against Sects/Cults (MILS)," the report complained. "The June 2001 'About-Picard' law tightens restrictions on organizations and lists criminal activities for which a religious association could be subject to dissolution."

"Leaders of the four major religions raised concerns about the legislation. There is also concern that countries with weaker protections for human rights, including some in eastern Europe and Asia, may look to the French legislation as a model for dealing with minority religions, a perception heightened by the interest shown in the French approach during travel by MILS officials to these countries."

The US report, which covered the period up to the end of June, 2002, also specified a number of areas of even more serious religious freedom violations.

Burma, China, Cuba, Laos, North Korea and Vietnam were criticized for "totalitarian or au-

thoritarian attempts to control religious belief or practice."

Iran, Iraq, Pakistan, Sudan, Saudi Arabia, Turkmenistan and Uzbekistan received blame for outright "hostility toward minority religions."

The following countries received criticism for failing to protect religious minorities from attacks by other groups or local police: Bangladesh, Belarus, Egypt, Georgia, Guatemala, India, Indonesia and Nigeria.

For implementing laws and regulations that "favor certain religions and place others at a disadvantage" the list of culprits included: Brunei, Eritrea, Israel, Jordan, Malaysia, Moldova, Russia and Turkey.

Afghanistan alone won praise for "significant improvements" in religious freedom. However the report did admit that other countries had made some progress.

Singled out as the most serious violators were Burma, China, Iran, Iraq and North Korea.

Such 'anti-cult' laws are prone to be implemented in ways that result in the persecution of people of faith

RELIGIOUS FREEDOM AROUND THE WORLD

By Rick Hunter

Belarus

Belarussian President Aleksandr Lukashenko and his cabinet have been banned from travel in Europe and the United States. After President Aleksandr Lukashenko signed into law a most restrictive religious activity law and closed the Minsk office of the Organization for Security and Cooperation in Europe, the United States joined with 14 of the 15 states of the European Union in banning the travel of Lukashenko and his cabinet for human rights abuses.

Canada

A bill which extends protection to homosexuals under current hate crime laws is being reviewed by the Justice Committee for passage by the full House of Commons. Religious leaders fear that the measure, if adopted, will essentially outlaw freedom of speech concerning biblical scriptures that condemn homosexuality and will subject pastors and others citing those scriptures to imprisonment.

China

■ A Chinese court upheld prison sentences of four to 20 years for 15 people who hacked into a cable system to broadcast programs in order to protest the ban on the Falun Gong meditation sect. The sentences, passed on Sept. 20, were among the longest imposed in China's campaign to crush the spiritual movement, which once had tens of millions of followers but was banned in

1999 as a threat to communist rule.

■ After an appellate court overturned the death sentence convictions of five principals of a banned Christian sect accused of running an "evil cult" aimed at the downfall of the communist state, a new trial, held in secret, convicted the leader, Gong Shengliang, and sentenced him and two codefendants to life in prison. Two others were given a 15-year sentence for "rape and battery." Gong established the South China Church in 1991 and it grew over a decade to encompass some 50,000 members spread through 10 provinces in eastern and central China. Church followers claimed police tortured women into testifying against him and the others.

China — Tibet

A video of an illegal Buddhist prayer ceremony including dancing, feasting and speeches before a portrait of the Dalai Lama dis-

covered by Chinese authorities in Sichuan Province apparently prompted Chinese Army troops to arrest five individuals for "serious crimes."

Others from the area fled to India after being summoned for questioning by police. Demonstrations in support of the Dalai Lama, currently living in India, are forbidden out of fear of political unrest.

Georgia

Defrocked Orthodox priest Vasili Mkalavishvili, who has led violent attacks against non-Orthodox groups, was to go on trial in late October after the US Helsinki Commission called upon President Eduard Shevardnadze to ensure an end to the increasing violence against minority religious groups. Authorities postponed the case five times, due to Mkalavishvili's mob entering the courtroom and assailing victims, lawyers and international observers. For more than two years, violent mobs have attacked members of various non-Orthodox religious communities while police allegedly participate in the attacks or simply refuse to intervene.

Germany

■ The Church of Scientology is celebrating victory in two major court decisions in Germany. First, reversing a 1995 interim ruling, the Federal Labor Court ruled against a former church member who claimed 320,000 Euros in backdated wages by ruling that church followers work for idealistic purposes and spiritual



improvement and that no employer-employee relationship exists.

In another precedent-setting decision, the German Federal Tax Court in Cologne has ruled that Scientology Missions International (SMI) and the International Hubbard Ecclesiastical League of Pastors (IHELP), headquartered in Los Angeles, are exempt from taxes in Germany. Ruling that these organizations qualify under the 1989 income tax treaty between United States and Germany, the court overturned the German federal tax office's May 1996 denial of their exemption applications. The IRS deemed SMI and IHELP as tax-exempt, religious and charitable organizations.

India

Leaders of India's Dalits ("untouchables") are flouting a new state law banning "religious conversions by "fraud, coercion or allurements" by calling for mass



conversions to Christianity and Buddhism — religions that do not have a caste tradition like Hinduism that treats them as "untouchables." The call comes after massive Christian-led protests on 24 October against the law, aimed at preventing "communal disharmony" in the southern state of Tamil Nadu. Nearly 70 percent of India's 24 million Christians are Dalits. Many have converted from

Hinduism in protest at the discrimination they faced from upper-caste Hindus.

Iran

■ After an appeal from the legislature and several weeks of widespread student and university teacher protests, supreme leader Ayatollah Ali Khameni ordered Iran's chief judge to review the death sentence handed down to university professor Hashem Aghajari for "apostasy and blasphemy." Aghajari may still face 74 lashes, eight years imprisonment and internal exile, and a 10-year prohibition from teaching. Aghajari had given a philosophical speech in which he said Muslims should not "blindly follow" clerical rule and that each new generation should be able to interpret the faith on its own.

■ Iran's parliament has approved a bill providing for equal "blood money" compensation to be paid in the deaths or injuries of non-Muslim Iranian men as Muslims, a move aimed at protecting the rights of Iran's religious minorities. Blood money is the amount that a killer can pay to his victim's family to avoid execution — 150 million riyals (\$18,750) for a murdered man. The payment had been about half that if the victim was Christian, Jewish, Zoroastrian or female. Iran's only Jewish legislator, Maurice Motamed, welcomed the bill, but called also for non-Muslims to be allowed to testify in Islamic courts and for government organizations to employ non-Muslims.

Latvia

The Christian Science Church has finally achieved the status of an officially registered "religious association" although not as a "traditional faith" after five attempts and five years of legal

battles. The Latvian Doctors' Association had blocked the registration every time the church applied for it.

Malaysia

In a move to stop Islam from being used to undermine the government, Malaysian authorities in Prime Minister Mahathir Mohamad's home state of Kedah will start video-taping sermons at six mosques where imams have attacked the government, while audio tapes will be used at others. The opposition Parti-Islam wants to turn the country into an Islamic state with sharia law. The government also plans to cut funding for religious schools suspected of sowing hatred.

North Korea

After his visit to Khabarovsk, Russia, Communist leader Kim Jong-il has decided to construct an Orthodox church in Pyongyang. The church will have frescos and icons painted by Russian artists and may be open for worship in a year. A Russian Orthodox priest who recently visited Pyongyang said that the proposed new Orthodox church will primarily be for locally-based Russian citizens. North Korea severely restricts religious activity, although there are four officially-approved religious organizations, one each for Buddhists, Catholics, Protestants and followers of Chundo Kyo (a faith which combines elements of Christianity and Buddhism).

Saudi Arabia

In an unprecedented public rebuke, Prince Nayef bin Abdul Azi, the Saudi interior minister, told the religious police that they should show "leniency" and respect the people's privacy and freedoms. The Commission for the

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Pledge of Allegiance Controversy

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that the Pledge therefore endorses and fosters religious values.

The decision immediately ignited a brouhaha across the land. Congressmen lined up on the steps of the Capitol to recite the Pledge. Both the House and the Senate passed resolutions and subsequently enacted a bill reaffirming the inclusion of “under God” in the Pledge as well as “In God We Trust” as the national motto. President Bush signed the bill into law on November 13. Likewise, several state legislators that had not previously done so passed laws requiring the recitation of the Pledge on a daily basis.

While these actions and like protests by those who oppose the decision of the 9th Circuit Court of Appeals may represent the sentiment of a majority of the people in the nation, the final decision rests with the courts. If the federal court system determines that the inclusion of the words “under God” by the Congress in 1954 was unconstitutional, then subsequent acts by the Congress and state legislatures would likewise be unconstitutional. Only a Constitutional Amendment could then trump the Court’s decision.

As yet, the decision of the three-judge panel has had no effect in the California schools. Af-

ter deciding the case, the chief judge issued a stay pending a review by the full 9th Circuit. If the full court upholds the decision, the Supreme Court will most likely hear the case because the ruling contradicts an earlier ruling in the 7th District that upheld the recitation of the Pledge.

The only case that the Supreme Court has heard regarding the Pledge was in 1943 before the words “under God” were included. In *West Virginia State Board of Education v. Barnette*, the Court ruled that no student could be forced to say the Pledge of Allegiance. In *Newdow v. U.S. Congress*, Michael Newdow’s daughter was not forced to say the Pledge. Rather, the panel found that the practice interfered with his rights as a parent.

While not ruling directly on the Pledge, Justices have made germane comments in several of their decisions. In some cases, they have distinguished between practices that are religious and practices that are primarily patriotic.

To cite only two of numerous examples, in *Abington v. Schempp*, Justice Brennan, concurring, stated

The reference to divinity in the revised pledge of allegiance, for example, may merely recognize the historical fact that our Nation was believed to have been founded “under God.” Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln’s Gettysburg Address, which contains an allusion to the same historical fact.

Likewise, in *Lynch v. Donnelly*, a majority of the Court recognized that our history is re-

plete with acceptable references by the government to our nation’s religious heritage.

Examples of reference to our religious heritage are found in the statutorily prescribed national motto “In God We Trust,” ... which Congress and the President mandated for our currency, ... and in the language “One nation under God,” as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children — and adults — every year.

Given this history, it is unlikely that the three-judge panel’s decision will stand. Since the Supreme Court has already commented on the Pledge, the full 9th Circuit may decide to overrule the panel. However, since the panel reached its decisions by applying several of the Supreme Court’s tests and raised the issue of a parent’s right to oversee their children’s religious education, the 9th Circuit may uphold the decision so that the Supreme Court can further clarify its position.

While the Supreme Court will probably overrule the 9th Circuit, in the process it will be called upon to more clearly define how various Establishment Clause tests relate to the Pledge and other official government statements that refer to God.

In so doing, what was initially seen as a victory for strict separationists and the rights of non-believers may turn out to be a setback for them. And what began as a seeming affront to the patriotic and religious sensibilities of many Americans may result in a reaffirmation of the United States’ religious heritage.



World Briefs

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Promotion of Virtue and the Prevention of Vice (a.k.a. the mutwa) comprises more than 3,500 officers plus thousands of volunteers who patrol the streets to enforce the country's deeply conservative Islamic codes of dress and morality. Religious police have broken into homes on suspicion that alcohol was being consumed or inappropriate contact between the sexes was taking place.

Sudan

For nearly 20 years, Africa's largest country has been ravaged by a civil war between the Arab-dominated Islamic government in the north and the black Christians and animists in the south. The government's vicious and bloody jihad has reportedly claimed more than 2 million lives, displaced more than 4 million, and enslaved tens of thousands of women and children. On October 21, US President George Bush signed into law the Sudan Peace Act which states that the "acts of the Government of Sudan constitute genocide" as defined by the UN. The National Assembly in Khartoum urged Arabs and Muslims throughout the world to denounce the law, calling it "a breach of Sudan's sovereignty." The Sudanese chargé d'affaires in Washington, Dr. Harun Khidir, blamed "members of the extremist Christian right groups and a group of the black masses" for pushing the Sudan Peace Act through Congress.

Uzbekistan

Jehovah's Witness Marat Mudarisov is being tried in the Uzbek capital Tashkent for allegedly inciting national, racial, or

religious hatred. Uzbek authorities claim Mudarisov was found with publications that defame Islam. Mudarisov's defense team, however, says the publications were planted on him by the National Security Service, or NSB. Members of many religious minority groups are regularly punished for their beliefs.

Viet Nam

Documents acquired in October confirm that by the end of September, 354 of 412 Montagnard churches had been forcibly disbanded in Dak Lak

province alone. "Montagnard" means "mountain people" and is a collective name for Vietnam's many minority tribal groups inhabiting the Central Highlands. Montagnard churches were historically part of the Evangelical Church of Vietnam (South). Local Dak Lak television broadcast "Ceremonies of Voluntarily Renouncing Christianity" and has shown pictures of Christians "voluntarily" giving their Bibles and songbooks to be burned. It is expected that the remaining 58 churches in the province will soon be closed.

Religious Freedom USA

■ A federal district judge has ruled that a Ten Commandments monument in the rotunda of Alabama's judicial building violates the constitution's ban on government promotion of religion. U.S. District Judge Myron Thompson gave Alabama Chief Justice Roy Moore, who had the 5,300-pound granite monument installed in the state building, 30 days to remove it. An appeal is expected.

■ A U.S. district judge ruled against a Pekin, Illinois federal prison inmate's demand to perform spells as part of his observance of the Wiccan religion. A Federal Bureau of Prisons ban on spells and curses "in the interest of security and good order of the institution", enacted in May of last year, includes the medium-security prison at Pekin, where the prisoner is housed.

■ An Eagle Scout who has earned 37 merit badges has been kicked out of the Boy Scouts for refusing to declare a belief in a higher power. On membership applications, Boy Scouts and adult leaders must say they recognize a higher power, although not necessarily a religious one.

■ On October 24, a unanimous three-judge panel of the 3rd Circuit U.S. Court of Appeals issued an opinion striking down the selective enforcement of a local ordinance against the posting of an *eruv*, a ceremonial demarcation of an area within which Orthodox Jews may engage in certain activities on the Sabbath that would otherwise be prohibited. The town insisted that allowing their placement represented an "establishment of religion." The Third Circuit held that because Tenafly, NJ had never enforced the law against the posting of church directional signs and lost animal signs, removing the *eruv* would represent religious discrimination.



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Belarus Religion Law

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Belarus during the Soviet era are out of business.

“This law returns the Protestants of Belarus to a time when Protestant churches were forced to act illegally,” said Nikolai Sinkovets, bishop of the Evangelical Christian Baptist church.

In the early days of the post-Soviet era, Catholic and Protestant evangelism experienced a flowering in Belarus, and newer religious movements such as Hare Krishna and the Unification Church also flourished. Beginning in 1995, however, the Russian Orthodox Church and former communists united in a nationalistic backlash against this new western-inspired spirituality.

In 1995, 50 Polish Roman Catholic priests were denied registration as foreign religious workers. In 1997, a Belarussian Baptist preacher was arrested for allowing an American to lead a prayer meeting. Bible studies with foreigners present were raided by the police. The Council of Ministers then adopted Resolution No. 39 which states that “all ... unregistered churches should be banned.” The Unification Church and several others were banned un-

der this rule, and numerous other faiths may be banned under the current law as they are forced to re-register within two years.

“Belarus is certainly Europe’s worst religious repressor, and now it has Europe’s most repressive religious law,” said Nina Shea, director of the Center for Religious Freedom at Freedom House in Washington.

The European community has registered strong disapproval of the law, and the Lukashenko regime is fast earning a reputation as a pariah in Europe. The Czech Republic refused to issue Lukashenko a visa to attend the November NATO summit in Prague, saying his dictatorial style made him “persona non grata.”

In the US, Sen. John McCain (R-AZ) went so far as to call Belarus “a black hole of authoritarianism” at the center of Europe.

Rep. Chris Smith (R-NJ) introduced the Belarus Democracy Act of 2002 (HR 5056) to promote democratic development, human rights and the rule of law in Belarus.

McCain alleged that under Lukashenko’s rule, Belarus has sold weapons to Iraq, Iran, Libya and



Sudan. There are “repeated reports from a variety of credible sources that Belarus is involved in arms transfers to states or groups that support terrorism, and in the military training of individuals associated with those states,” McCain said.

US State Department spokesman Philip Reeker said: “The new Belarussian law contradicts international principles of religious freedom and human rights. We join the European Union and members of many faiths in our opposition to this law.”

Whether the Belarussian religion law will stand against international and internal pressure to conform with recognized human rights standards bears close scrutiny as a harbinger of the fate of religious freedom in the former Soviet nations of Europe.