
**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DR. REV. MICHAEL NEWDOW, *et al.*,
Plaintiffs-Appellees

v.

U.S.A., *et al.*,
Defendants-Appellants

On Appeal from the United States District Court
for the Eastern District of California

**MOTION OF *AMICUS CURIAE* PACIFIC JUSTICE INSTITUTE IN
SUPPORT OF LEAVE TO FILE LONGER BRIEF; DECLARATION
OF PETER D. LEPISCOPO, ESQ. IN SUPPORT OF MOTION
(*FRAP 29(d), FRAP 27, and FRAP 32*)**

Amicus Curiae Pacific Justice Institute hereby moves the Court for leave to file a brief that exceeds the maximum provided for under F.R.A.P. 29(d) and F.R.A.P. 32.

This motion is based upon F.R.A.P. 29(d), F.R.A.P. 27, and F.R.A.P. 32 and the Declaration of Peter D. Lepiscopo in support hereof, which is attached hereto.

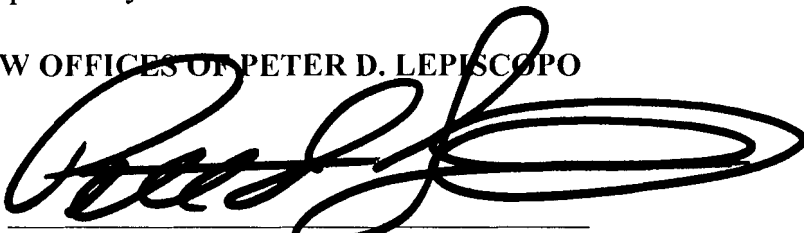
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Dated: May 31, 2006.

Respectfully submitted

LAW OFFICES OF PETER D. LEPISCOPO

By:



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PACIFIC JUSTICE INSTITUTE

**Counsel of Record and Member of the Bar of
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DECLARATION OF PETER D. LEPISCOPO

I, Peter D. Lepiscopo, declare as follows:

1. I am an attorney duly licensed and admitted to practice law within the State of California and I am a member of the Bar of this Court. I represent the *Amicus Curiae* Pacific Justice Institute. I am over the age of eighteen and have personal knowledge of the herein stated matters, and, if called upon as a witness, could and would testify competently and accurately to the herein stated matters.

2. Pursuant to F.R.A.P. 29(a), all parties have provided their consent to *Amicus Curiae* Pacific Justice Institute to file a brief in support of Appellants U.S.A. and Rio Linda Union School District for reversal of the district court's decision.

3. In the first round of litigation regarding the Pledge of Allegiance, I represented Pacific Justice in the United States Supreme Court. See *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1 (2004)(“*Elk Grove*”). Accordingly, I am completely familiar with not only the standing issues that were raised in *Elk Grove*, but also the substantive constitutional law issues (even though those issues were not decided by the Supreme Court).

4. As this case presents important issues of constitutional law, I have carefully reviewed the arguments set forth in Pacific Justice’s *amicus* brief, a copy of which is attached hereto as Exhibit 1. In this regard, I spent considerable time revising and reducing the brief to a more succinct, reduced version. Even so doing, I was only able to reduce the brief to twenty-five **25** pages, which exceeds the page limit provided for by F.R.A.P. 29(d). As I attempted to further reduce it to the fifteen (15) page limit it became disjointed and somewhat incoherent.

The following is an outline of the issues that are addressed in the proposed *amicus* brief:

I. THE PHRASE “*UNDER GOD*” IN THE PLEDGE OF ALLEGIANCE DOES NOT CREATE A JUSTICIABLE CLAIM UNDER THE FIRST AMENDMENT’S ESTABLISHMENT CLAUSE

- A. The Phrase “*Under God*” in the Pledge of Allegiance is Neither a Religious Activity, Profession of Religious Belief, nor Prayer, But is Merely a Restatement of the Political Philosophy Underpinning this Nation’s Form of Government**
- B. As The Phrase “*under God*” In The Pledge Is Not A Religious Act, Profession Of Religious Belief, Or Prayer, It Does Not Contravene The Establishment Clause**

