

*Judges Censor
Acknowledgment of God*

FOR DECADES, the Pledge of Allegiance has been recited daily by millions of schoolchildren. Depictions of the Ten Commandments appear on thousands of public properties, including the U.S. Supreme Court. Against the wishes of Congress, state legislatures, and the American people, unelected judges have been assaulting our right to acknowledge God.

Lawsuits filed by atheists may soon target other acknowledgments of God. Our national motto is “In God We Trust,” and it is enshrined on our currency. In our National Anthem, we sing “In God is our trust” and “Praise the Power that hath made and preserved us a Nation.”

All three branches of the federal government, as well as our military, have always acknowledged God. Congress opens each session with a prayer. The President issues Thanksgiving and other proclamations acknowledging God and usually ends his speeches with “God bless America.”

The U.S. Supreme Court starts each day with “God save the United States and this Honorable Court.” All public officials, including the President and all judges, swear an oath to uphold the Constitution “so help me God.” Most of us use this same oath when we swear to tell the truth in legal proceedings. These customs have persisted for more than two centuries.

Our nation’s founding document, the Declaration of Independence, acknowledges God as our Creator, Supreme Lawgiver, Supreme Judge, Source of all Rights, and Patron and Protector.

God has been specifically acknowledged in all state constitutions. Among the powers reserved to the states under the Tenth Amendment of the U.S. Constitution is surely the power to write their own constitutions.

Nothing in the Constitution confers on the federal courts the final authority to decide how other entities of government may acknowledge God.

ASSAULT ON THE PLEDGE

Despite the tremendous role that the Pledge of Allegiance has played in American life for many decades, on June 26, 2002, the Ninth Circuit U.S. Court of Appeals handed down a 2 to 1 ruling in *Newdow v. U.S. Congress* banning the Pledge of Allegiance from the public schools because of its words “under God.” The dissenting judge emphasized how ridiculous it is to claim that the Pledge of Allegiance violates the Establishment Clause of the First Amendment: “Such phrases as ‘In God We Trust’ and ‘under God’ have

no tendency to establish a religion in this country or to suppress anyone's exercise, or non-exercise, of religion, except in the fevered eye of persons who most fervently would like to drive all tincture of religion out of the public life of our polity. Those expressions have not caused any real harm of that sort over the years since 1791, and are not likely to do so in the future."

When the Ninth Circuit on March 4, 2003, voted to deny the request for a rehearing *en banc*, one of the dissenting judges asked, "Does atheism become the default religion protected by the Establishment Clause?"

Congress's reaction to the *Newdow* decision was dramatic. On the same day as the original anti-Pledge ruling, a resolution of appropriate indignation was adopted by the U.S. House of Representatives by a vote of 416 to 3 and by a Senate vote of 99 to 1. When the full Ninth Circuit refused to reconsider this outrageous decision, the House reaffirmed its support for the Pledge by a vote of 400 to 7, and the Senate did likewise by 94 to 0.

Two cheers for Congress. But words are cheap, and Congress has done nothing substantial to fulfill its constitutional duty to correct this judicial outrage.

When the *Newdow* case reached the Supreme Court in the summer of 2004, the justices decided to duck the issue and dismissed it on the technicality that *Newdow* lacked standing to sue. As Chief Justice Rehnquist said in his dissent, this technicality was "like the proverbial excursion ticket—good for this day only."

This evasion saved the Court the embarrassment of confronting the argument that the abolition of "under God"

in the Pledge would be the logical result of its long series of anti-religion decisions. As Justice Thomas wrote in his concurrence, “adherence to *Lee* would require us to strike down the Pledge policy.” *Lee v. Weisman* (1992) was the decision banning school invocations, which is now gleefully cited in all anti-God litigation.

Before we rejoice that public school children may continue to recite the Pledge, we should face the fact that five of the nine justices (including Justice Kennedy) voted to dismiss the *Newdow* case on procedural grounds alone. They were eager to outlaw the Pledge, but probably feared that such a decision might help to re-elect George W. Bush in November. The justices decided to wait for a more opportune time. *Newdow* brought another case and on September 14, 2005 successfully got a Jimmy Carter–appointed judge in California to rule the Pledge in public schools unconstitutional again.

Newdow’s case was not the only one of its kind. In July 2003, a federal judge barred Pennsylvania teachers from obeying a state law requiring them to lead their classes in reciting the Pledge or singing the National Anthem. On appeal, the Third Circuit unanimously affirmed this decision (*Circle School v. Pappert*, 2004). In August 2003, the ACLU persuaded another federal district judge to block a Colorado law requiring teachers to lead the Pledge, even though the law had a religious exception and exempted teachers who were not U.S. citizens.

Public opinion has always been strongly in favor of having schoolteachers lead the Pledge. Children are not compelled to join in the recitation if it is contrary to their

religion, but one atheist parent should not be permitted to silence the entire class. Massachusetts Governor Michael Dukakis's veto of a state law requiring teachers to lead the Pledge became a major issue in the 1988 Presidential campaign and helped to elect George H.W. Bush.

ONE NATION UNDER GOD

The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." The American Civil Liberties Union (ACLU), atheist lawyers, and activist judges have been trying to make us believe that the acknowledgment of God by public officials, or by anyone on public property, is a violation of those words and therefore must cease. They are acting contrary to what the First Amendment says as well as to our entire political and legal tradition.

God has always been part of the American ideology and experience. In the Declaration of Independence, Thomas Jefferson described our rights as God-given. This means that our rights are natural and inborn, not a grant from a king or the government.

The term "nation under God" as used in the Pledge of Allegiance was popularized by President Abraham Lincoln in the Gettysburg Address in 1863: ". . . a new nation, conceived in liberty and dedicated to the proposition that all men are created equal . . . that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from

the earth.” It is ludicrous to suggest that Thomas Jefferson or Abraham Lincoln was trying to establish a religion.

In the 1950s, during the Cold War, the phrase “nation under God” gained increased popularity as a way of distinguishing America from “godless communism,” which was aggressively atheistic and intolerant of religion. Our leaders preferred to describe America in positive, not negative, terms. They didn’t want to say “we have individual rights because we’re not ruled by kings or commies.” Jefferson and Lincoln were known for their eloquence, and saying we are a “nation under God” is surely a better way of endorsing our traditional American ideals.

Atheist pressure groups and activist judges are now claiming that public acknowledgments of God are somehow unconstitutional. It’s hard, though, to find Americans sincerely offended by the acknowledgment of God.

NEWDOW’S DAY IN COURT

When Dr. Michael Newdow personally appeared in oral argument to ask the Supreme Court to ban teachers from reciting “under God” in the Pledge of Allegiance, the atheists thought he had a compelling legal case. Over the last several decades, the Supreme Court again and again has censored and excluded prayer and morality from public life and schools.

A simple acknowledgment of God in public schools? A moment of silence in school? Posting the Ten Commandments in classrooms? A student-arranged invocation at

graduation? A student-led prayer before a football game? The Supreme Court has said no, no, no, no, and no. In no other area of the law have the liberals enjoyed such a run-up of victories over such a long period of time.

The religion-haters' mischievous use of the federal courts has persisted because the American public has not been paying attention and because the legal community has propagated the myth that the Constitution is whatever the Supreme Court says it is.

Newdow looked at the long series of pro-atheist Supreme Court rulings and concluded that these precedents require removing "under God" from the Pledge. The atheists assumed the Court was ripe for the ultimate censorship to prevent our society from acknowledging the very nature of our existence. Their victory would relegate the Declaration of Independence, the Gettysburg Address, and countless presidential proclamations to the status of historical curiosities.

At the oral argument before the Supreme Court, Justice John Paul Stevens showed his hostility to religion by supporting Newdow. Justice David Souter expressed the secularists' argument that "under God" doesn't really mean under God, calling the Pledge's mention of God "so tepid, so diluted then so far, let's say, from a compulsory prayer that in fact it—it should be, in effect, beneath the constitutional radar." His metaphor was revealing; under the radar is exactly where the secularists want to conceal God, so that no reference to God is ever noticeable in public or in school.

Newdow probably thought he was scoring points in his oral argument when he said that adding the words “under God” to the Pledge in the 1950s was contrary to the spirit of its original purpose and divided the country between those who are religious and those who are not. Under questioning, he had to admit that “under God” was voted into the Pledge by an act of Congress that was “apparently unanimous.” Chief Justice William Rehnquist commented, “Well, that doesn’t sound divisive.” Newdow retorted, “That’s only because no atheist can get elected to public office.” At that point, spectators broke into spontaneous applause, confirming that most Americans do not want atheists running our country.

The day after the oral argument, an Associated Press poll reported that nine out of ten Americans want “under God” to remain in the Pledge. When President Bush was asked during his second presidential debate in 2004 what kind of judge he would nominate to the Supreme Court, he replied, “I wouldn’t pick a judge who said that the Pledge of Allegiance couldn’t be said in a school because it had the words ‘under God’ in it.”

THE TEN COMMANDMENTS ON TRIAL

The Supreme Court banned the Ten Commandments from public school classrooms in 1980. Private funds had been raised to place framed depictions of the Ten Commandments in Kentucky classrooms, but in *Stone v. Graham* the Supreme Court ordered them removed.

That action by the judicial supremacists started a national campaign to remove the Ten Commandments from public buildings and parks all over the country. Most of these lawsuits were instigated by the American Civil Liberties Union or Americans United for Separation of Church and State.

Since 1980, twenty-eight cases have been filed to challenge displays of the Ten Commandments in public buildings, squares and parks, including twenty-four since 1999. In Utah the ACLU even announced a scavenger hunt with a prize for anyone who could find another Ten Commandments monument that the ACLU could persuade an activist judge to remove. These monuments are worth a lot of money to the ACLU because federal law allows generous legal fees to be recovered for every Ten Commandments lawsuit the ACLU wins.

The most famous Ten Commandments case unfolded in Montgomery, Alabama, where the ACLU sued to force removal of a Ten Commandments monument that had been installed in the colonnaded rotunda of the Alabama State Judicial Building on August 1, 2001, by Alabama Chief Justice Roy Moore. Shaped like a cube, this four-foot-tall monument displayed the Ten Commandments on the top. Each of the four sides of the cube featured famous American words: “Laws of nature and of nature’s God” from the Declaration of Independence (1776), “In God We Trust” from our national motto (1956), “One nation under God, indivisible, with liberty and justice for all” from our Pledge of Allegiance (1954), and “So help me God” from the oath of office in the Judiciary Act (1789). The remaining space on

the sides of the cube was filled with quotations from famous Americans such as George Washington, Thomas Jefferson and our first Chief Justice John Jay, from British jurist William Blackstone, and from our National Anthem.

The ACLU filed suit to have the monument removed, and found a Carter-appointed federal judge willing to intervene in a state court matter. Myron H. Thompson was confirmed as a federal judge by the Democrat-controlled Senate in 1980 just a few months before the Reagan landslide.

Judge Thompson held a week-long trial, then ruled the Ten Commandments monument unconstitutional and ordered it removed from the State Judicial Building. It took him seventy-six pages to present his rationale in *Glassroth v. Moore* (2003). Thompson's principal holding was that "the Chief Justice's actions and intentions" violate the Establishment Clause of the First Amendment. Unable to demonstrate that the monument itself violates the First Amendment, Thompson rested his decision on Chief Justice Moore's speeches, writings, campaign literature, and associations.

Thompson, who personally went to view the monument, pronounced "the solemn ambience of the rotunda" and "sacred aura" about the monument as additional reasons why it is unconstitutional. He pretended to see the "sloping top" of the Ten Commandments tablets as unconstitutionally making the viewer think that they are an open Bible in disguise.

The "aura" about the monument was augmented, he said, by its location "in front of a large picture window with a waterfall in the background," so that you really can't

miss seeing the monument. Thompson concluded that “a reasonable observer” would “feel as though the State of Alabama is advancing or endorsing, favoring or preferring, Christianity.” It surely is a non sequitur to say that a picture window and waterfall somehow transform the Ten Commandments, which belong to Jewish law, into an endorsement of Christianity.

Judge Thompson ordered the Ten Commandments removed because three attorney plaintiffs “consider the monument offensive. It makes them feel like outsiders.” But no atheist has any plausible claim to be offended by a reference to something he thinks does not exist. Atheists feign offense simply as a way to censor expressions of faith by others. In any case, nobody has a constitutional right not to be offended.

The strangest lines in this opinion were Judge Thompson’s repeated references to Chief Justice Moore’s belief in “the Judeo-Christian God.” Thompson accused Moore of “an obvious effort to proselytize” on behalf of his Judeo-Christian religion and even of being “uncomfortably too close” to supporting the adoption of a “theocracy.” Thompson said it would be “unwise and even dangerous” to define the word “religion” in the First Amendment, but then used the word “religion” or “religious” 149 times in his opinion.

This case had nothing to do with establishing a religion or a church, which the Establishment Clause forbids. The case simply posed the question whether the First Amendment prohibits us from acknowledging God on public property or in a public forum, and the answer should be no.

JUDICIAL CAT-AND-MOUSE

In Duluth, Minnesota, a controversy over a Ten Commandments monument donated by the Fraternal Order of Eagles, which stood outside its city hall for forty-seven years, led to thirteen months of wrangling, public rallies, a lawsuit, and 140 published letters to the editor. The *Duluth News Tribune* urged settlement out of fear that paying the ACLU's attorney's fees could cost the city up to \$90,000. In October 2004, to settle the lawsuit, the city council moved the monument to property owned by Comfort Suites.

Hoping to avoid litigation, LaCrosse, Wisconsin, sold its Ten Commandments monument and the land under it to the Fraternal Order of Eagles, which had donated it to the city years earlier. The Freedom from Religion Foundation sued the city anyway. A Carter-appointed federal judge ordered the city to "undo the sale" and remove the monument. The Seventh Circuit reversed that decision in 2005.

In a Missouri town named Humansville, population 950, the school district is paying \$45,000 to a woman who sued to get an activist judge to order the removal of a Ten Commandments plaque the size of a legal pad that had been hanging on the cafeteria wall for six years.

In Nebraska, an anonymous ACLU atheist sued the city of Plattsmouth to remove a Ten Commandments monument (that he claims "alienates" him) which is situated in an isolated corner of a large city park. He won his case before an Eighth Circuit panel, but the full Eighth Circuit overturned that decision in August 2005.

Everett, Washington, spent \$70,000 defending a granite Ten Commandments monument that stood for decades in front of its old city hall.

The Sixth Circuit in *ACLU of Ohio v. Ashbrook* (2004) upheld a district court ruling that a state court judge must remove a Ten Commandments poster from his courtroom. He also displayed a Bill of Rights poster, but that didn't save him.

Five Georgia counties placed Ten Commandments displays in their courthouses. A federal judge ordered one removed; the others face challenges.

A district court judge in the Tenth Circuit tossed out a suit challenging a Ten Commandments monument in Pleasant Grove Park in Salt Lake City, Utah, which had been donated by the Fraternal Order of Eagles in 1971.

By 2005, three federal circuits had held Ten Commandments displays unconstitutional, but four federal circuits and one state supreme court had held that the Ten Commandments are constitutional.

Finally, the U.S. Supreme Court dealt with the Ten Commandments issue in two inconsistent 5 to 4 decisions on June 27, 2005. In *Van Orden v. Perry*, the Court allowed the Ten Commandments to be displayed on the grounds of the Texas State Capitol, but in *McCreary County v. ACLU of Kentucky* the Court banished the Ten Commandments from courthouses.

According to the Court, displaying the Ten Commandments outside a building is permissible, but inside a building it is not. Since most of the hundreds of Ten Commandments monuments in the open air were installed

as a promotion for Cecil B. DeMille's wonderful movie *The Ten Commandments*, that's acceptable because it had a secular motive. But the Ten Commandments display in the Kentucky courthouse was suspected of being installed with a religious motive, so the Supreme Court won't allow it.

The incoherence of these two decisions is evident in the Court's explanation of why the Ten Commandments must be removed from courthouses all over the country, but not from the walls of the Supreme Court building itself. The tablets that Moses is carrying, the Court argued, do not have all the words spelled out.

Justice Souter declared that "suing a state over religion puts nothing in a plaintiff's pocket." On the contrary, the lawsuits against religion that now clutter our courts are fueled by a federal law allowing enormous attorney's fees to the winners. When groups such as the ACLU win their cases, they receive extravagant attorney's fees at the expense of local taxpayers.

Barry Lynn, director of Americans United for Separation of Church and State, summed up the Supreme Court's long-awaited ruling: "These decisions guarantee there will be far more lawsuits." He is correct about that; decisions about the Ten Commandments on a case by case basis assure that we will have many more supremacist decisions based on the current whims of the justices.

PRAYER IN SCHOOLS

The judicial supremacists' war on the acknowledgment of God began in 1962 when the Supreme Court banned prayer

in public schools in *Engel v. Vitale*. The prayer at issue in that case was in no way an establishment of religion or even a sectarian prayer. It simply read: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers and our Country.”

No school was ordered to use this prayer; it was merely recommended as a prayer that schools could use. No child was compelled to recite the prayer; children who did not wish to say the prayer could remain silent or leave the room. Teachers were forbidden to make any comment about a child who left the room.

Justice Potter Stewart’s dissent went to the core of the problem: “The Court has misapplied a great constitutional principle. I cannot see how an ‘official religion’ is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our nation.”

Engel v. Vitale is a major example of the new judicial supremacy embarked upon by what became known as the Warren Court, headed by Chief Justice Earl Warren from 1953 to 1969. *Engel* was widely criticized at the time. Legal scholars recognized that the Court was treading on new territory outside the proper scope of judicial authority.

In a major speech, Erwin Griswold, dean of the Harvard Law School, said the Court had no business voiding the prayer. “Congress had made no law,” he said in reference to the wording of the First Amendment, and “those who

wrote the ‘establishment of religion’ clause might be rather perplexed by the use which has been made of it in 1962.”

Griswold said “it was unfortunate that the question involved in the *Engel* case was ever thought of as a matter for judicial decision.” Furthermore, “it was unfortunate that the Court decided the case, one way or the other” because “there are some matters which are essentially local in nature . . . to be worked out by the people themselves in their own communities.”

Pointing out that there was nothing compulsory about the prayer, Griswold added, “In a country which has a great tradition of tolerance, is it not important that minorities, who have benefited so greatly from that tolerance, should be tolerant, too?” But the minority atheists are supremely *intolerant*, and they found judicial supremacists who were all too eager to overturn two centuries of American school-children’s acknowledgment of God.

It’s easy to track increased public dissatisfaction with the public schools from that date forward. In case after case since *Engel v. Vitale*, the Supreme Court has carried on a relentless campaign against any mention of God in public schools. The Supreme Court prohibited Kentucky from posting the Ten Commandments in schoolrooms (*Stone v. Graham*, 1980), and prohibited Alabama public schools from having a daily moment of silence “for prayer and meditation” (*Wallace v. Jaffree*, 1985).

When the Court banned a prayer at graduation ceremonies in *Lee v. Weisman* (1992), Justice Scalia said in his dissent that this decision “lays waste a tradition that is as old as public school graduation ceremonies themselves.” By the

year 2000, the Court had even banned prayers before football games (*Santa Fe Independent School District v. Doe*).

In 2003, the federal courts started to extend prayer bans to adults. The Fourth Circuit U.S. Court of Appeals declared that it is unconstitutional for cadets attending Virginia Military Institute, a strict state military college, to be required to remain silent while a student chaplain recites this invocation before supper: “Now O God, we receive this food and share this meal together with thanksgiving. Amen.” Both the Fourth Circuit and the Supreme Court seemed to acknowledge that the plaintiffs had no standing to sue, but nevertheless allowed a ruling to stand that makes school officials personally financially liable if they reinstate the supper prayer (*Mellen v. Bunting*).

Another nationally prominent military college, the Citadel, then announced that it, too, would ban prayers rather than risk the expense of defending against a lawsuit. Prayers at other military academies are the ACLU’s next targets.

Chief Justice Rehnquist stated in *Santa Fe Independent School District v. Doe* that the Court “bristles with hostility to all things religious in public life.” Judge Bork says that activist judges are so thoroughly secularized that “they not only reject personal belief but maintain an active hostility to religion and religious institutions.” The Supreme Court “has almost succeeded in establishing a new religion: secular humanism.” Under recent First Amendment decisions, nude dancing before school football games would be a more acceptable form of expression than prayer.

CROSSES AND SEALS

The atheists have carried on a fifteen-year battle to get supremacist judges to remove a twenty-nine-foot cross first erected some seventy years ago atop Mount Soledad in La Jolla, California, as a memorial to World War I veterans. There had never been a complaint until the ACLU filed suit, calling the cross a violation of the Establishment Clause. The ACLU has so far collected \$63,000 in attorney's fees for legal victories along the way. As part of the public campaign to save the cross, Congress passed a law, signed by President Bush, declaring it a national war memorial.

But on October 7, 2005, a state court judge ruled it unconstitutional to transfer the cross and the land under it to the federal government under the deal approved by 76 percent of the voters in a special election on July 26. The judge called the transfer "an unconstitutional preference of the Christian religion to the exclusion of other religions and non-religious beliefs."

The atheists have carried on similar campaigns to remove depictions of a cross in any county or city seal. Many local government entities surrender rather than risk the costs to defend the seal, especially when costs include not only their own attorney's fees, but the ACLU's as well.

The ACLU demanded that Los Angeles County remove a tiny cross from the Los Angeles County seal, one of nearly a dozen symbols included in the seal. One look at the seal shows how ridiculous this demand was. A third of the seal and the centerpiece is the Greek goddess Pomona standing on the shore of the Pacific Ocean. The ACLU doesn't

object to her; portrayals of pagan goddesses are acceptable. Both side sections of the seal depict California motifs: the Spanish galleon *San Salvador*, a tuna fish, a cow, the Hollywood Bowl, two stars representing the movie and television industries, oil derricks, and a couple of engineering instruments that signify Los Angeles' industrial construction and space exploration. The cross is so tiny that it doesn't even have its own section and consumes perhaps two percent of the seal's space.

Removing the cross is a blatant attempt to erase history, to drop it down the Memory Hole, as George Orwell would say. It is just as reasonable to recognize the historical fact that California was settled by Christians who built missions all over the state as it is to honor the Spanish ship, the *San Salvador*, which sailed into San Pedro Harbor (named after St. Peter) on October 8, 1542. Nevertheless, the county caved in to the ACLU's threats and began to spend \$700,000 to put a newly designed seal on buildings, cars, employee uniforms, letterheads, and websites.

The atheists and secularists who are determined to wipe out any public recognition of religion are indefatigable in seeking plaintiffs for their litigation. In addition to the many Christmastime challenges to Nativity scenes, targets in the last couple of years have included:

- An open Bible under glass inside a four-foot stone monument near the entrance to a courthouse in Houston that was erected as a memorial to philanthropist William S. Mosher. (The judge in *Staley v. Harris County* ordered the county to remove the

Bible “within ten days” and to pay plaintiff “\$40,586 in attorney’s fees and expenses within ten days.”) The case is on appeal to the Fifth Circuit.

- A Theodore Roosevelt quotation engraved on the mahogany walls of one of Riverside, California’s oldest courtrooms that reads “The true Christian is the true citizen.”
- “In God We Trust” on the front of the Davidson County (North Carolina) Government Center.
- Christmas trees in public buildings in Pasco County, Florida, which allegedly were religious symbols.

THE ACLU’S WAR ON THE BOY SCOUTS

The American Civil Liberties Union has sued the Boy Scouts fourteen times over the last twenty-five years. The ACLU objects to the Boy Scout oath: “On my honor, I will do my best to do my duty to God and my country, and to obey the Scout Law, to help other people at all times, to keep myself physically strong, mentally awake and morally straight.” Those policies have been building character in boys for the last ninety years. Character development and value-based leadership training are central to the Boy Scouts’ mission. Most Americans think the Boy Scouts is a terrific organization that trains boys to be better citizens.

In the most widely publicized of these court cases, *Boy Scouts v. Dale* (2000), the Supreme Court ruled 5 to 4 to uphold the right of the Boy Scouts to prevent homosexuals from being Scout leaders. Despite losing that case, the ACLU has continued to harass the Boy Scouts and try to

chase them off all public properties. The ACLU claims the Boy Scout oath violates the First Amendment if recited on public property.

In December 2004, the U.S. Department of Defense caved in to an ACLU lawsuit and agreed to stop sponsoring four hundred Boy Scout troops and to warn military bases worldwide not to directly sponsor Boy Scout troops.

For over two decades, the Boy Scouts have held a quadrennial jamboree on military property in Virginia attracting forty thousand Scouts and three hundred thousand parents and spectators. The federal Jamboree Statute authorized the Secretary of Defense to loan equipment necessary for the event. In July 2005, federal district court Judge Blanche M. Manning, a Clinton appointee, knocked out the Jamboree law in *Winkler v. Chicago School Reform Board of Trustees*. She didn't bother to hold a trial on the issue; she just enjoined the government from obeying the Jamboree statute.

The ACLU is now carrying on a campaign to get supremacist judges to expel the Boy Scouts from every public school in the country. In 2005 the ACLU threatened the Boy Scouts with massive litigation if they did not abandon all their school charters. The Scouts have been trying to find non-school sponsors so they can meet at public schools as an independent group.

OUR RELIGIOUS HERITAGE

The banning of the acknowledgment of God from public life and from public schools is not required by the Consti-

tution. It is a malicious campaign invented and pursued by the judicial supremacists of the last fifty years. Previously, the Court's attitude toward religion was eloquently stated in the 1892 Supreme Court decision of *Church of the Holy Trinity v. United States*: "No purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation."

The Court listed the religious origins of our society such as the first colonial grant to Sir Walter Raleigh in 1584, the first charter of Virginia in 1606, the Fundamental Orders of Connecticut in 1638-39, the charter of privileges granted by William Penn to Pennsylvania in 1701, the Declaration of Independence, and the constitutions of all the individual states. Concluding, the Supreme Court ruled: "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons: they are organic utterances; they speak the voice of the entire people."

As late as 1952, none other than Supreme Court Justice William O. Douglas wrote that "We are a religious people whose institutions presuppose a Supreme Being" (*Zorach v. Clauson*). But since 1962, the judicial supremacists have been fiercely determined to expurgate every mention of religion from the schoolhouse.

Justice Scalia's dissent in the 2005 case that held the Ten Commandments in the Kentucky courthouse un-

constitutional (*McCreary County v. ACLU of Kentucky*) is an eloquent and current recitation of America's religious heritage, showing why it is simply not true, as the Court's majority proclaimed, that "the First Amendment mandates governmental neutrality between . . . religion and nonreligion."

The issue of the acknowledgment of God will not go away. The notorious *Lemon* test, first announced in *Lemon v. Kurtzman* (1971), encourages the filing of lawsuits so that activist judges can censor any mention of God or religion on the ground that it has a religious purpose, has a religious effect, or increases an entanglement of government with religion. This permits judicial supremacists to manipulate the test any way that suits them.

What damage will the Supreme Court do with its next dozen cases on religion? Will the American people allow the judicial supremacists to continue denying our heritage, keeping our children ignorant of our history, changing our culture, and censoring our precious words? Or, are we going to put a stop to the usurpations of the activist judges? That is our challenge.

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- A list of the acknowledgments of God in all 50 state constitutions is in: *The Ten Commandments & Their Influence on American Law* by William J. Federer (Amerisearch, 2003), 52-55.

- No justice signed the Supreme Court's opinion expelling the Ten Commandments from schools in *Stone v. Graham*, which it issued in a per curiam decision. Nor did the Court allow oral argument or even full briefing in the case, as is customary. Instead, the Court simply banned the Ten Commandments outright based merely on a petition for certiorari, reversing the Kentucky judiciary. The Court decried that the posted Ten Commandments might "induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments." Many parents and teachers today wish that students would obey the Commandments and thereby restore order to our schools.
- Carter-appointed Judge Myron Thompson's judicial supremacy extends beyond the Ten Commandments case. For nineteen years, he has held control of a case alleging discrimination, inflicting enormous injury and costs on the State of Alabama (*Reynolds v. McInnes*, 2003). The Eleventh Circuit U.S. Court of Appeals reversed one of his decisions in that case and said this about his general handling of that case:

"After 18 years of hearing following hearing, order after order, appeal and more appeals, it is fair to ask what has been accomplished and what remains to be done. The answer, it appears, is not enough has been accomplished and a lot remains to be done. This unwieldy litigation has been afflicting the judicial system and draining huge amounts of public funds from the State of Alabama for much too long. The amounts are staggering. Fifty million dollars in public funds has been spent on attorney's fees alone in the case. An additional \$62.5 million has been paid out in consultant and expert costs, bringing the total litigation costs to the State of Alabama to more than \$112 million, and that cost is growing at a rate of around \$500,000.00 each and every month. The figure does not even include the close to \$13 million in contempt fines that the State has paid and continues to pay at the rate of \$250,000.00 per month. If the contempt fines are included in the total, the case has cost

the taxpayers of the State of Alabama \$125 million so far, and the tab is increasing at the rate of \$750,000.00 per month.”

Despite this rebuke, the case continues to run out of control and causes damages that are far in excess of what was alleged in the first place. By the end of 2004, Alabama had paid \$174 million in expenses and fines on this case.

- Dean Griswold’s speech was published in the *Washington Star*, March 3, 1963.
- The Court’s hostility to religion started with nonbinding dicta in *Everson v. Board of Education* (1947). Justice Hugo Black wrote for the majority: “The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.”

The decision itself permitted New Jersey to use tax money for school buses sending children to Catholic and other private schools, and was thus not particularly hostile to religion. But subsequent decisions have cited *Everson* dicta to argue that government cannot “aid all religions,” and therefore must promote secularism. Justices Scalia and Thomas are the only ones on the current Supreme Court who acknowledge the errors in this reasoning. The Constitution was never intended to prohibit state policies that benefit all religions.

LESSON TWO

JUDGES CENSOR ACKNOWLEDGMENT OF GOD

QUESTIONS FOR DISCUSSION:

- ★ The First Amendment states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .” Do you think the government is establishing a religion when schoolchildren recite the Pledge of Allegiance, or when a copy of the Ten Commandments is posted in a courthouse or park?
- ★ Since Congress passed the text of the Pledge of Allegiance a half century ago, and Ten Commandments monuments and plaques have been posted in public places for centuries, why are judges suddenly declaring these things a violation of the First Amendment which has been in effect since 1791?
- ★ When the Supreme Court banned prayer from public schools, how was this decision criticized by Harvard Law School Dean Erwin Griswold?
- ★ Discuss the ACLU’s war on the Mount Soledad cross that has been in the courts for 17 years and cost the taxpayers hundreds of thousands of dollars.
- ★ Discuss the ACLU’s war on the Boy Scouts.
- ★ Is the judicial attack on the Pledge, the Ten Commandments, prayer in schools, crosses, and the Boy Scouts all part of an attempt by the atheists to rewrite history and expunge our religious heritage?
- ★ What did Chief Justice Rehnquist say about the judges’ hostility to religion?
- ★ How can we get Congress to stop judges from their attempt to remove all references to religion from public life?