

1. The Plaintiff, American Humanist Association (hereinafter "AHA"), is a nonprofit 501 (c)(3) organization incorporated in Illinois with a principal place of business at 1777 T Street N.W., Washington, District of Columbia.
2. The Plaintiff, John Doe, is a resident of Aberdeen Township, Monmouth County, State of New Jersey.
3. The Plaintiff, Jane Doe, is a resident of Aberdeen Township, Monmouth County, State of New Jersey.
4. The Plaintiffs John Doe and Jane Doe are husband and wife, citizens of the United States of America, and they bring this action individually and as parents and next friends of Doechild, a minor, who resides with them in Aberdeen Township, Monmouth County, State of New Jersey.
5. The Defendant, Matawan-Aberdeen Regional School District, is a public school system in Aberdeen, Monmouth County, State of New Jersey.
6. The Defendant, David M. Healy, as Superintendent of Schools, is chief executive officer of the Matawan-Aberdeen Regional School District, and is responsible for enforcing all provisions of law and all rules and regulations relating to management of the public schools within the Matawan-Aberdeen Regional School District.

FACTS

7. The Plaintiffs John Doe, Jane Doe, and Doechild hold and affirm religious views that are Humanist. With regard to the existence of a divinity, John Doe and Jane Doe are atheists, as they do not accept the existence of any type of God or gods.

8. The Plaintiff AHA is a national nonprofit 501 (c)(3) organization with over 24,800 members and over 180 chapters and affiliates nationwide (7 of which are in New Jersey). The AHA

promotes Humanism and defends the rights of Humanists and other non-theistic individuals. The AHA's mission is to advocate progressive values and equality for Humanists, atheists, and freethinkers. Among these members and supporters are numerous parents of children who are, or will be, attending New Jersey public schools, including some who attend or will be attending the public schools of the Matawan-Aberdeen Regional School District.

9. Whereas atheism is a religious view that essentially addresses only the specific issue of the existence of a deity, the Humanism affirmed by the Does is a broader religious world view that includes, in addition to a non-theistic view on the question of deities, an affirmative naturalistic outlook; an acceptance of reason, rational analysis, logic, and empiricism as the primary means of attaining truth; an affirmative recognition of ethical duties; and a strong commitment to human rights.

10. Humanism encompasses a variety of nontheistic views (atheism, agnosticism, rationalism, naturalism, secularism) while adding the important element of a comprehensive worldview and set of ethical values – values that are grounded in the philosophy of the Enlightenment, informed by scientific knowledge, and driven by a desire to meet the needs of people in the here and now.

11. Humanist principles are promoted and defended by formal organizations such as the AHA (which provides a statement of Humanist principles in a document known as "Humanism and Its Aspirations," signed by 21 Nobel laureates and thousands of others), as well as the International Humanist and Ethical Union (which provides a statement of Humanist principles known as "The Amsterdam Declaration").

12. Humanism also has formal religious structure, with clergy (usually known as "celebrants" who perform Humanist weddings, funerals, baby-welcoming ceremonies, counseling,

and other functions commonly performed by clergy), chaplains (including a Humanist Chaplain at Rutgers University), and with formal entities dedicated to the practice of religious Humanism, such as the American Ethical Union (based on the Ethical Culture movement founded by Felix Adler in 1876) and the Society for Humanistic Judaism (founded by Rabbi Sherwin Wine in 1969), among others. Religious Humanism also has a strong history and continuing tradition within the Unitarian Church (now formally known as the Unitarian Universalist Association).

13. Jane Doe and John Doe are members of the AHA and other national and local Humanist and atheist organizations.

14. Atheists, as a class in the United States and in New Jersey, do not enjoy favorable public sentiments. Surveys, such as a study by the University of Minnesota published in American Sociological Review in April 2006, have ranked atheists as the most disliked and distrusted minority group in the country, ranking below recent immigrants, Muslims, and gays and lesbians.

15. Jane Doe and John Doe have personally experienced the public's prejudice against atheists, as they have frequently heard and read strong public opinions disfavoring atheists and atheism. They have been told directly that atheists are "arrogant for not believing in God."

16. As a result, each of them has at times felt marginalized by the widespread public disapproval of atheism, hesitant to openly express their religious beliefs, and hesitant to identify openly as atheists and Humanists, for fear of public hostility, ostracism, and other negative reaction.

17. Doechild is also aware of unfavorable public attitudes toward atheism, and in fact has been personally confronted and shouted at in response to his openly identifying as atheist.

18. Humanism, while not aggressively evangelical, encourages a willingness in its adherents to be open about one's Humanism, including the non-theistic aspect of it. The Does and

many Humanists (as well as atheists) are sometimes hesitant to be open about their non-belief, because public hostility toward atheists is so great.

19. Doechild attends public schools in the Matawan-Aberdeen Regional School District.

20. New Jersey statute [N.J. Stat. Ann. §18A:36-3(c)] requires public schools to conduct a daily flag-salute exercise that includes recitation of the Pledge of Allegiance to the Flag (hereinafter “the Pledge”).

21. Said statute states in part that: “Every board of education shall: (c) Require the pupils in each school in the district on every school day to salute the United States flag and repeat the following 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, under God, indivisible, with liberty and justice for all,’ which salute and pledge of allegiance shall be rendered with the right hand over the heart, except that pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress.”

22. The school attended by the plaintiff Doechild regularly conducts the flag-salute exercise, including group recitation of the Pledge, each day pursuant to N.J. Stat. Ann. §18A:36-3(c) and regular school policy and practice.

23. By affirming that the United States is one nation “under God,” the daily classroom Pledge recitation directly contradicts the religious beliefs and principles of the plaintiffs. Jane Doe, John Doe and Doechild embrace a Humanist world view and do not believe that any God exists or that any country is “under God.” Despite this, on a daily basis the Defendants’ public schools

assert, through an official, school-sponsored, patriotic exercise, that in fact the Does' religious views are wrong.

24. Just as America's Jews, Hindus, and Muslims would feel excluded, marginalized and stigmatized if they were told by their government on a daily basis that the United States is one nation "under Jesus," and just as America's Christians would feel excluded, marginalized and stigmatized if a daily classroom exercised declared that the nation is "under no God," so do the Does feel about their government affirming to them through a regular public school exercise that their country is "under God."

25. The continued daily, school-sponsored affirmation in public schools, where the minds and opinions of young citizens are shaped, that the United States is "under God" portrays God-belief as patriotic and atheism as less patriotic and even unpatriotic.

26. The continued daily, school-sponsored affirmation in public schools, where the minds and opinions of young citizens are shaped, that the United States is "under God" marginalizes Plaintiffs and reinforces the general public prejudice against atheists and Humanists, as it necessarily classifies them as outsiders and defines them as second-class citizens.

27. While Plaintiffs recognize that Doechild has the right to refuse participation in the flag-salute exercise and Pledge recitation, the child does not wish to be excluded from it, and in fact wants to be able to participate in an exercise that does not portray other religious groups as first-class citizens and his own as second-class.

28. Plaintiffs have suffered and continue to suffer actual harm as a direct and proximate result of the Defendants' policies and actions of conducting the regular classroom Pledge exercise as described, for the exercise publicly disparages Plaintiffs' religious beliefs, calls Plaintiffs' patriotism into question, portrays Plaintiffs as outsiders and second-class citizens, and forces

Dochild to choose between nonparticipation in a patriotic exercise or participation in a patriotic exercise that is invidious to him and his religious class.

29. Though the Pledge was originally written in 1892, the words “under God” were not added to it until 1954.

30. The language “under God” was added to the Pledge at the height of the McCarthy era and the Red Scare, after strong lobbying by religious groups, at a time when many felt it would help to distinguish America from the communist Soviet Union. Prior to 1954, the Pledge was worded without any theistic language, as follows: “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.”

31. The Soviet Union fell in 1991, and the need, if there ever was any, to distinguish America in this manner from communist adversaries no longer exists.

32. Public prejudice against atheists and Humanists is both wrong and unfair. Extensive data indicates that atheism and Humanism do not correlate to an increase in social or personal ills, and in fact the reverse is often true. For example:

a. More secular societies (where surveys indicate higher percentages of individuals identifying as atheist or Humanist and/or claiming no god-belief) tend to have lower rates of violent crime than more conservatively religious societies. This can be seen both internationally (for example, compare the United States, which is relatively religious, to Western Europe or Scandinavia, where secularism is much more prevalent) and within the United States (compare so-called “Bible-belt” states, for example, to regions where religious conservatism is less predominant).

b. More secular societies and individuals tend to have lower rates of teen pregnancy.

- c. More secular societies and individuals tend to have higher rates of education.
- d. Surveys have found that atheists are less likely than average to be racist, anti-Semitic, gender-biased, ethnocentric, and authoritarian.

33. Even if the State of New Jersey or the public schools have a legitimate public interest in promoting civic responsibility, patriotism, love of country, and other similar goals through a daily classroom exercise of some kind, there is no rational basis (let alone compelling reason) for doing so with group recitation of a pledge that affirmatively declares the nation to be “under God.” In fact, until 1954, throughout the country those public interests were achieved very well with the inclusive, nonreligious Pledge (which means that the nonreligious, inclusive version of the Pledge was used during two victorious world wars and the Great Depression).

34. Even if the State of New Jersey or the public schools have a legitimate public interest in acknowledging the nation’s religious heritage within a daily public school flag-salute ceremony, the nation’s religious heritage can be acknowledged in a manner that does not discriminate against Plaintiffs and other atheists and Humanists, in a manner that does not affirmatively assert the theological claim that the nation is in fact “under God.”

35. Acknowledging a religious heritage by asserting such a theological claim serves no rational or compelling governmental interest, and in fact affirmatively discriminates against those who hold contrary religious beliefs.

36. The pledge’s “under God” language sends a message to public school children, and indeed to the general public, that the government favors belief in God.

37. Negative public attitudes toward atheists are also unjustified when considered together with American religious demographics, which show that the nonreligious population is a significant portion of the American landscape. According to the 2008 American Religious Identity Survey

(ARIS) conducted by Trinity College of Hartford, Connecticut, which is recognized as a respected authority on religious demographics, only about 69.5 percent of Americans express a belief in a personal God, while another 12.1 percent express belief in a “higher power.” Moreover, in the same survey approximately 15 percent of Americans answered “None” when asked for religious affiliation, a figure nearly double that of 1990. This is a figure that is significantly more than Mormons, Muslims, Jews, Episcopalians, and Methodists *combined*, and it is the only major category of religious identification to show any growth during said time period. More recent polling by Pew reveals that the religiously unaffiliated segment of society has grown even larger since the 2008 ARIS survey.

38. Prejudice against atheists is further evidenced by the fact that many states still have laws that prohibit atheists from holding public office. These states include:

- a. Arkansas, Article 19, Section 1: No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any Court.
- b. Maryland, Article 37: That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.
- c. Mississippi, Article 14, Section 265: No person who denies the existence of a Supreme Being shall hold any office in this state.
- d. North Carolina, Article 6, Section 8: The following persons shall be disqualified for office: Any person who shall deny the being of Almighty God.

- e. South Carolina, Article 17, Section 4: No person who denies the existence of a Supreme Being shall hold any office under this Constitution.
- f. Tennessee, Article 9, Section 2: No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.
- g. Texas, Article 1, Section 4: No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

39. Although the Does have no desire to evangelize their Humanism and atheism, they strongly desire to be treated equally, not as second-class citizens, by their government and school system.

40. The discrimination experienced by the Does is also experienced by other public school teachers, students, and parents, across the State of New Jersey, individuals whose situation is substantially similar to that of the Does, in that they are also subjected to N.J. Stat. Ann. §18A:36-3(c), and regular Pledge recitation with “under God” wording.

41. Plaintiffs hereby affirmatively state that they make no federal claims of any kind.

COUNT I
Dochild
 Equal Protection Rights
 Under the Constitution of the State of New Jersey
 Declaratory and Injunctive Relief

42. The Plaintiff, Dochild, a minor by parents and next friends, hereby repeats, realleges, and incorporates by reference Paragraphs 1 through 41 as if fully and expressly stated herein.

43. New Jersey has a high standard of equality in its law: “New Jersey has always been in the vanguard in the fight to eradicate the cancer of unlawful discrimination of all types from our society.” *Peper v. Princeton University Board of Trustees*, 77 N.J. 55, 80 (1978). “Equality of treatment is a dominant theme of our laws and a central guarantee of our State Constitution, and fitting for a State with so diverse a population. The New Jersey Constitution not only stands apart from other state constitutions, but also ‘may be a source of ‘individual liberties more expansive than those conferred by the Federal Constitution.’” *Lewis v. Harris*, 188 N.J. 415, 456 (2006).

44. The New Jersey Constitution, Article 1, ¶ 5 holds that: “No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.”

45. Religion is a suspect classification, meaning that governmental actions discriminating on the basis of religion, such as the actions described herein, are subject to strict scrutiny.

46. Moreover, as an atheist and Humanist, Doechild belongs to a class of individuals whose religious beliefs and identity make them the target of significant prejudice and discrimination, further warranting a strict scrutiny standard.

47. The Defendants, by continuing a policy and practice through their agents, servants, and employees of regular, school-sponsored recitation of the “Pledge of Allegiance to the Flag” in a form including the “under God” language, wrongfully discriminate against the Plaintiff, Doechild, and violate the Plaintiff’s rights to Equal Protection, unjustifiably creating an official public atmosphere of disapproval of the religious views of the Plaintiff, causing the Plaintiff to feel marginalized and not fully accepted, suggesting that the Plaintiff is an outsider and not fully part of

the mainstream society, portraying Plaintiff as a second-class citizen, and contributing to public hostility toward the Plaintiff's religious class and religious views.

48. The Defendants' policy and practice of regular recitation of the Pledge with "under God" language disadvantages Doechild.

WHEREFORE, the Plaintiff demands relief as follows:

a. That this Honorable Court declare that regular, officially sponsored recitation of the "Pledge of Allegiance to the Flag" in a form including "under God" language in New Jersey public schools, whether conducted pursuant to N.J. Stat. Ann. §18A:36-3(c), or any other governmental policy or practice, is unconstitutionally violative of the Equal Protection rights of the Plaintiff and other atheists and Humanists under the Constitution of the State of New Jersey.

b. That this Honorable Court order the Defendants to take necessary steps to ensure that regular, officially sponsored recitation of the "Pledge of Allegiance to the Flag" in a form including "under God" language immediately cease in the Defendants' public schools.

c. That this Honorable Court order that, should the Defendants decide to have any type of regular flag-salute or similar exercise to instill values of patriotism and good citizenship, or for any other purpose, said exercise shall not include any official affirmations as to the existence or non-existence of a divinity.

d. Nominal damages.

e. Attorneys fees and costs.

f. Any other relief that this Honorable Court deems appropriate.

COUNT II

Jane Doe and John Doe, individually

Equal Protection Rights

Under the Constitution of the State of New Jersey

Declaratory and Injunctive Relief

49. The Plaintiffs, Jane Doe and John Doe, hereby repeat, reallege, and incorporate by reference Paragraphs 1 through 48 as if fully and expressly stated herein.

50. New Jersey has a high standard of equality in its law: “New Jersey has always been in the vanguard in the fight to eradicate the cancer of unlawful discrimination of all types from our society.” *Peper v. Princeton University Board of Trustees*, 77 N.J. 55, 80 (1978). “Equality of treatment is a dominant theme of our laws and a central guarantee of our State Constitution, and fitting for a State with so diverse a population. The New Jersey Constitution not only stands apart from other state constitutions, but also ‘may be a source of ‘individual liberties more expansive than those conferred by the Federal Constitution.’” *Lewis v. Harris*, 188 N.J. 415, 456 (2006).

51. The New Jersey Constitution, Article 1, ¶ 5 holds that: “No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.”

52. Governmental actions discriminating on the basis of religion, such as those described herein, are subject to strict scrutiny.

53. Moreover, as atheists and Humanists, the Plaintiffs Jane Doe and John Doe belong to a class of individuals whose religious beliefs and identity make them the target of significant prejudice and discrimination, further warranting a strict scrutiny standard.

54. The Defendants, by continuing a policy and practice through their agents, servants, and employees of regular classroom recitation of the “Pledge of Allegiance to the Flag” with language affirming that the nation is “under God,” in the classroom attended by the child of Jane Doe and John Doe, wrongfully discriminate against Plaintiffs and violate Plaintiffs’ rights to Equal

Protection, unjustifiably creating an official public atmosphere of disapproval of the religious views of the Plaintiffs, causing the Plaintiffs be marginalized and not fully accepted, casting Plaintiffs (and their child and religious class) as second-class citizens, suggesting that the Plaintiffs and their child are outsiders and not fully part of the mainstream society, and contributing to public hostility toward Plaintiffs' religious class and religious views.

55. The Defendants' policy and practice of regular state-sponsored classroom recitation of the Pledge with "under God" language disadvantages the Plaintiffs, their child, and their class.

WHEREFORE, the Plaintiffs demand relief as follows:

- a. That this Honorable Court declare that regular, officially sponsored recitation of the "Pledge of Allegiance to the Flag" in a form including "under God" language in New Jersey public schools, whether conducted pursuant to N.J. Stat. Ann. §18A:36-3(c), or any other governmental policy or practice, is unconstitutionally violative of the Equal Protection rights of the Plaintiffs and other atheists and Humanists under the Constitution of the State of New Jersey.
- b. That this Honorable Court order the Defendants to take necessary steps to ensure that regular, officially sponsored recitation of the "Pledge of Allegiance to the Flag" in a form including "under God" language immediately cease in the Defendants' public schools.
- c. That this Honorable Court order that, should the Defendants decide to have any type of regular flag-salute or similar exercise to instill values of patriotism and good citizenship, said exercise shall not include any affirmations as to the existence or non-existence of a divinity.
- d. Nominal damages.
- e. Attorneys fees and costs
- f. Any other relief that this Honorable Court deems appropriate.

COUNT III
American Humanist Association
Equal Protection Rights
Under the Constitution of the State of New Jersey
Declaratory and Injunctive Relief

56. The Plaintiff, AHA, hereby repeats, realleges, and incorporates by reference Paragraphs 1 through 55 as if fully and expressly stated herein.

57. AHA members who are or may become New Jersey public school teachers, parents, and students, as atheists and Humanists, would otherwise have standing to sue in their own right. The interest that the AHA seeks to protect is germane to the AHA's purpose. Neither the claims asserted nor the relief requested requires participation of AHA's individual members in the suit.

58. Said AHA members belong to a class of individuals whose religious beliefs make them the target of significant prejudice and discrimination.

59. As members of this religious class, said AHA members are entitled to Equal Protection under the Constitution of the State of New Jersey.

60. Religion is a suspect classification, meaning that governmental actions discriminating on the basis of religion, such as those described herein, are subject to strict scrutiny.

61. The Defendants and other public schools in New Jersey, by continuing a policy and practice through their agents, servants, and employees of regular recitation of the "Pledge of Allegiance to the Flag" with language affirming that the nation is "under God," wrongfully discriminate against Humanists and atheists and violate the rights of Humanists and atheists to Equal Protection, unjustifiably creating an official public atmosphere of disapproval of Atheist/Humanist religious views, causing Humanists and atheists to become marginalized and not fully accepted, suggesting that Humanists and atheists are outsiders and not fully part of the

mainstream society, and contributing to public hostility toward the atheist and Humanist religious class.

62. The policy and practice of regular recitation in public schools of the Pledge with “under God” language wrongfully disadvantages the class represented by the Plaintiff AHA and implicates fundamental constitutional rights of said class.

WHEREFORE, the Plaintiff demands relief as follows:

a. That this Honorable Court declare that regular, officially sponsored recitation of the “Pledge of Allegiance to the Flag” with language affirming that the nation is “under God,” whether conducted pursuant to N.J. Stat. Ann. §18A:36-3(c), or any other governmental policy or practice, is unconstitutionally violative, under the Constitution of the State of New Jersey, of the Equal Protection rights of atheists and Humanists and the class represented by the Plaintiff.

b. That this Honorable Court order the Defendants to take necessary steps to ensure that regular, officially sponsored recitation of the “Pledge of Allegiance to the Flag” with language affirming that the nation is “under God,” language immediately cease in the Defendants’ public schools.

c. That this Honorable Court order that, should the Defendants decide to have any type of regular flag-salute ceremony or similar exercise to instill values of patriotism and good citizenship, said ceremony or exercise shall not include any affirmations as to the existence or non-existence of a divinity.

d. Nominal damages.

e. Attorneys fees and costs.

f. Any other relief that this Honorable Court deems appropriate.

The Plaintiffs,
American Humanist Association,
and John Doe and Jane Doe, individually
and as parents and next friends of Doechild,
By their attorney,



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