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Pledge is more about patriotism than religion

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The U.S. Supreme Court will soon decide whether it is constitutional for public school teachers to lead willing students in the voluntary recitation of the Pledge of Allegiance. The deadline for pledge supporters to express their views to the court expired Friday. Yet what is most striking about this case is not any particular brief or legal argument, but rather the fact that the case is being litigated in the first place.

Last year, the San Francisco-based 9th U.S. Circuit Court of Appeals — the most frequently overturned circuit court in the nation — forbade teachers from leading willing students in reciting the Pledge, simply because it contains the words "under God." The ruling was absurd, but just one of many recent examples of judicial activism eroding religious expression in the public square.

We have drifted a long way from the original vision of our Founding Fathers. The Constitution says that there shall not be any law "respecting an establishment of religion." It also says that there shall not be any law "prohibiting the free exercise thereof." Both principles deserve protection.

Clearly, our founders wanted to prohibit the government from establishing an official state church. They never meant for our government to be actively hostile to religious expression and people of faith. Our founders were religiously devout people. They recognized that any free and civilized society, committed to protecting certain unalienable rights endowed to us by our Creator, must have a healthy appreciation for religious faith.

Under our Constitution, everyone is allowed to practice whatever religion they choose — including no religion at all. Likewise, people should be free under our Constitution to encourage religious expression through their public, democratic institutions.

For example, we open every daily session of Congress with a prayer. Every day, courts throughout our land admit testimony on the basis of a commitment to tell the truth "so help me God." Even our calendar system resonates with religious significance — our Constitution explicitly acknowledges that its drafting was completed "in the Year of our Lord" 1787, and expressly recognizes Sunday as a day of rest.

Yet, through a series of sharply divided rulings by the Supreme Court, religious expression has otherwise been largely expelled from the public square, without constitutional or other legal justification.

As attorney general of Texas, I had the honor of arguing one such case before the court. In Santa Fe Independent School District v. Doe, I defended the right of high school students to engage in voluntary public prayer at the outset of a public high school football game — a great American tradition. But that tradition was eliminated by a vote of 6-3.

In earlier cases, the Supreme Court abolished the exercise of voluntary prayer in other settings, including public school graduation ceremonies. Other Supreme Court decisions purport to micromanage the operation of parochial schools that receive government funds on equal terms as their nonsectarian counterparts.

Judicial activism isn't just wrong. It offends democracy by taking the ability to make decisions away from the American people.

Moreover, the costs of judicial activism and hostility to religious faith, to our culture and to our nation, have been staggering. It doesn't take a social scientist to see a connection between the loss of faith and high incidence of crime and welfare, nor is scientific data necessary to observe that our culture, our public discourse and our standards of civility and decency have all coarsened dramatically.

And now, judicial activism threatens a cherished act of American patriotism and pride: the Pledge of Allegiance, both to the flag of the United States, and to the nation for which it stands.

As chairman of the Senate subcommittee on the Constitution, and on behalf of a majority of its membership, I submitted the first brief on the merits in defense of the Pledge of Allegiance in the Supreme Court. That brief argues that, even under the court's precedents, there is nothing wrong with public school teachers leading willing students in the voluntary recitation of the Pledge of Allegiance. Voluntary recitation of the pledge, after all, is a patriotic act, not a religious exercise.

Any patriotic American — whether atheist or agnostic, Christian, Jewish, Muslim or of any other faith — can recite the pledge and express allegiance to a nation that was so clearly founded "under God." When the United States Senate voted unanimously earlier this year to support the Pledge of Allegiance and to recognize that our nation was indeed "established as a union 'under God,'" we were not representing any particular church, but rather the American people.

It is my hope that the Supreme Court will repudiate this act of judicial activism and uphold the Pledge of Allegiance. But that alone is not enough. As a nation, we must not only pledge our allegiance to the flag. We must also pledge our allegiance to the Constitution, and the many freedoms it protects.

Cornyn, a Republican, represents Texas.