Atheism Back in Court Again

by Phyllis Schlafly December 5, 2007

Google Ads are provided by Google and are not selected or endorsed by Eagle Forum

The U.S. Court of Appeals for the Ninth Circuit on December 4 will again hear a challenge by Michael Newdow to the Pledge of Allegiance and its phrase "under God." Newdow won his prior lawsuit against the Pledge until the Supreme Court, perhaps to avoid public outrage in the 2004 presidential election year, tossed out his case on a procedural technicality.

Newdow's first case caused a national uproar when he initially prevailed, but Congress failed to seize the day by withdrawing jurisdiction from the courts over this issue. Instead, Congress took away jurisdiction from courts over lawsuits against gun manufacturers and, at the urging of former Majority Leader Tom Daschle, over lawsuits by environmentalists against brush clearing in South Dakota.

The Ninth Circuit is notoriously hostile to religion, so it may give us another anti-Pledge decision. Atheism has spread in influence to where it controls many federal courts, many public schools, and now even Hollywood, with the atheistic movie "The Golden Compass" promoted for Christmastime entertainment.

Classical music with religious names was banned at graduation by Everett School District No. 2 in the State of Washington. The school ordered that only "secular"

music would be allowed even though there were no lyrics or words spoken, and a federal court held against the students.

Judge Robert S. Lasnik, who was appointed by President Bill Clinton to the bench in 1998, wrote the decision. Lasnik was the same judge who struck down a good Washington State law banning video games that demonstrated how to kill policemen and wrote in his decision that violent video games are "as much entitled to the protection of free speech as the best of literature."

The intolerance of atheists and their allies has now placed the "best of" music off-limits to public school performers. Goodbye to many of the great works of Bach, Haydn, Handel, Beethoven and Mozart.

It is not only the Left Coast that is promoting atheism. In New Jersey, an award-winning high school football coach, Marcus Borden, was ordered in 2005 by his intolerant school district not to bow his head or "take a knee" during any player-initiated prayers.

This case illustrates how atheism in schools is often censorship in disguise. First the school district censored Borden from prayer with his players, and then censored even his silent gestures.

He sued and the trial judge ruled in his favor. But the school officials and liberal allies were relentless and have appealed to the Court of Appeals for the Third Circuit.

These are not isolated cases. In Nevada censors pulled the plug of the microphone in the middle of the high school valedictorian's speech when she mentioned her Christian faith; in Virginia a high school removed from a bulletin board materials posted by a teacher because they included reference to a day of prayer; in Chicago

a federal judge enjoined the state superintendent from enforcing a new law requiring a moment of silence in Illinois schools.

Atheism has been growing ever since the Supreme Court censored school prayer in Engel v. Vitale in 1962. That decision failed to cite a single precedent as authority.

The Supreme Court held decades ago held that free speech includes prayer, yet lower courts continue to drive it from public places. In Faith Center v. Glover, the Ninth Circuit affirmed the exclusion of a Christian group from using a public library because some aspects of the group's speech might be described as worship.

Panel member Judge Lawrence Karlton, who was appointed by President Jimmy Carter nearly 30 years ago, ridiculed the Supreme Court by claiming there is a "sorry state of the law" in not censoring more religious speech (like "under God") and that he is "pray[ing] for the court's enlightenment" to rule further against religion.

That decision, including the ridicule, seemed perfect for the Roberts-Alito Court to overturn with a strong message to deter disrespectful lower courts, but it declined. A Supreme Court that hears only 75 cases a year and ducks the big ones cannot end the havoc wrought by over 100 lower courts rendering perhaps 1000 times as many decisions.

Luckily, a rare Supreme Court decision last term written by Justice Sam Alito was used by an appellate court to dismiss a lawsuit against prayer in the Indiana legislature. Four months after Justice Alito's decision dismissing on standing grounds a challenge to President Bush's faith-based programs, the Seventh Circuit relied on it to dismiss a challenge to prayer in Indiana in Hinrichs v. Speaker of the House of Representatives.

Earlier, the Seventh Circuit also dismissed on standing grounds an ACLU lawsuit attempting to prevent the Boy Scouts from holding their Jamboree on military property. The results in these cases point the way for Congress to save the Pledge of Allegiance: withdraw jurisdiction from the Courts over acknowledgment-of-God cases such as by passing the We the People Act (H.R. 300).