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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

REV. DR. MICHAEL A. NEWDOW,

Plaintiff,

CIV S-00-0495 MLS PAN PS

v.

THE CONGRESS OF THE UNITED STATES, et al.,

Defendants.

FINDINGS AND RECOMMENDATION

—oOo—

On March 8, 2000, plaintiff filed a complaint alleging defendants Elk Grove School District and Sacramento City Unified School District violate the Establishment Clause of the First Amendment by requiring teachers lead morning classes in recitation of the pledge of allegiance. Defendant school districts move to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

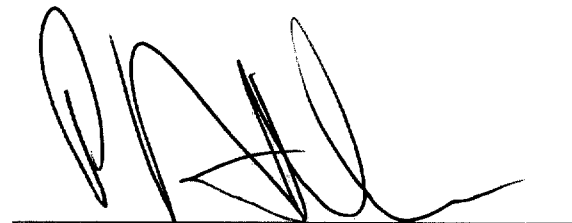
The only federal Court of Appeal directly to address this issue held that schools may lead the pledge of allegiance without violating the First Amendment so long as pupils are not compelled to participate, because the ceremonial reference to God in the pledge does not convey

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1 endorsement of particular religious beliefs. Sherman v. Community Consolidated School  
2 District, 980 F.2d 437, 442-448 (11th Cir. 1992). While the Supreme Court has not directly  
3 addressed the issue, it has noted that its “previous opinions have considered in dicta the motto  
4 [‘In God We Trust’] and the pledge [of allegiance], characterizing them as consistent with the  
5 proposition that government may not communicate an endorsement of religious belief.” County  
6 of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 602-03 (1989); see also id. at 625  
7 (O'Connor, J., concurring); Lynch v. Donnelly, 465 U.S. 668, 693 (1984) (O'Connor, J.,  
8 concurring); id. at 716-17 (Brennan, J., dissenting); School District of Abington Township v.  
9 Schempp, 374 U.S. 203, 303 (1963) (Brennan, J., concurring); Engel v. Vitale, 370 U.S. 421,  
10 449-50 (1962) (Stewart, J., dissenting). Two Courts of Appeal have stated, also in dicta, that the  
11 pledge is not an endorsement of religion. See Chandler v. James, 180 F.3d 1254, 1262 (11th Cir.  
12 1999); Separation of Church and State Committee v. City of Eugene, 93 F.3d 617, 622 (9th Cir.  
13 1996).

14 The Seventh Circuit’s decision in Sherman and the statements in dicta noted above, while  
15 not binding on this court, are persuasive and directly on point. Whether the court employs the  
16 test set forth in Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971), or the more recent  
17 endorsement test, see Allegheny, supra, 492 U.S. at 593-594, the Pledge does not violate the  
18 Establishment Clause of the First Amendment. Accordingly, I recommend plaintiff’s complaint  
19 be dismissed.

20 Dated: May 25, 2000.



Peter A. Nowinski  
United States Magistrate Judge