ELK GROVE UNIFIED SCHOOL DISTRICT v. NEWDOW

542 U.S. 1 (2004)

Justice Stevens delivered the opinion of the Court.

Each day elementary school teachers in the Elk Grove Unified School District (School District) lead their classes in a group recitation of the Pledge of Allegiance. Respondent, Michael A. Newdow, is an atheist whose daughter participates in that daily exercise. Because the Pledge contains the words "under God," he views the School District's policy as a religious indoctrination of his child that violates the First Amendment. A divided panel of the Court of Appeals for the Ninth Circuit agreed with Newdow. In light of the importance of that decision, we granted certiorari. We conclude that Newdow lacks standing and reverse.

I

As its history illustrates, the Pledge of Allegiance evolved as a public acknowledgment of the ideals that our flag symbolizes. Its recitation is a patriotic exercise designed to foster national unity and pride in those principles.

The Pledge of Allegiance was initially conceived more than a century ago. As part of the nationwide interest in commemorating the 400th anniversary of Christopher Columbus' discovery of America, a national magazine for youth proposed in 1892 that pupils recite the following affirmation: "I pledge allegiance to my Flag and the Republic for which it stands: one Nation indivisible, with Liberty and Justice for all." In the 1920's, the National Flag Conferences replaced the phrase "my Flag" with "the flag of the United States of America."

In 1942, Congress adopted, and the President signed, a Joint Resolution codifying a detailed set of "rules and customs pertaining to the display and use of the flag of the United States of America." Section 7 of this codification provided in full:

> "That the pledge of allegiance to the flag, 'I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all', be rendered by standing with the right hand over the heart; extending the right hand, palm upward, toward the flag at the words 'to the flag' and holding this position until the end, when the hand drops to the side. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute."

This resolution confirmed the importance of the flag as a symbol of our Nation's indivisibility and commitment to the concept of liberty.

Congress revisited the Pledge of Allegiance 12 years later when it amended the text to add the words "under God." Act of June 14, 1954. The House Report observed that, "[f]rom the time of our earliest history our peoples and our institutions have reflected the traditional concept that our Nation was founded on a fundamental belief in God." The resulting text is the Pledge as we know it today: "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."

II

Under California law, "every public elementary school" must begin each day with "appropriate patriotic exercises." The statute provides that "the Pledge of Allegiance shall satisfy" this requirement. The School District has implemented the state law by requiring that "[e]ach elementary school class recite the pledge of allegiance once each day." Consistent with our case law, the School District permits students who object on religious grounds to abstain from the recitation. See *West Virginia Bd. of Ed.* v. *Barnette,* 319 U.S. 624 (1943).

In March 2000, Newdow filed suit against the United States Congress, the President of the United States, the State of California, and the Elk Grove Unified School District and its superintendent. At the time of filing, Newdow's daughter was enrolled in kindergarten in the Elk Grove Unified School District and participated in the daily recitation of the Pledge. The complaint explains that Newdow is an atheist who was ordained more than 20 years ago in a ministry that "espouses the religious philosophy that the true and eternal bonds of righteousness and virtue stem from reason rather than mythology." The complaint seeks a declaration that the 1954 Act's addition of the words "under God" violated the Establishment and Free Exercise Clauses of the United States Constitution, as well as an injunction against the School District's policy requiring daily recitation of the Pledge. It alleges that Newdow has standing to sue on his own behalf and on behalf of his daughter as "next friend."

The case was referred to a Magistrate Judge, whose brief findings and recommendation concluded, "the Pledge does not violate the Establishment Clause." The District Court adopted that recommendation and dismissed the complaint. The Court of Appeals reversed.

In its first opinion the appeals court held that Newdow has standing "as a parent to challenge a practice that interferes with his right to direct the religious education of his daughter." On the merits, the court held that both the 1954 Act and the School District's policy violate the Establishment Clause.

After the Court of Appeals' initial opinion, Sandra Banning, the mother of Newdow's daughter, filed a motion for leave to intervene, or alternatively to dismiss the complaint. She declared that although she and Newdow shared "physical custody" of their daughter, a state-court order granted her "exclusive legal custody" of the child, "including the sole right to represent [the daughter's] legal interests and make all decision[s] about her education" and welfare. Banning further stated that her daughter is a Christian who believes in God and has no objection either to reciting or hearing others recite the Pledge of Allegiance. Banning expressed the belief that her daughter would be harmed if the litigation were permitted to proceed, because others might incorrectly perceive the child as sharing her father's atheist views. Banning accordingly concluded that it was not in the child's interest to be a party to Newdow's lawsuit. The California Superior Court entered an order enjoining Newdow from including his daughter as an unnamed party or suing as her "next friend." That order did not purport to answer the question of Newdow's Article III standing.

In a second published opinion, the Court of Appeals reconsidered Newdow's standing in light of Banning's motion. The court noted that Newdow no longer claimed to represent his daughter, but unanimously concluded that "the grant of sole legal custody to Banning" did not deprive Newdow, "as a noncustodial parent, of Article III standing to object to

unconstitutional government action affecting his child." The court held that under California law Newdow retains the right to expose his child to his particular religious views even if those views contradict the mother's, and that Banning's objections as sole legal custodian do not defeat Newdow's right to seek redress for an alleged injury to his own parental interests.

We granted the School District's petition for a writ of certiorari to consider two questions: (1) whether Newdow has standing as a noncustodial parent to challenge the School District's policy, and (2) if so, whether the policy offends the First Amendment.

III

In our view, it is improper for the federal courts to entertain a claim by a plaintiff whose standing to sue is founded on family law rights that are in dispute when prosecution of the lawsuit may have an adverse effect on the person who is the source of the plaintiff's claimed standing. When hard questions of domestic relations are sure to affect the outcome, the prudent course is for the federal court to stay its hand rather than resolve a weighty question of constitutional law. There is a vast difference between Newdow's right to communicate with his child and his claimed right to shield his daughter from influences to which she is exposed in school. We conclude that, having been deprived under California law of the right to sue as next friend, Newdow lacks prudential standing to bring this suit in federal court.

Justice Scalia took no part in the consideration or decision of this case.

Chief Justice Rehnquist, with whom Justice O'Connor joins, and with whom Justice Thomas joins as to Part I, concurring in the judgment.

The Court today erects a novel prudential standing principle in order to avoid reaching the merits of the constitutional claim. I dissent from that ruling. On the merits, I conclude that the School District policy does not violate the Establishment Clause.

I

Respondent asserts that the School District's pledge ceremony infringes his right under California law to expose his daughter to his religious views. While she is intimately associated with the source of respondent's standing (the father-daughter relationship and respondent's rights thereunder), the daughter *is not the source* of respondent's standing; instead it is their relationship that provides respondent his standing. The prudential prohibition on third-party standing provide no basis for denying respondent standing.

II

As part of an overall effort to "codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America," Congress enacted the Pledge on June 22, 1942. Congress amended the Pledge to include the phrase "under God" in 1954. The amendment's sponsor said its purpose was to contrast this country's belief in God with the Soviet Union's embrace of atheism. Following the decision of the Court of Appeals in this case, Congress passed legislation that made extensive findings about the historic role of religion in the political development of the Nation and reaffirmed the text of the Pledge. To the millions of people who regularly recite the Pledge, and who have no access to, or concern with, such legislation or legislative history, "under God" might mean several different things: that God has guided the destiny of the United States, for example, or

that the United States exists under God's authority. How much consideration anyone gives to the phrase probably varies, since the Pledge itself is a patriotic observance focused primarily on the flag and the Nation, and only secondarily on the description of the Nation.

The phrase "under God" in the Pledge seems, as a historical matter, to sum up the attitude of the Nation's leaders, and to manifest itself in many of our public observances. Examples of patriotic invocations of God and official acknowledgments of religion's role in our Nation's history abound.

At George Washington's first inauguration on April 30, 1789, he

> "stepped toward the iron rail, where he was to receive the oath of office. The diminutive secretary of the Senate, Samuel Otis, squeezed between the President and Chancellor Livingston and raised up the crimson cushion with a Bible on it. Washington put his right hand on the Bible, opened to Psalm 121:1. The Chancellor proceeded with the oath. The President responded, 'I solemnly swear,' and repeated the oath, adding, 'So help me God.' He then bent forward and kissed the Bible before him." M. Riccards, A Republic, If You Can Keep It: The Foundation of the American Presidency, 1700-1800, pp 73-74 (1987).

Later the same year, after encouragement from Congress, Washington issued his first Thanksgiving proclamation, which began:

> "Whereas it is the duty of all Nations to acknowledge the problems of Almighty God, to obey His will, to be grateful for his benefits, and humbly to implore his protection and favor--and whereas both Houses of Congress have by their joint Committee requested me 'to recommend to the People of the United States a day of public thanksgiving and prayer to be observed by acknowledging with grateful hearts the many signal favors of Almighty God especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness.'"

Almost all succeeding Presidents have issued similar Thanksgiving proclamations.

Later Presidents, at critical times in the Nation's history, have likewise invoked the name of God. Abraham Lincoln, concluding his masterful Gettysburg Address in 1863, used the very phrase "under God." Lincoln's equally well known second inaugural address, delivered on March 4, 1865, makes repeated references to God. President Franklin Delano Roosevelt, taking the office of the Presidency in the depths of the Great Depression, concluded his first inaugural address with these words: "In this dedication of a nation, we humbly ask the blessing of God. May He protect each and every one of us! May He guide me in the days to come!"

The motto "In God We Trust" first appeared on the country's coins during the Civil War. Paper currency followed suit at a slower pace; Federal Reserve notes were so inscribed during the decade of the 1960's. Meanwhile, in 1956, Congress declared that the motto of the United States would be "In God We Trust." Our Court Marshal's opening proclamation concludes with the words "'God save the United States and this honorable Court.'" The language goes back at least as far as 1827.

All of these events strongly suggest that our national culture allows public recognition of our Nation's religious history and character. In the words of the House Report that accompanied the insertion of the phrase "under God" in the Pledge: "From the time of our earliest history our peoples and our institutions have reflected the traditional concept that our Nation was founded on a fundamental belief in God."

As pointed out by the Court, California law requires public elementary schools to "conduc[t] . . . appropriate patriotic exercises" at the beginning of the school day, and notes that the "giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy the requirements of this section." The School District complies with this requirement by instructing that "[e]ach elementary school class recite the [P]ledge of [A]llegiance to the [F]lag once each day." Students who object on religious (or other) grounds may abstain from the recitation.

Notwithstanding the voluntary nature of the District policy, the Court of Appeals held that the policy violates the Establishment Clause because it "impermissibly coerces a religious act." To reach this result, the court relied primarily on our decision in *Lee* v. *Weisman*.

I do not believe that the phrase "under God" in the Pledge converts its recital into a "religious exercise" of the sort described in *Lee*. Instead, it is a declaration of belief in allegiance and loyalty to the United States flag and the Republic that it represents. The phrase "under God" is in no sense a prayer, nor an endorsement of any religion, but a simple recognition of the fact noted in H. R. Rep. No. 1693, at 2: "From the time of our earliest history our peoples and our institutions have reflected the traditional concept that our Nation was founded on a fundamental belief in God." Reciting the Pledge, or listening to others recite it, is a patriotic exercise, not a religious one; participants promise fidelity to our flag and our Nation, not to any particular God, faith, or church. The recital, in a patriotic ceremony pledging allegiance to the flag and to the Nation, of the descriptive phrase "under God" cannot possibly lead to the establishment of a religion.

Justice O'Connor, concurring in the judgment.

I join the concurrence of the Chief Justice in full. Like him, I would conclude that the respondent does have standing to bring his constitutional claim before a federal court. Like the Chief Justice, I believe that petitioner school district's policy does not offend the Establishment Clause. I write separately to explain the principles that guide my own analysis of the constitutionality of that policy.

As I have said before, the Establishment Clause "cannot easily be reduced to a single test. When a court confronts a challenge to government-sponsored speech or displays, I continue to believe that the endorsement test "captures the essential command of the Establishment Clause, namely, that government must not make a person's religious beliefs relevant to his or her standing in the political community by conveying a message 'that religion or a particular religious belief is favored or preferred.'" In that context, I repeatedly have applied the endorsement test, and I would do so again here.

In order to decide whether endorsement has occurred, a reviewing court must keep in mind two crucial principles. First, the endorsement test assumes the viewpoint of a reasonable

observer. Given the dizzying religious heterogeneity of our Nation, adopting a subjective approach would reduce the test to an absurdity. Second, the test does not evaluate a practice in isolation from its origins and context. Instead, the reasonable observer must be deemed aware of the history of the conduct in question, and must understand its place in our Nation's cultural landscape.

The Court has permitted government, in some instances, to refer to or commemorate religion in public life. I believe that although these references speak in the language of religious belief, they are more properly understood as employing the idiom for essentially secular purposes. One such purpose is to commemorate the role of religion in our history. In my view, some references to religion in public life and government are the inevitable consequence of our Nation's origins. It is unsurprising that a Nation founded by religious refugees and dedicated to religious freedom should find references to divinity in its symbols, songs, mottoes, and oaths. Eradicating such references would sever ties to a history that sustains this Nation even today.

Facially religious references can serve other valuable purposes in public life as well. For centuries, we have marked important occasions or pronouncements with references to God and invocations of divine assistance. Such references can serve to solemnize an occasion instead of to invoke divine provenance. The reasonable observer, fully aware of our national history and the origins of such practices, would not perceive these acknowledgments as signifying a government endorsement of any specific religion, or even of religion over non-religion.

There are no *de minimis* violations of the Constitution--no constitutional harms so slight that the courts are obliged to ignore them. Given the values that the Establishment Clause was meant to serve, however, I believe that government can, in a discrete category of cases, acknowledge or refer to the divine without offending the Constitution. This category of "ceremonial deism" most clearly encompasses such things as the national motto ("In God We Trust"), religious references in traditional patriotic songs such as the Star-Spangled Banner, and the words with which the Marshal of this Court opens its sessions. These references are not minor trespasses upon the Establishment Clause to which I turn a blind eye. Instead, their history, character, and context prevent them from being constitutional violations at all.

This case requires us to determine whether the appearance of the phrase "under God" in the Pledge of Allegiance constitutes an instance of such ceremonial deism. Although it is a close question, I conclude that it does.

The constitutional value of ceremonial deism turns on a shared understanding of its legitimate nonreligious purposes. That sort of understanding can exist only when a given practice has been in place for a significant portion of the Nation's history, and when it is observed by enough persons that it can fairly be called ubiquitous. By contrast, novel or uncommon references to religion can more easily be perceived as government endorsements because the reasonable observer cannot be presumed to be fully familiar with their origins. As a result, in examining whether a given practice constitutes an instance of ceremonial deism, its "history and ubiquity" will be of great importance.

Fifty years have passed since the words "under God" were added, a span of time that is not inconsiderable given the relative youth of our Nation. In that time, the Pledge has become,

alongside the singing of the Star-Spangled Banner, our most routine ceremonial act of patriotism; countless schoolchildren recite it daily, and their religious heterogeneity reflects that of the Nation as a whole. As a result, the Pledge and the context in which it is employed are familiar and nearly inseparable in the public mind. No reasonable observer could have been surprised to learn that petitioner school district has a policy of leading its students in daily recitation of the Pledge.

"[O]ne of the greatest dangers to the freedom of the individual to worship in his own way [lies] in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services." *Engel* v. *Vitale,* 370 U.S. 421, 429 (1962). Because of this principle, only in the most extraordinary circumstances could actual worship or prayer be defended as ceremonial deism. Any statement that has as its purpose placing the speaker or listener in a penitent state of mind, or that is intended to create a spiritual communion or invoke divine aid, strays from the legitimate secular purposes of solemnizing an event and recognizing a shared religious history.

Of course, any statement *can* be imbued by a speaker or listener with the qualities of prayer. But the relevant viewpoint is that of a reasonable observer, fully cognizant of the history, ubiquity, and context of the practice in question. Such an observer could not conclude that reciting the Pledge, including the phrase "under God," constitutes an instance of worship. I know of no religion that incorporates the Pledge into its canon, nor one that would count the Pledge as a meaningful expression of religious faith. Even if taken literally, the phrase is merely descriptive; it purports only to identify the United States as a Nation subject to divine authority. That cannot be seen as a serious invocation of God or as an expression of individual submission to divine authority. A reasonable observer would note that petitioner school district's policy of Pledge recitation appears under the heading of "Patriotic Observances." Petitioner school district also employs teachers, not chaplains or religious instructors, to lead its students' exercise; this serves as a further indication that it does not treat the Pledge as a prayer.

It is true that some of the legislators who voted to add the phrase "under God" to the Pledge may have done so in an attempt to attach to it an overtly religious message. But their intentions cannot decide our inquiry. First of all, those legislators also had permissible secular objectives in mind. Second--and more critically--the *subsequent* social and cultural history of the Pledge shows that its original secular character was not transformed by its amendment. Whatever the sectarian ends its authors may have had in mind, our continued repetition of the reference to "one Nation under God" in an exclusively patriotic context has shaped the cultural significance of that phrase to conform to that context. Any religious freight the words may have been meant to carry originally has long since been lost.

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson* v. *Valente,* 456 U.S. 228, 244 (1982). No religious acknowledgment could claim to be an instance of ceremonial deism if it explicitly favored one particular religious belief system over another.

The Pledge complies with this requirement. It does not refer to a nation "under Jesus" or "under Vishnu," but instead acknowledges religion in a general way: a simple reference to a generic "God." Of course, some religions--Buddhism, for instance--are not based upon a

belief in a separate Supreme Being. But one would be hard pressed to imagine a brief solemnizing reference to religion that would adequately encompass every religious belief expressed by any citizen of this Nation. The phrase "under God," conceived and added at a time when our national religious diversity was neither as robust nor as well recognized as it is now, represents a tolerable attempt to acknowledge religion and to invoke its solemnizing power without favoring any individual religious sect or belief system.

A final factor that makes the Pledge an instance of ceremonial deism, in my view, is its highly circumscribed reference to God. In most of the cases in which we have struck down government speech or displays under the Establishment Clause, the offending religious content has been much more pervasive. Of course, a ceremony cannot avoid Establishment Clause scrutiny simply by avoiding an explicit mention of God. But the brevity of a reference to religion or to God in a ceremonial exercise can be important for several reasons. First, it tends to confirm that the reference is being used to acknowledge religion or to solemnize an event rather than to endorse religion in any way. Second, it makes it easier for those participants who wish to "opt out" of language they find offensive to do so without having to reject the ceremony entirely. And third, it tends to limit the ability of government to express a preference for one religious sect over another.

The reference to "God" in the Pledge qualifies as a minimal reference to religion; respondent's challenge focuses on only two of the Pledge's 31 words. Moreover, the presence of those words is not absolutely essential to the Pledge. As a result, students who wish to avoid saying the words "under God" still can consider themselves meaningful participants in the exercise if they join in reciting the remainder of the Pledge.

I have framed my inquiry as a specific application of the endorsement test by examining whether the ceremony would convey a message to a reasonable observer, familiar with its history, origins, and context, that those who do not adhere to its literal message are political outsiders. But consideration of these factors would lead me to the same result even if I were to apply the "coercion" test featured in several opinions of this Court. *Santa Fe Independent School Dist.* v. *Doe*, 530 U.S. 290 (2000); *Lee* v. *Weisman*, 505 U.S. 577 (1992).

Any coercion that persuades an onlooker to participate in an act of ceremonial deism is inconsequential, as an Establishment Clause matter, because such acts are simply not religious in character. As a result, symbolic references to religion that qualify as instances of ceremonial deism will pass the coercion test as well as the endorsement test. This is not to say, however, that government could *overtly* coerce a person to participate in an act of ceremonial deism. Leaders in this Nation cannot force us to proclaim our allegiance to *any* creed, whether it be religious, philosophic, or political. That principle found eloquent expression in a case involving the Pledge itself, even before it contained the words to which respondent now objects. See *West Virginia Bd. of Ed.* v. *Barnette*, 319 U.S. 624, 642 (1943) (Jackson, J.). The compulsion of which Justice Jackson was concerned, however, was of the direct sort--the Constitution does not guarantee citizens a right entirely to avoid ideas with which they disagree.

Certain ceremonial references to God and religion in our Nation are the inevitable consequence of the religious history that gave birth to our founding principles of liberty. It

would be ironic indeed if this Court were to wield our constitutional commitment to religious freedom so as to sever our ties to the traditions developed to honor it.

Justice Thomas, concurring in the judgment.

We granted certiorari in this case to decide whether the Elk Grove Unified School District's Pledge policy violates the Constitution. The answer to that question is: "no." But the Court of Appeals reached the opposite conclusion based on a persuasive reading of our precedent, especially *Lee* v. *Weisman*, 505 U.S. 577 (1992). In my view, *Lee* adopted an expansive definition of "coercion" that cannot be defended. The difficulties with our Establishment Clause cases, however, run far deeper than *Lee.*

I would take this opportunity to begin the process of rethinking the Establishment Clause. I would acknowledge that the Establishment Clause is a federalism provision, which, for this reason, resists incorporation. Moreover, as I will explain, the Pledge policy is not implicated by any sensible incorporation of the Establishment Clause, which would probably cover little more than the Free Exercise Clause.

I

I conclude that, as a matter of our precedent, the Pledge policy is unconstitutional. I believe, however, that *Lee* was wrongly decided. *Lee* depended on a notion of "coercion" that has no basis in law or reason. The kind of coercion implicated by the Religion Clauses is that accomplished "by force of law and threat of penalty." Peer pressure, unpleasant as it may be, is not coercion. But rejection of *Lee*-style "coercion" does not suffice to settle this case. Although children are not coerced to pledge, they are legally coerced to attend school. Because what is at issue is state action, the question becomes whether the Pledge policy implicates a religious liberty right protected by the Fourteenth Amendment.

II

I accept that the Free Exercise Clause, which clearly protects an individual right, applies against the States through the Fourteenth Amendment. But the Establishment Clause is another matter. The text and history of the Establishment Clause strongly suggest that it is a federalism provision intended to prevent Congress from interfering with state establishments. It makes little sense to incorporate the Establishment Clause. In any case, I do not believe that the Pledge policy infringes any religious liberty right that would arise from incorporation of the Clause. Because the Pledge policy also does not infringe any free-exercise rights, I conclude that it is constitutional.

A

The Establishment Clause probably prohibits Congress from establishing a national religion. Perhaps more importantly, the Clause made clear that Congress could not interfere with state establishments. Nothing in the text of the Clause suggests that it reaches any further. The Establishment Clause does not purport to protect individual rights. By contrast, the Free Exercise Clause plainly protects individuals against congressional interference with the right to exercise their religion. This textual analysis is consistent with the prevailing view

that the Constitution left religion to the States. History also supports this understanding: At the founding, at least six States had established religions.

Quite simply, the Establishment Clause is best understood as a federalism provision--it protects state establishments from federal interference but does not protect any individual right. These two features independently make incorporation of the Clause difficult to understand.

But even assuming that the Establishment Clause precludes the Federal Government from establishing a national religion, it does not follow that the Clause created or protects any individual right. It is more likely that States and only States were the direct beneficiaries. Moreover, incorporation of this putative individual right leads to a peculiar outcome: It would prohibit precisely what the Establishment Clause was intended to protect--*state* establishments of religion. Nevertheless, the potential right against federal establishments is the only candidate for incorporation.

I would welcome the opportunity to consider more fully the difficult questions whether and how the Establishment Clause applies against the States. One observation suffices for now: As strange as it sounds, an incorporated Establishment Clause prohibits exactly what the Establishment Clause protected--state practices that pertain to "an establishment of religion." We must therefore determine whether the Pledge policy pertains to an "establishment of religion."

B

The traditional "establishments of religion" to which the Establishment Clause is addressed necessarily involve actual legal coercion. Even if "establishment" had a broader definition, one that included support for religion generally through taxation, the element of legal coercion (by the State) would still be present.

It is also conceivable that a government could "establish" a religion by imbuing it with governmental authority, or by "delegat[ing] its civic authority to a group chosen according to a religious criterion," A religious organization that carries some measure of the authority of the State begins to look like a traditional "religious establishment," at least when that authority can be used coercively.

I find much to commend the view that the Establishment Clause "bar[s] governmental preferences for *particular* religious faiths." But the position I suggest today is consistent with this. Legal compulsion is an inherent component of "preferences" in this context.

C

Through the Pledge policy, the State has not created or maintained any religious establishment, and neither has it granted government authority to an existing religion. The Pledge policy does not expose anyone to the legal coercion associated with an established religion. Further, no other free-exercise rights are at issue. It follows that religious liberty rights are not in question and that the Pledge policy fully comports with the Constitution.