

# BOISI CENTER INTERVIEWS



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**MICHAEL NEWDOW** is a lawyer, physician and First Amendment activist whose legal challenge to the words “under God” in the Pledge of Allegiance reached the Supreme Court in 2004. He spoke with Boisi Center associate director **Erik Owens** before participating in a panel on religious freedom and the pledge of allegiance.

**OWENS:** What do you think is the function of a pledge of allegiance—not just the American version, but a pledge of allegiance as such?

**NEWDOW:** The function of a pledge, I think, is to get people to respect their form of government. Now, I’m not a big pledger; I’m not into group-speak. But I accept the fact that we have a pledge, and I have no objections to it except for the two words “under God.”

**OWENS:** It seems to me that this pledge is a form of civic education to conform people’s ideas of what America ought to be or what we are as citizens. Beyond the words that are there, does the pledge point to a certain mode of citizenship in your mind—a particular vision of America—or is this nation so diverse that you can’t say that?

**NEWDOW:** I think the words stand for noble ideas that few people would be against. The pledge’s purpose was to unify us, to make us think that this nation has some especially noble and good qualities that we defend. What I don’t like about this is that it implies that other countries aren’t as good as ours. I think our form of government may well be the best, but it doesn’t follow that we as Americans are superior to citizens of other nations.

**OWENS:** Do you think it’s appropriate to use the pledge in naturalization ceremonies or VFW meetings or other such gatherings?



**NEWDOW:** In any private meeting, there’s no problem whatsoever, because individuals can do whatever they want. There are two questions here. One is my personal view on pledging, and the other is the constitutional issue. The latter is all I’m trying to argue. Constitutionally, I think the government can ask its citizens to affirm any values that the majority chooses, except those that are prohibited by the Constitution. There’s really one that matters more than any and that’s religion. The government is not allowed to

say what is a correct religious view. That’s my objection to the words “under God” appearing in the pledge.

**OWENS:** Was your legal challenge to the school policy of the pledge or was it to the pledge as such?

**NEWDOW:** The challenge was to the pledge as such—to the idea that the government of the United States essentially says there is a God. If you say we are “under God,” it implies there’s a God. Because I’m an atheist, that turns me into a second-class citizen, and it perpetuates the animus against atheists that I think is pretty pervasive. And it needs to change. I’m a citizen of this state and of this country, and I go to civic gatherings where they say the pledge—for instance, school board meetings. If I want to run for public office, I can’t win, because the government is essentially telling people not to vote for me. And I have a daughter in school, and I want to know she’s not being indoctrinated with religion there.

**OWENS:** So your arguments against the words “under God” don’t only rest on the coercion test?

**NEWDOW:** There are several establishment clause tests, and as far as I’m concerned, no matter which one you apply, the words would have to be removed from the pledge. The argument that is used regarding public schools is usually

the coercion test, which is actually an extreme test. Coercion is about the free exercise realm of the religion clauses, and the Supreme Court has stated clearly that this is an establishment clause violation. I think it is coercive, especially with little kids. There's no question; by that test, it fails. But it also fails by any other test.

**OWENS:** There is no question that the phrase "under God" is religious. But a lot of people have argued that this is ceremonial deism and therefore, because it's ceremonial, it's not religious beliefs, let alone a requirement to affirm religious beliefs. Can you comment on this idea and on the argumentative posture religious people assume when they say this?

**NEWDOW:** Why do religious people make this argument? It's an issue of equality. No one is asking for special favors for atheists; we're simply asking to be treated equally. That's why we have an establishment clause, and this claim about ceremonial deism shows that we need it. If you look at what Congress said in 1954, there was nothing about it being ceremonial. They were talking about believing in the Christian God. Maybe you could stretch it to the Judeo-Christian God, but it certainly was a particular view of God. The appeal to the founding fathers and their dedication to the Almighty is not historically accurate. This isn't ceremonial; it is religious belief in a supreme being, and that's what everybody had in mind until it got challenged. Then all of sudden, they come up with these bogus excuses.

**OWENS:** One of the other arguments is that perhaps "under God" was religious in that context, but no one believes it anymore. So it doesn't really matter; there's no harm given by this "religious" expression. How do you respond to that?

**NEWDOW:** I think Justice Souter made that argument, and I'm not sure even he believed it. He may have just been posing the question. The fact is, the phrase "under God" bothers some people. The people for whom it is not meaningless

are either the people who want it there because it's religious or the people who don't want it there because it's religious. Either way, it sounds religious to me. So get it out of there.

**OWENS:** You've filed a lawsuit trying to strike the national motto—In God We Trust—from our currency for the same reason, that it violates the establishment clause. Can you differentiate that case from the pledge case?

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**NEWDOW:** One difference is that religious people ought to be against having the motto on currency. A minister of a church might say, "I can't collect money in my church because we refuse to take money that says *In God we Trust*. It's sacrilege." But the biggest difference is that there is no context in which you are required to read money out loud, whereas you actually stand up and affirmatively voice the pledge, which includes the statement that we are a nation under God. You can opt out of doing this, but that's not the issue. In the end, both

cases are clear violations of the principles I'm emphasizing.

**OWENS:** In your opinion, are there any tolerable examples of government speech or action that mention God—for example, military chaplains, prison chaplains, holiday displays on public properties?

**NEWDOW:** I don't want the government to be forbidden from talking about religion, or anything like that. But I'm against religious holiday displays on public properties, because when this happens, the government is taking a side in the biggest controversy of religious dogma: whether or not God exists. It's saying, yes, God does exist.

I have no problem with supplying chaplains in the military, because I don't have a problem with giving military members the option to have spiritual assistance. However, the fact that Congress has official chaplains seems a little bizarre to me.

**OWENS:** Would teaching about religion in schools be acceptable to you?

**NEWDOW:** Absolutely. But only if it's from a neutral standpoint, to explain what the different religions are. Teachers shouldn't be claiming that Jesus is good or Buddhism is wonderful.

**OWENS:** Do you think we have the tools we need to deal with church-state relations in the United States today?

**NEWDOW:** I think we need to read the Constitution. The public can talk about anything it chooses in terms of religion. That's a free exercise question. But the government is not the public square; government is forbidden to take a position. That needs to be crystal-clear.

**OWENS:** A common reaction to your pledge lawsuit is that you are trying to take away the right of a majority of Americans to express their religious beliefs.

**NEWDOW:** If you can find a single sentence where I've suggested that any individual or group is forbidden from ex-

exercising its religious beliefs, I hope you'll point it out. And I don't want the pledge to deny that God exists. That would be just as wrong as saying "one nation, under God." I'm asking for "one nation, indivisible," which is what we had before.

**OWENS:** This issue exemplifies the challenge of protecting minority rights against the wishes of a majority. This has been a constant challenge in American history. Do you think any other country provides a model we could follow?

**NEWDOW:** Well, I'm not an authority on other nations, though I know about France and Canada and England. But I actually think ours is a perfect model—it just needs to be adhered to. If you ask Americans whether they want "under God" in the Pledge of Allegiance, 90% may say yes, but if you ask whether people think the government should treat all religious views equally, I think you'd get close to 100%. And when we point that out that we're not treating people equally when government takes a position, lots of people say oh, I see it now, I'm with you. Some Christian and Jewish clergy are on my side in this because they understand that it's not about belief or disbelief in God. It's about belief or disbelief in equality.

**OWENS:** My last two questions are more personal. How do your own religious beliefs, or non-religious beliefs, influence your arguments?

**NEWDOW:** Politically and legally, my beliefs don't influence my arguments at all. I argue not as an atheist, but as a citizen. But once it gets out that I'm an atheist...well, let's just say there's prejudice against atheists in this society. And in terms of voting, half the population still refuses to vote for an atheist. I think that is a reflection of the fact that the government keeps reinforcing religion with things like the national motto and the pledge.



**OWENS:** What was it like to argue for your religious freedom before the Supreme Court?

**NEWDOW:** I did 11 moot courts to practice before I argued the case before the Supreme Court, and I had only had one oral argument before that in my life. So the Supreme Court actually felt like another moot court, just with bigger chairs and older judges. For a moment it was intimidating, but then I got into my argument, into the issue, and I quickly forgot who I was talking to.

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