

Is the Pledge of Allegiance Constitutional?

- **Grade Levels:** 9-12
- **Academic Standards:** Academic Standards for Civics and Government 5.1.12.F, 5.1.12.G and 5.1.12.L.
- **Creator:** This lesson was created by David Hall, North Penn School District; David Oleszek, Downingtown Area High School; and Maureen Willis.

Objectives: As a result of this activity, students will be able to 1) define the establishment clause; 2) summarize the role of the United States Supreme Court in interpreting the constitutionality of laws; and 3) explain the arguments for and against “under God” being in the Pledge of Allegiance. The lesson takes approximately 90 minutes.

Materials:

- *Elk Grove Unified School District v. Newdow*: Facts of the Case
- *Elk Grove Unified School District v. Newdow*: Classifying Arguments in a Case
- The First Amendment of the United States Constitution.

Preparation:

1. Photocopy “Facts of the Case” worksheet, “Classifying Arguments in Case” worksheet, and First Amendment to the U.S. Constitution (1 copy per participant).
2. Write agree on one side of the chalkboard and disagree at the opposite side of the chalkboard.

Procedure:

1. Hand out the First Amendment and read the following to the students, “Congress shall make no laws respecting an establishment of religion.” Explain that these are the only 10 words in the entire U.S. Constitution regarding establishing religion.

Discussion:

1. What does it mean for the government to establish a religion?
2. Explain why this was important to include in the U.S. Constitution.
3. Is it unconstitutional for the principal of our school to read a prayer from the New Testament every morning over the school’s announcements? Explain. *The U.S. Supreme has said that the answer to this question is yes.*
4. Is it unconstitutional for a member of the clergy to be invited by the school to speak and invoke a higher spiritual being at a junior high school graduation? Explain. *The U.S. Supreme has said that the answer to this question is yes.*

Explain that these ten words from the First Amendment, and the way in which they are interpreted, are known as the Establishment Clause.

2. Distribute the “Facts of the Case” worksheet. Read it to students.

3. Ask the students if having the words ‘under God’ included in the Pledge of Allegiance is a violation of the Establishment Clause of the U.S. Constitution? Ask a specific student to stand on your agree/disagree continuum. If that student feels that “under God” violates the U.S. Constitution, then he/she should stand by agree. If that student feels that the phrase is constitutional, he/she should stand by disagree. Students also can pick degrees of agree/disagree depending on where they choose to stand. A student who is undecided can stand in the middle.
4. After the student explains his/her reasoning, invite other students to stand on the continuum and explain their views. Eventually the entire class should be standing along the continuum.
5. After students have clearly expressed their opinions, break them into three groups: attorneys for Newdow; attorneys for the U.S. Congress; and justices of the U.S. Supreme Court (nine justices sit on the U.S. Supreme Court – but teachers may want to use eight or another even number since Justice Scalia has recused himself).
6. Have groups sit together. Distribute the “Classifying Arguments in a Case” worksheet. Review with them which arguments help Newdow and which arguments help the U.S. Congress.
7. Instruct the groups representing Newdow and the U.S. Congress to choose three to four attorneys out of their group to argue the case. Each attorney will get one minute for oral arguments. Instruct the justices to develop questions regarding this case and the Establishment Clause. Explain that attorneys from each side will argue their cases, and that the justices then will direct questions at the attorneys.
8. Allow groups time to work on their oral arguments or questions.
9. The attorneys for Newdow will present their case.
10. The attorneys for the U.S. Congress will present their case.
11. The U.S. Supreme Court justices will ask questions.
12. Each justice will explain which side he/she is voting for and why.
13. After the verdict is read, ask the following discussion questions:
 1. Attorneys: How did it feel while your side was making its case?
 2. All others: What arguments did you make that you feel were most convincing?
 3. What arguments did your opponents make that you found compelling?
 4. How do you expect the general public to respond to the U.S. Supreme Court’s verdict?