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PLEDGE OF ALLEGIANCE

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During the 2003 legislative session, the Colorado General Assembly passed House Bill 03-1368, requiring all public school teachers and students to recite the Pledge of Allegiance at the beginning of each school day. The constitutionality of the law was challenged in federal court by the American Civil Liberties Union, resulting in a delay in the implementation of the law. This Issue Brief highlights the history of the Pledge of Allegiance and provides information about the status of Colorado's Pledge of Allegiance law, as well as information on Pledge of Allegiance laws throughout the United States.

History

The Pledge of Allegiance was originally printed in 1892 in a magazine called *Youth's Companion*. The author, Francis Bellamy, wrote the Pledge to be recited as part of a program that he and James Upham, co-owner of *Youth's Companion*, organized to honor the 400th anniversary of the discovery of America. Bellamy and Upham worked with the National Education Association, Congress, and President Benjamin Harrison to organize a national public school observance of Columbus Day in 1892, the 400th anniversary. President Harrison proclaimed the public school flag ceremony as the center of the Columbus Day celebration, and Mr. Bellamy's Pledge of Allegiance was recited as part of the flag ceremony. The original words of the Pledge were:

I pledge allegiance to my Flag, and to the Republic for which it stands: one Nation indivisible, with liberty and justice for all.

The words of the Pledge have been altered three times. First, in 1923, the words "my flag" were changed to "the flag of the United States." The second change

was in 1924 when the words "of America" were added to follow "the flag of the United States." The final change came in 1954 when the Knights of Columbus lobbied Congress and President Eisenhower to add the phrase "under God." Today's version of the Pledge is as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

On June 22, 1942, the U.S. Congress voted to include the Pledge of Allegiance in the United States Code. Today, the Pledge is in Section 4, Title 4, of the United States Code.

Colorado's Law

Colorado's 2003 Pledge of Allegiance law required all public school teachers and students to recite the Pledge of Allegiance each school day. The law provided exceptions for teachers and students who objected on religious grounds or who were not United States' citizens. In addition, parents or guardians could excuse their child from reciting the Pledge for any reason as long as the parent notified the school in writing.

On August 6, 2003, Colorado's Pledge of Allegiance law took effect. On August 12, 2003, the American Civil Liberties Union (ACLU) of Colorado sued in federal court on behalf of three students and six teachers from four metro-area school districts (Denver, Jefferson County, Aurora, and Cherry Creek). The lawsuit claimed that the law violated the First Amendment right to freedom of speech of students and teachers by forcing

them to say the Pledge. U.S. District Judge Lewis Babcock agreed with the ACLU, and on August 15, 2003, Judge Babcock ruled to temporarily block the implementation of the law. In the ruling, Judge Babcock found that:

- the plaintiffs are likely to prevail on the merits of their claim;
- irreparable injury is likely to occur to the students and teachers who are party to the lawsuit if the restraining order is not granted;
- the threatened injury outweighs the harm a temporary restraining order would cause the defendants; and
- temporarily delaying the implementation of the law would not adversely affect the public.

In response to Judge Babcock's decision, Colorado Attorney General Ken Salazar filed a motion asking Judge Babcock to extend the temporary restraining order for nine months, until the end of the 2004 legislative session, to allow lawmakers to make changes to the law during the 2004 session if they wish. Judge Babcock again agreed, and the law was put on hold.

Early in the 2004 legislative session, the General Assembly passed House Bill 04-1002 (Section 22-1-106, C.R.S.). The new Pledge law strikes the section which requires all students and teachers to recite the Pledge each day. In lieu of this language, a section was added which requires each school district to provide students an opportunity each school day to recite the Pledge if they choose to do so. Students who do not wish to recite the Pledge are exempt from doing so and need not participate.

The 2003 lawsuit is still pending in federal court. At this point, it is unknown whether the lawsuit will be dismissed, dismissed with prejudice, or whether the case will continue. Negotiations are also occurring regarding the plaintiffs' claim to have the state pay attorney fees and court costs.

Other State Pledge Laws

The Pledge of Allegiance has become a popular issue with lawmakers across the nation. In 2002 and 2003, 17 states enacted new Pledge laws or amended existing policies. Thus far in 2004, Colorado is the only state to make changes to or to enact a Pledge law. Currently, 42 states have Pledge laws. These laws range from requiring the Pledge to be recited each day in public schools to simply permitting the Pledge to be said

in public schools. Eight states do not have a Pledge law (Hawaii, Indiana, Iowa, Maine, Michigan, Nebraska, Vermont, and Wyoming).

Of the states that require the Pledge to be recited in public schools, none of these laws are as stringent as the 2003 law passed in Colorado. Some states, such as Alaska, Montana, Oklahoma, and Utah, require that students be notified of their right not to participate. Other states, such as Illinois, use more general wording in their law. Rather than requiring all students and teachers to recite the Pledge each day, Illinois' law simply states that the Pledge will be recited each day by public school pupils. This is similar to the approach used in Colorado's 2004 law. The more general wording seems to dispel the notion that students and teachers are being forced to recite the Pledge or that there is pressure for students and teachers to recite the Pledge even if they object to doing so.

Other Court Cases Related to the Pledge

The U.S. Supreme Court has ruled on a lawsuit that was originally filed in Federal District Court in Sacramento, CA. The lawsuit, *Elk Grove Unified School District v. Newdow*, 02-1624, was filed by the atheist father of a public school student in California who argued that the Pledge violated his daughter's First Amendment right to a separation of church and state. The Court of Appeals for the Ninth Circuit agreed and declared the Pledge unconstitutional because, with the words "under God," it crosses the line between church and state. This ruling conflicts with a 1992 ruling by the Court of Appeals for the Seventh Circuit. The Supreme Court heard oral arguments regarding the case and subsequently ruled that the father does not have legal authority to speak for his daughter since he is not the custodial parent and therefore cannot sue on her behalf. The Supreme Court's ruling did not address whether the Pledge violates the separation of church and state provision of the constitution.