SUPREME COURT OF THE UNITED STATES

No. 02–1624

ELK GROVE UNIFIED SCHOOL DISTRICT AND DAVID W. GORDON, SUPERINTENDENT, PETITIONERS *v.* MICHAEL A. NEWDOW ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 14, 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 obvious importance of that decision, we granted certiorari to review the First Amendment issue and, preliminarily, the question whether Newdow has standing to invoke the jurisdiction of the federal courts. We conclude that Newdow lacks standing and therefore reverse the Court of Appeals' decision.

I

"The very purpose of a national flag is to serve as a symbol of our country," *Texas* v. *Johnson,* 491 U. S. 397, 405 (1989), and of its proud traditions "of freedom, of equal

opportunity, of religious tolerance, and of good will for other peoples who share our aspirations," *id.*, at 437 (STEVENS, J., dissenting). As its history illustrates, the Pledge of Allegiance evolved as a common public acknowledgement 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 widely circulated 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."[1] In the 1920's, the National Flag Conferences replaced the phrase "my Flag" with "the flag of the United States of America."

In 1942, in the midst of World War II, 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." Chapter 435, 56 Stat. 377. 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 ren-

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[1] J. Baer, The Pledge of Allegiance: A Centennial History, 1892–1992, p. 3 (1992) (internal quotation marks omitted). At the time, the phrase "one Nation indivisible" had special meaning because the question whether a State could secede from the Union had been intensely debated and was unresolved prior to the Civil War. See J. Randall, Constitutional Problems Under Lincoln 12–24 (1964). See also W. Rehnquist, Centennial Crisis: The Disputed Election of 1876, p. 182 (2004).

> dered 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." *Id.*, at 380.

This resolution, which marked the first appearance of the Pledge of Allegiance in positive law, 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, ch. 297, 68 Stat. 249. The House Report that accompanied the legislation 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." H. R. Rep. No. 1693, 83d Cong., 2d Sess., p. 2 (1954). 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." 4 U. S. C. §4.

II

Under California law, "every public elementary school" must begin each day with "appropriate patriotic exercises." Cal. Educ. Code Ann. §52720 (West 1989). The statute provides that "[t]he giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy" this requirement. *Ibid.* The Elk Grove Unified School District has implemented the state law by requir-

ing that "[e]ach elementary school class recite the pledge of allegiance to the flag once each day."[2] 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 in the United States District Court for the Eastern District of California 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.[3] App. 24. 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. Styled as a mandamus action, 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." *Id*., at 42, ¶ 53. 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,[4] as well as an injunction against the

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[2] Elk Grove Unified School District's Policy AR 6115, App. to Brief for United States as Respondent Supporting Petitioners 2a.

[3] Newdow also named as defendants the Sacramento Unified School District and its superintendent on the chance that his daughter might one day attend school in that district. App. 48. The Court of Appeals held that Newdow lacks standing to challenge that district's policy because his daughter is not currently a student there. *Newdow* v. *U. S. Congress*, 328 F. 3d 466, 485 (CA9 2003) *(Newdow III)*. Newdow has not challenged that ruling.

[4] The First Amendment provides in relevant part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U. S. Const., Amdt. 1. The Religion Clauses apply to the States by incorporation into the Fourteenth Amendment.

School District's policy requiring daily recitation of the Pledge. *Id.*, at 42. It alleges that Newdow has standing to sue on his own behalf and on behalf of his daughter as "next friend." *Id.*, at 26, 56.

The case was referred to a Magistrate Judge, whose brief findings and recommendation concluded, "the Pledge does not violate the Establishment Clause." *Id.*, at 79. The District Court adopted that recommendation and dismissed the complaint on July 21, 2000. App. to Pet. for Cert. 97. The Court of Appeals reversed and issued three separate decisions discussing the merits and Newdow's standing.

In its first opinion the appeals court unanimously 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." *Newdow* v. *U. S. Congress*, 292 F. 3d 597, 602 (CA9 2002) *(Newdow I).* That holding sustained Newdow's standing to challenge not only the policy of the School District, where his daughter still is enrolled, but also the 1954 Act of Congress that had amended the Pledge, because his "'injury in fact'" was "'fairly traceable'" to its enactment. *Id.*, at 603–605. On the merits, over the dissent of one judge, the court held that both the 1954 Act and the School District's policy violate the Establishment Clause of the First Amendment. *Id.*, at 612.

After the Court of Appeals' initial opinion was announced, Sandra Banning, the mother of Newdow's daughter, filed a motion for leave to intervene, or alternatively to dismiss the complaint. App. 82. 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

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See *Cantwell* v. *Connecticut,* 310 U. S. 296, 303 (1940).

represent [the daughter's] legal interests and make all decision[s] about her education" and welfare. *Id.*, at 82, ¶¶ 2–3. 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, or to its reference to God. *Id.*, at 83, ¶ 4. 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. *Id.*, at 85, ¶ 10. Banning accordingly concluded, as her daughter's sole legal custodian, that it was not in the child's interest to be a party to Newdow's lawsuit. *Id.*, at 86. On September 25, 2002, 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. See *Newdow* v. *U. S. Congress*, 313 F. 3d 500, 502 (CA9 2002) *(Newdow II)*.

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." *Id.*, at 502–503. 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. *Id.*, at 504–505.

On February 28, 2003, the Court of Appeals issued an order amending its first opinion and denying rehearing en banc. *Newdow* v. *U. S. Congress*, 328 F. 3d 466, 468 (CA9

2003) *(Newdow III).* The amended opinion omitted the initial opinion's discussion of Newdow's standing to challenge the 1954 Act and declined to determine whether Newdow was entitled to declaratory relief regarding the constitutionality of that Act. *Id.*, at 490. Nine judges dissented from the denial of en banc review. *Id.*, at 471, 482. 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. 540 U. S. 945 (2003).

III

In every federal case, the party bringing the suit must establish standing to prosecute the action. "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth* v. *Seldin,* 422 U. S. 490, 498 (1975). The standing requirement is born partly of "'an idea, which is more than an intuition but less than a rigorous and explicit theory, about the constitutional and prudential limits to the powers of an unelected, unrepresentative judiciary in our kind of government.'" *Allen* v. *Wright,* 468 U. S. 737, 750 (1984) (quoting *Vander Jagt* v. *O'Neill*, 699 F. 2d 1166, 1178–1179 (CADC 1983) (Bork, J., concurring)).

The command to guard jealously and exercise rarely our power to make constitutional pronouncements requires strictest adherence when matters of great national significance are at stake. Even in cases concededly within our jurisdiction under Article III, we abide by "a series of rules under which [we have] avoided passing upon a large part of all the constitutional questions pressed upon [us] for decision." *Ashwander* v. *TVA,* 297 U. S. 288, 346 (1936) (Brandeis, J., concurring). Always we must balance "the heavy obligation to exercise jurisdiction," *Colorado River*

Water Conservation Dist. v. *United States,* 424 U. S. 800, 820 (1976), against the "deeply rooted" commitment "not to pass on questions of constitutionality" unless adjudication of the constitutional issue is necessary, *Spector Motor Service, Inc.* v. *McLaughlin,* 323 U. S. 101, 105 (1944). See also *Rescue Army* v. *Municipal Court of Los Angeles,* 331 U. S. 549, 568–575 (1947).

Consistent with these principles, our standing jurisprudence contains two strands: Article III standing, which enforces the Constitution's case or controversy requirement, see *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 559–562 (1992); and prudential standing, which embodies "judicially self-imposed limits on the exercise of federal jurisdiction," *Allen*, 468 U. S., at 751. The Article III limitations are familiar: The plaintiff must show that the conduct of which he complains has caused him to suffer an "injury in fact" that a favorable judgment will redress. See *Lujan,* 504 U. S., at 560–561. Although we have not exhaustively defined the prudential dimensions of the standing doctrine, we have explained that prudential standing encompasses "the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." *Allen*, 468 U. S., at 751. See also *Secretary of State of Md.* v. *Joseph H. Munson Co.,* 467 U. S. 947, 955–956 (1984). "Without such limitations—closely related to Art. III concerns but essentially matters of judicial self-governance—the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights." *Warth*, 422 U. S., at 500.

One of the principal areas in which this Court has cus-

tomarily declined to intervene is the realm of domestic relations. Long ago we observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *In re Burrus,* 136 U. S. 586, 593–594 (1890). See also *Mansell* v. *Mansell,* 490 U. S. 581, 587 (1989) ("[D]omestic relations are preeminently matters of state law"); *Moore* v. *Sims,* 442 U. S. 415, 435 (1979) ("Family relations are a traditional area of state concern"). So strong is our deference to state law in this area that we have recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt* v. *Richards,* 504 U. S. 689, 703 (1992). We have also acknowledged that it might be appropriate for the federal courts to decline to hear a case involving "elements of the domestic relationship," *id*., at 705, even when divorce, alimony, or child custody is not strictly at issue:

> "This would be so when a case presents 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar.' Such might well be the case if a federal suit were filed prior to effectuation of a divorce, alimony, or child custody decree, and the suit depended on a determination of the status of the parties." *Id*., at 705–706 (quoting *Colorado River,* 424 U. S., at 814).

Thus, while rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, see, *e.g.*, *Palmore* v. *Sidoti,* 466 U. S. 429, 432–434 (1984), in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts.[5]

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[5] Our holding does not rest, as THE CHIEF JUSTICE suggests, see *post*,

As explained briefly above, the extent of the standing problem raised by the domestic relations issues in this case was not apparent until August 5, 2002, when Banning filed her motion for leave to intervene or dismiss the complaint following the Court of Appeals' initial decision. At that time, the child's custody was governed by a February 6, 2002, order of the California Superior Court. That order provided that Banning had "'*sole* legal custody as to the rights and responsibilities to make decisions relating to the health, education and welfare of'" her daughter. *Newdow II*, 313 F. 3d, at 502. The order stated that the two parents should "'consult with one another on substantial decisions relating to'" the child's "'psychological and educational needs,'" but it authorized Banning to "'exercise legal control'" if the parents could not reach "'mutual agreement.'" *Ibid*.

That family court order was the controlling document at the time of the Court of Appeals' standing decision. After the Court of Appeals ruled, however, the Superior Court held another conference regarding the child's custody. At a hearing on September 11, 2003, the Superior Court announced that the parents have "joint legal custody," but that Banning "makes the final decisions if the two . . .

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at 2–5, on either the domestic relations exception or the abstention doctrine. Rather, our prudential standing analysis is informed by the variety of contexts in which federal courts decline to intervene because, as *Ankenbrandt* v. *Richards,* 504 U. S. 689 (1992), contemplated, the suit "depend[s] on a determination of the status of the parties," *id*., at 706. We deemed it appropriate to review the dispute in *Palmore* because it "raise[d] important federal concerns arising from the Constitution's commitment to eradicating discrimination based on race." 466 U. S., at 432. In this case, by contrast, the disputed family law rights are entwined inextricably with the threshold standing inquiry. THE CHIEF JUSTICE in this respect, see *post*, at 3, misses our point: The *merits* question undoubtedly transcends the domestic relations issue, but the *standing* question surely does not.

disagree." App. 127–128.[6]

Newdow contends that despite Banning's final authority, he retains "an unrestricted right to inculcate in his daughter—free from governmental interference—the atheistic beliefs he finds persuasive." *Id.*, at 48, ¶ 78. The difficulty with that argument is that Newdow's rights, as in many cases touching upon family relations, cannot be viewed in isolation. This case concerns not merely Newdow's interest in inculcating his child with his views on religion, but also the rights of the child's mother as a parent generally and under the Superior Court orders specifically. And most important, it implicates the interests of a young child who finds herself at the center of a highly public debate over her custody, the propriety of a widespread national ritual, and the meaning of our Constitution.

The interests of the affected persons in this case are in many respects antagonistic. Of course, legal disharmony

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[6]The court confirmed that position in a written order issued January 9, 2004:

"The parties will have joint legal custody defined as follows: Ms. Banning will continue to make the final decisions as to the minor's health, education, and welfare if the two parties cannot mutually agree. The parties are required to consult with each other on substantial decisions relating to the health, education and welfare of the minor child, including . . . psychological and educational needs of the minor. If mutual agreement is not reached in these areas, then Ms. Banning may exercise legal control of the minor that is not specifically prohibited or is inconsistent with the physical custody." App. to Reply Brief for United States as Respondent Supporting Petitioners 12a.

Despite the use of the term "joint legal custody"—which is defined by California statute, see Cal. Fam. Code Ann. §3003 (West 1994)—we see no meaningful distinction for present purposes between the custody order issued February 6, 2002, and the one issued January 9, 2004. Under either order, Newdow has the right to consult on issues relating to the child's education, but Banning possesses what we understand amounts to a tiebreaking vote.

in family relations is not uncommon, and in many instances that disharmony poses no bar to federal-court adjudication of proper federal questions. What makes this case different is that Newdow's standing derives entirely from his relationship with his daughter, but he lacks the right to litigate as her next friend. In marked contrast to our case law on *jus tertii*, see, *e.g.*, *Singleton* v. *Wulff,* 428 U. S. 106, 113–118 (1976) (plurality opinion), the interests of this parent and this child are not parallel and, indeed, are potentially in conflict.[7]

Newdow's parental status is defined by California's domestic relations law. Our custom on questions of state law ordinarily is to defer to the interpretation of the Court of Appeals for the Circuit in which the State is located. See *Bishop* v. *Wood,* 426 U. S. 341, 346–347 (1976). In this case, the Court of Appeals, which possesses greater familiarity with California law, concluded that state law vests in Newdow a cognizable right to influence his daughter's religious upbringing. *Newdow II*, 313 F. 3d, at 504–505. The court based its ruling on two intermediate state appellate cases holding that "while the custodial parent undoubtedly has the right to make ultimate decisions concerning the child's religious upbringing, a court will not enjoin the noncustodial parent from discussing religion

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[7] "There are good and sufficient reasons for th[e] prudential limitation on standing when rights of third parties are implicated—the avoidance of the adjudication of rights which those not before the Court may not wish to assert, and the assurance that the most effective advocate of the rights at issue is present to champion them." *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.,* 438 U. S. 59, 80 (1978). Banning tells us that her daughter has no objection to the Pledge, and we are mindful in cases such as this that "children themselves have constitutionally protectible interests." *Wisconsin* v. *Yoder,* 406 U. S. 205, 243 (1972) (Douglas, J., dissenting). In a fundamental respect, "[i]t is the future of the student, not the future of the parents," that is at stake. *Id.*, at 245.

with the child or involving the child in his or her religious activities in the absence of a showing that the child will be thereby harmed." *In re Marriage of Murga*, 103 Cal. App. 3d 498, 505, 163 Cal. Rptr. 79, 82 (1980). See also *In re Marriage of Mentry*, 142 Cal. App. 3d 260, 268–270, 190 Cal. Rptr. 843, 849–850 (1983) (relying on *Murga* to invalidate portion of restraining order barring noncustodial father from engaging children in religious activity or discussion without custodial parent's consent). Animated by a conception of "family privacy" that includes "not simply a policy of minimum state intervention but also a presumption of parental autonomy," 142 Cal. App. 3d, at 267–268, 190 Cal. Rptr., at 848, the state cases create a zone of private authority within which each parent, whether custodial or noncustodial, remains free to impart to the child his or her religious perspective.

Nothing that either Banning or the School Board has done, however, impairs Newdow's right to instruct his daughter in his religious views. Instead, Newdow requests relief that is more ambitious than that sought in *Mentry* and *Murga*. He wishes to forestall his daughter's exposure to religious ideas that her mother, who wields a form of veto power, endorses, and to use his parental status to challenge the influences to which his daughter may be exposed in school when he and Banning disagree. The California cases simply do not stand for the proposition that Newdow has a right to dictate to others what they may and may not say to his child respecting religion. *Mentry* and *Murga* are concerned with protecting "'the fragile, complex interpersonal bonds between child and parent,'" 142 Cal. App. 3d, at 267, 190 Cal. Rptr., at 848, and with permitting divorced parents to expose their children to the "'diversity of religious experiences [that] is itself a sound stimulant for a child,'" *id*., at 265, 190 Cal. Rptr., at 847 (citation omitted). The cases speak not at all to the problem of a parent seeking to reach outside the

private parent-child sphere to restrain the acts of a third party. A next friend surely could exercise such a right, but the Superior Court's order has deprived Newdow of that status.

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 reach out to resolve a weighty question of federal constitutional law. There is a vast difference between Newdow's right to communicate with his child—which both California law and the First Amendment recognize—and his claimed right to shield his daughter from influences to which she is exposed in school despite the terms of the custody order. 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.[8]

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[8]Newdow's complaint and brief cite several additional bases for standing: that Newdow "at times has himself attended—and will in the future attend—class with his daughter," App. 49, ¶ 80; that he "has considered teaching elementary school students in [the School District]," *id*., at 65, ¶ 120; that he "has attended and will continue to attend" school board meetings at which the Pledge is "routinely recited," *id*., at 52, ¶ 85; and that the School District uses his tax dollars to implement its Pledge policy, *id*., at 62–65. Even if these arguments suffice to establish Article III standing, they do not respond to our prudential concerns. As for taxpayer standing, Newdow does not reside in or pay taxes to the School District; he alleges that he pays taxes to the District only "indirectly" through his child support payments to Banning. Brief for Respondent Newdow 49, n. 70. That allegation does not amount to the "direct dollars-and-cents injury" that our strict taxpayer-standing doctrine requires. *Doremus* v. *Board of Ed. of Hawthorne,* 342 U. S. 429, 434 (1952).

The judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE SCALIA took no part in the consideration or decision of this case.