

# Supreme Court hears pledge case

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WASHINGTON — The crowds outside the Supreme Court March 24 waged shouting matches over whether the Pledge of Allegiance should mention God.

But inside the courtroom the justices seemed most concerned with whether a California man even has the legal right to seek the change on the grounds that it harms his daughter to be exposed to the words "under God."

Arguing his own case against the Elk Grove Unified School District, California physician and lawyer Dr. Michael Newdow told the court that even though he does not have primary custody of his daughter he has a right not to have his atheist beliefs demeaned in her eyes by a school exercise that refers positively to the existence of God.

Newdow said the words "under God" are tantamount to the kind of school-led prayer the court has ruled unconstitutional in previous cases.

"Under God" is as religious as you can get," he said.

Justice Ruth Bader Ginsburg said "under God" is much less like a prayer than the first words of the patriotic song, "God Bless America," which children sometimes sing in school.

By comparison, the phrase in the pledge comes in the middle of something recited by rote "and the child doesn't have to say them," Ginsburg said.

"The issue is whether the government can put those words in her mouth" over her father's objections, Newdow said.

But, as the noncustodial parent, "you don't have the right" to make that claim, Ginsburg reminded him.

The girl's mother, Sandra Banning, said in a brief to the court that she and her daughter are practicing



Paul Haring/CNS

Students gather near the U.S. flag outside the Supreme Court in Washington March 24 as justices were hearing a case involving the Pledge of Allegiance.

Christians who have no objection to the phrase "one nation under God" in the pledge.

Attorney Terence Cassidy, arguing on behalf of the school district, told the court that district policy requires the pledge to be recited daily in elementary school classrooms as a patriotic exercise. And neither Newdow's daughter nor any other student is required to say it. A 1948 Supreme Court ruling in a case brought by Jehovah's Witnesses, whose beliefs preclude taking oaths, said students nationwide may opt out of participating in the pledge.

Solicitor General Theodoré Olson, arguing in support of the school district, said Newdow has no legal right to make the claim of damage on his daughter's behalf and that the 9th U.S. Circuit Court of Appeals erred in saying he had legal standing to make the case.

If the justices do consider the merits of the claim about the pledge

itself, Olson said, he has found opinions by 14 different Supreme Court justices saying there is a significant difference between the pledge and other government-sponsored religious acts.

Justice Stephen Breyer told Newdow that while the pledge is not perfect it does a fair job of providing a unifying patriotic statement that encompasses the beliefs of a broad segment of the populace. "It seems the purpose of unification at the price of offending a small number of people like you" is a valid civic exercise, he said.

Only eight of the court's nine justices heard the case, which could complicate efforts to issue a decisive ruling.

Justice Antonin Scalia recused himself from the case after he made public statements critical of the 9th Circuit Court ruling.

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