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Reply to Freehold Office

July 29, 2014

**VIA HAND DELIVERY**

Motions Clerk,  
Monmouth County Superior Court  
Law Division  
71 Monument Park  
Freehold, NJ 07728

Re: American Humanist Assn. v. Matawan Aberdeen Regional School District  
et al. v. Frank Jones et al.  
Docket No. MON-L-1317-14  
Motion Return Date: September 5, 2014

Dear Sir/Madam:

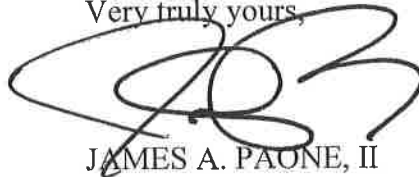
This office represents Defendant-Intervenors, Frank Jones, Michele Jones, S. Jones F. Jones and H. Jones and The Knights of Columbus in the above matter. In that regard, I am enclosing an original and two copies of the following documents for filing:

1. Notice of Motion to Intervene;
2. Brief in Support of Motion to Intervene;
3. Certification of James Stoever;
4. Certification of Charles Maurer;
5. Certification of Frank Jones;
6. Proposed Order; and
7. Proposed Answer and CIS

Kindly return a "filed" copy of the aforementioned documents in the enclosed stamped, self-addressed envelope. Please charge our collateral account 140896 for the filing fees in this matter.

Thank you for your courtesies in this regard.

Very truly yours,



JAMES A. PAONE, II

JAP/am

C: Arnold N. Fishman, Esq., w/encls., via regular mail  
David B. Rubin, Esq., w/encls., via regular mail

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Attorneys for Defendant-Intervenors

AMERICAN HUMANIST ASSOCIATION and  
JOHN DOE and JANE DOE, individually and as  
parents and next friends of DOECHILD,

Plaintiffs,

v.

MATAWAN ABERDEEN REGIONAL SCHOOL  
DISTRICT and DAVID M. HEALY, in his capacity  
as Superintendent of Schools,

Defendants,

and

FRANK JONES and MICHELE JONES,  
individually and as parents of next friends of S.  
JONES, F. JONES and H. JONES and THE  
KNIGHTS OF COLUMBUS, a Connecticut tax-  
exempt corporation,

Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-001317-14

*Civil Action*

**NOTICE OF MOTION TO  
INTERVENE OF PROPOSED  
DEFENDANT-INTERVENORS  
FRANK JONES, MICHELE  
JONES, S. JONES, F. JONES, AND  
H. JONES, AND THE KNIGHTS  
OF COLUMBUS**

TO: Motions Clerk, Monmouth County Superior Court  
Monmouth County Court House  
71 Monument Park  
Freehold, NJ 07728

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PLEASE TAKE NOTICE that on Friday, September 5, 2014, at 9:00 a.m. or as soon thereafter as counsel may be heard, the undersigned Attorneys for the Defendant-Intervenors shall make application to the Superior Court of New Jersey, Law Division, Monmouth County at the Monmouth County Court House in Freehold, New Jersey for an Order granting intervention pursuant to R. 4:33. Accompanying this Motion are a Brief in support of the Motion, Certification of Frank Jones, Certification of Charles Maurer, Certification of James Stoever, and Defendant-Intervenors' Proposed Answer to the Complaint..

PLEASE TAKE FURTHER NOTICE that oral argument is hereby requested. A proposed Order is attached hereto.

No pre-trial conference, arbitration proceeding, calendar call, or trial date has been set. A discovery end date has not been assigned to this matter.

Respectfully submitted,



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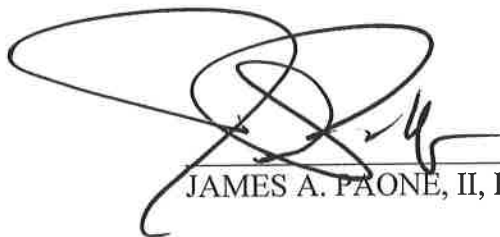
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**CERTIFICATION OF SERVICE**

I hereby certify that an original and one copy of the original Motion and supporting documents have been forwarded via hand delivery to the Motions Clerk, Monmouth County Superior Court, Monmouth County Court House, 71 Monument Park, Freehold, NJ 07728, and that true copies have been forwarded via regular mail and certified mail to the following counsel:

Arnold N. Fishman, Esq.  
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Metuchen, NJ 08840

A handwritten signature in black ink, appearing to read 'James A. Paone, II', written over a horizontal line.

JAMES A. PAONE, II, ESQUIRE

Dated: 7/29/14

AMERICAN HUMANIST ASSOCIATION and  
JOHN DOE and JANE DOE, individually and as  
parents and next friends of DOECHILD,

Plaintiffs,

v.

MATAWAN ABERDEEN REGIONAL SCHOOL  
DISTRICT and DAVID M. HEALY, in his capacity  
as Superintendent of Schools,

Defendants,

and

FRANK JONES and MICHELE JONES,  
individually and as parents of next friends of S.  
JONES, F. JONES and H. JONES and THE  
KNIGHTS OF COLUMBUS, a Connecticut tax-  
exempt corporation,

Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-001317-14

*Civil Action*

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**BRIEF IN SUPPORT OF PROPOSED  
DEFENDANT-INTERVENORS' MOTION TO INTERVENE**

---

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

PRELIMINARY STATEMENT ..... 1

STATEMENT OF FACTS ..... 2

ARGUMENT..... 7

I. INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT UNDER  
R4:33-1 ..... 7

    A. Intervenor have an interest in the subject of this litigation ..... 7

    B. The disposition of this action may practically impair or impede  
        the Intervenor’s ability to protect their interest..... 10

    C. The Intervenor’s interests are not adequately represented by  
        the existing parties. .... 12

    D. The motion to intervene is timely. .... 13

II. IN THE ALTERNATIVE, INTERVENORS SATISFY THE REQUIREMENTS  
    OF R. 4:33-2 FOR PERMISSIVE INTERVENTION..... 14

CONCLUSION ..... 16

**TABLE OF AUTHORITIES**

**CASES:**

ACLU of N.J. v. Cnty. Of Hudson  
352 N.J. Super. (App. Div. 2004) .....7, 13, 14

Agostini v. Felton  
521 U.S. 203 (1994).....9

Allstate N.J. Ins. Co. v. Neurology Pain Assoc.  
418 N.J. Super. 246 (App. Div. 2011) ..... 7, 10, 12

B. Fernandez & Hnos., Inc. v. Kellogg,  
440 F.3d 541 (1<sup>st</sup> Cir. 2006).....12, 13

Clarke v. Brown,  
101 N.J. Super. 404 (Law Div. 1968).....13

Cold Indian Springs Corp. v. Ocean Tp.,  
154 N.J. Super. 75 (1977) .....11

Commonwealth v. Johnson  
309 Mass 476 (1941) .....8

Doe v. Acton-Boxborough Regional School District  
468 Mass. (2014) .....5, 8, 10

Freedom From Religion Foundation v. Hanover School District,  
626 F.3d 1 (1<sup>st</sup> Cir. 2010)  
*cert. denied* 131 S. Ct. 2992 (2011).....5

Glancy v. Taubman Cts., Inc.,  
373 F3d 656 (6<sup>th</sup> Cir. 2004).....13

Holden v. Bd. Of Educ.  
46 N.J. 281 (1966) .....7

Int’l Union v. Brock  
477 U.S. 274 (1986).....10

Kleissler v. U.S. Forest Serv.,  
157 F.3d 964 (3d. Cir. 1998) .....10, 11



<u>Newdow v. Rio Linda Union Dist.</u> 597 F.3d 1007 (9 <sup>th</sup> Cir. 2010) .....	2, 4, 5, 8, 9
<u>N.J. Div. of Youth v. Family Serv.</u> 422 N.J. Super. 583 (App. Div. 2011) .....	13
<u>Sierra Club v. EPA.</u> 995 F.2d 1486(9thCir. 1993) .....	11
<u>Sierra Club v. Espy.</u> 18 F.3d 1202 (5thCir. 1994) .....	11
<u>Stafford v. Stafford Twp. Zoning Bd. of Adj.</u> 154 N.J. 62 (1998) .....	17
<u>State v. Lanza.</u> 74 N.J. Super. 363 (App. Div. 1962) .....	13
<u>Sutter v. Horizon Blue Cross Blue Shield of N.J.</u> 406 N.J. Super. 86 (App. Div. 2009) .....	7
<u>Trbovich v. United Mine Workers.</u> 404 U.S. 528 (1972).....	12
<u>Tudor v. Bd. of Educ. Of Borough of Rutherford.</u> 14 N.J. 31 (1953) .....	9
<u>United Nuclear Corp. v. Cannon.</u> 697 F.2d 141 (1 <sup>st</sup> Cir. 1982).....	13
<u>Yniguez v. Arizona</u> 939 F.2d 727 (9 <sup>th</sup> Cir. 1991) .....	10
<u>Zelman v. Simmons-Harris</u> 536 U.S. 639 (2002).....	9

**RULES:**

R. 4:33-1 .....2, 7, 14  
R. 4:33-2 .....2, 14  
Fed. R. Civ. P. 24(a) .....10  
Fed. R. Civ. P. 24(a)(2).....11

**STATUTES:**

N.J.S.A. 18A:36-3.....2  
N.J.S.A. 18A:36-3(c) .....3, 7  
4 U.S.C. § 4.....4

**OTHER:**

Amendment of K. of C. for Pledge of Allegiance  
Adopted by Senate, New Haven Register, May 13, 1954 ..... 4  
Congress Pub. L. No. 83-396..... 4  
Congress Pub. L. No. 107-293 (2002) ..... 4, 5  
H.R. Rep. No. 83-1693 at 1-2 (1954) ..... 5  
K. of C. Urged Revised Oath  
New York Journal-American May 18, 1954..... 4  
Letter from Dwight D. Eisenhower to Luke E. Hart,  
Supreme Knight of the Knights of Columbus, August 17, 1954 .....5  
Nedow v. Congress of the U.S.,  
2006 WL 47307 at 3 (E.D. Cal. Jan. 6, 2006) .....10  
N.J. Const. Art. 1 .....3

7C Charles A. Wright, Arthur R. Miller & Mary Kay Kane Federal Practice and Procedure § 1908.2 (2007) .....	10
7C Charles A. Wright, Arthur R. Miller & Mary Kay Kane Federal Practice and Procedure § 1909 (2007) .....	12
7C Charles A. Wright, Arthur R. Miller & Mary Kay Kane Federal Practice and Procedure § 1911 (2007) .....	14
“Under God” Under Attack, Columbia Sept. 2002 .....	4, 5

## PRELIMINARY STATEMENT

Pursuant to N.J. R. 4:33, the following proposed intervenors respectfully seek leave to intervene in this case as defendant-intervenors:

1. S. Jones, F. Jones, and H. Jones (New Jersey public school students who desire to continue to recite the Pledge of Allegiance as an important component of their education) (“Student-Intervenors”)
2. Frank and Michele Jones (parents of these students) (“Parent-Intervenors”); and
3. The Knights of Columbus (a Connecticut tax-exempt corporation instrumental in the inclusion of the words “under God” in the Pledge) (“Knights”).

These students, their parents, and the Knights of Columbus (collectively “Intervenors”) respectfully request leave to intervene in this case as a matter of right to protect their substantial interest in defending, against Plaintiffs’ constitutional challenge, the constitutionality of the Pledge of Allegiance that is recited daily in New Jersey public schools. As students and parents of students in New Jersey public schools, the Student- and Parent-Intervenors have a strong interest in the subject matter of the litigation and will undoubtedly be affected by a judgment from this court or a New Jersey appellate court in this case. A determination regarding the constitutionality of the Pledge will directly impact the content of the education they receive from New Jersey public schools and the way in which they declare their commitment to the ideals of their country reflected in the Pledge. Furthermore, as an entity that took part in recommending the addition of the phrase “under God” to the Pledge in 1954, the Knights have a particularly strong interest in the Pledge’s constitutionality that may be impaired if denied the opportunity to intervene in this proceeding.

As set forth in detail below, Intervenors may intervene both as of right under R. 4:33-1 and by permissive intervention under R. 4:33-2.

### STATEMENT OF FACTS

Proposed Student- and Parent-Intervenors are residents of Blackwood, New Jersey. Student-Intervenor H. Jones attends school in the Gloucester Township Public School District, and Student-Intervenors F. Jones and S. Jones attend school in the Black Horse Pike Regional School District, both school districts that would be affected by any change to N.J.S.A. 18A:36-3. (See Jones Certification ¶¶ 4-7). Student- and Parent-Intervenors recognize that at least since the Declaration of Independence was written, our national ethos has held that we have inalienable rights that the State cannot take away, because the source of those inalienable rights is an authority greater than the State. Jones Certification ¶ 9; see also Newdow v. Rio Linda Union Sch. Dist., 597 F.3d 1007, 1029 (9th Cir. 2010) (“the Framers believed that God endowed people with certain inalienable rights, rights no government could take away”), *no cert. pet. docketed*. They recognize that the Pledge and its use of the phrase “under God” is, like the Declaration, a statement of political philosophy, not of theology. (Jones Certification ¶ 10). And they understand that this political philosophy depends for its force on the premise that our rights are only inalienable because they inhere in a human nature that has been “endowed” with such rights by a “Creator.” (Id. at ¶ 9.) Accordingly, these Intervenors believe that the continued recitation of the Pledge is an important element of a public school education in order to teach and reaffirm the limited nature of the American Republic, bound as it is to respect the inalienable rights of its people. (Id. at ¶ 12). Parent-Intervenors therefore encourage their children to participate in the voluntary recitation of the Pledge at their respective schools, and Student-Intervenors desire to continue to recite the Pledge at those schools. (Id. at ¶ 12-13). Parent-

Intervenors believe that Student-Intervenors' education will be diminished if their schools alter the Pledge. (Id. at ¶ 14). Moreover, Parent-Intervenors believe that by editing the words “under God” out of the Pledge, the government would send a message of unreasoning hostility towards religion by stating that any government use of the word “God”—religious or not—is unconstitutional. (Id.).

On March 31, 2014, the American Humanist Association and Plaintiffs Jane and John Doe, parents of Doechild filed a complaint (the “Complaint”) against the Matawan-Aberdeen Regional School District and the Superintendent of Schools, David M. Healy. The Complaint alleges that a New Jersey statute, N.J.S.A. 18A:36-3(c), which requires public schools to conduct a daily Pledge of Allegiance—including the phrase “under God”—violates the equal protection provision of the New Jersey state constitution (N.J. Const. Art. 1 ¶ 5). The Complaint demands, *inter alia*, that this Court: 1) declare that officially sponsored recitation of the Pledge of Allegiance with the phrase “under God” in public schools violates the equal protection rights of humanists and atheists; 2) order the Defendants to forbid classroom recitation of the present form of the Pledge of Allegiance; and 3) order the Defendants to sponsor regular flag-salutes or similar exercises only if there is no reference to the existence or non-existence of a divinity.

**The Knights of Columbus:** The Knights of Columbus is the world's largest lay Catholic fraternal organization with more than 1.8 million members. (Maurer Certification ¶ 2). The Knights have over 63,000 members in New Jersey, including within the Matawan-Aberdeen School District. (Maurer Certification ¶ 3). At least one of its members has a child attending Matawan-Aberdeen public schools, and has stated that he wants his children to continue saying the Pledge of Allegiance in full. (Stoever Certification ¶ 3).

In 1951, the Supreme Board of Directors of the Knights of Columbus amended the Pledge of Allegiance regularly recited at their organizational meetings to include the phrase “under God.” See Amendment of K. of C. for Pledge of Allegiance Adopted by Senate, New Haven Register, May 13, 1954; “Under God” Under Attack, Columbia, Sept. 2002, at 8-9. In 1952, the Knights recommended this amendment to the President, Vice-President, and members of both Houses of Congress. See K. of C. Urged Revised Oath, New York Journal-American, May 18, 1954. The Knights urged this amendment to the Pledge at the height of the Cold War between the United States and Soviet Union, distinguishing the nature and extent of human rights in the United States from that in communist Russia. See Rio Linda Union Sch. Dist., 597 F.3d at 1032.

Consistent with the Knights’ recommendation, Congress officially amended the Pledge in 1954 to include the phrase “under God.”<sup>1</sup> Pub. L. No. 83-396. Congress was motivated by the same principle that drove the Knight’s recommendation: i.e., that the dignity of man and certain inalienable rights cannot be usurped by the government or its laws. As the House of Representatives Report on the joint resolution adding “under God” to the Pledge stated:

Our American Government is founded on the concept of the individuality and the dignity of the human being. Underlying this concept is the belief that the human person is important because he was created by God and endowed by Him with certain inalienable rights which no civil authority may usurp.

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<sup>1</sup> Codified at 4 U.S.C. § 4, the Pledge as amended in 1954 reads as follows:

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.

Congress reaffirmed the Pledge in 2002. Pub. L. No. 107-293 (2002); see also, Rio Linda Union Sch. Dist., 597 F.3d at 1029-32 (recounting history).

H.R. Rep. No. 83-1693, at 1-2 (1954); see also, Pub. L. No. 107-293 (2002) (amending Pledge statute in 2002 and describing in greater detail Congress' reasons for including "under God" in the Pledge). President Dwight D. Eisenhower similarly recognized this principle when he thanked the Knights for their role in promoting the amendment:

[W]e are particularly thankful to you for your part in the movement to have the words "under God" added to our Pledge of Allegiance. These words will remind Americans that despite our great physical strength we must remain humble. They will help us to keep constantly in our minds and hearts the spiritual and moral principles which alone give dignity to man, and upon which our way of life is founded. For the contribution which your organization has made to this cause, we must be genuinely grateful.

Letter from Dwight D. Eisenhower to Luke E. Hart, Supreme Knight of the Knights of Columbus, Aug. 17, 1954, *reprinted in "Under God" Under Attack*, Columbia, Sept. 2002, at 9.

In light of their involvement in shaping the present language of the Pledge, the Knights have a strong interest in defending the constitutionality of the Pledge (and its daily recitation in public schools in New Jersey and around the country) so that the Pledge may continue to serve as a daily reminder for all Americans of the political philosophy that has animated this country since its Founding, that is, that the inalienable rights with which all citizens are endowed must be respected by the State precisely because they are prior to the State. (Maurer Certification ¶ 5). The Knights have already successfully intervened to defend the Pledge in federal court in California, Rio Linda Union School District, 597 F.3d 1007, New Hampshire, Freedom From Religion Foundation v. Hanover School District, 626 F.3d 1 (1st Cir. 2010), cert. denied, 131 S. Ct. 2992 (2011), and Massachusetts, Doe v. Acton-Boxborough Regional School District, 468 Mass. 64 (2014). The Knights intend to continue defending the Pledge wherever it may be



challenged. The Knights seek both individual standing and associational standing to assert the rights of their members.

## ARGUMENT

### **I. Intervenors are entitled to intervene as of right under R. 4:33-1.**

To intervene in an action as of right under R. 4:33-1, the New Jersey courts require a proposed intervenor to establish the following:

(1) claim “an interest relating to the property or transaction which is the subject of the transaction,” (2) show [that the movant] is “so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest,” (3) demonstrate that the “[movant's] interest” is not “adequately represented by existing parties,” and (4) make a “timely” application to intervene.

Sutter v. Horizon Blue Cross Blue Shield of N.J., 406 N.J. Super. 86, 106 (App. Div. 2009) (quoting, ACLU of N.J. v. Cnty. of Hudson, 352 N.J. Super. 44, 67 (App. Div. 2002)) (alterations in original). If satisfied, then the court is required to grant the motion to intervene. Sutter, 406 N.J. Super. at 106 (citing ACLU of N.J., 352 N.J. Super. at 67). Proposed Intervenors easily satisfy all four criteria.

#### **A. Intervenors have an interest in the subject of this litigation.**

New Jersey courts construe R. 4:33-1 liberally and take a practical approach in determining Intervenors’ interest. Allstate N.J. Ins. Co. v. Neurology Pain Assoc., 418 N.J. Super. 246, 254-55 (App. Div. 2011). Intervenors arguably have more of an interest in the subject matter of this lawsuit than do Plaintiffs. Because reciting the Pledge is by law completely voluntary, Intervenors are the ones who will be silenced if Plaintiffs are successful, while Plaintiffs can be silent now if they choose. “[P]upils who have conscientious scruples against such pledge or salute . . . shall not be required to render such salute and pledge . . .” N.J.S.A. 18A:36-3(c); see also, Holden v. Bd. of Educ., 46 N.J. 281 (1966) (interpreting N.J.S.A. 18A:36-3(c) to allow schoolchildren to refuse to say the Pledge). In contrast, granting the Plaintiffs’

demands would forbid Intervenors from reciting the Pledge in its current form in any school district in New Jersey, not just Matawan-Aberdeen.

With respect to the Student- and Parent-Intervenors, there can be little doubt that students have a significant interest in the content of the education that they receive, and that parents have an equally significant interest in the content of the education that their children receive. The Pledge of Allegiance—the subject matter of this lawsuit—is an important component of the content of a public school education. By instilling patriotism and teaching about the nature of this country’s Republican form of government, the Pledge achieves the educational purpose of “inculcat[ing] patriotism and . . . instill[ing] a recognition of the blessings conferred by orderly government under the Constitutions of the State and nation.” Commonwealth v. Johnson, 309 Mass. 476, 484 (1941); see also, Rio Linda Union Sch. Dist., 597 F.3d at 1037; Acton-Boxborough Reg’l. Sch. Dist., 468 Mass. at 69-72.

Student-Intervenors are directly affected by Plaintiffs’ lawsuit because they attend New Jersey public schools. Plaintiffs have asked this Court to interpret how the New Jersey Constitution applies to a New Jersey law, both of which apply to the Student-Intervenors’ school districts, as to any school district in New Jersey. A finding that the Pledge violates New Jersey law will immediately affect every school district in the state. Moreover, an appeal is likely in this case, and a decision from the New Jersey Supreme Court would apply to all New Jersey school districts.

Accordingly, to protect their interest in the educational content they receive from the public schools, Student- and Parent-Intervenors have an interest in the specific content of the Pledge. It is their position that without the words “under God” in the Pledge, the quality of the content of the public school education they receive would decline. In their view (as discussed

above), removal of the words “under God” would mean that the Pledge would no longer serve to teach and remind students of the political philosophy that has guided this Republic since its Founding—i.e., that citizens have inalienable rights that the State cannot take away because “a power greater than the government gives the people their inalienable rights.” Rio Linda Union Sch. Dist., 597 F.3d at 1037.

In sum, there can be little doubt that Student- and Parent-Intervenors’ interest in the content of the education they receive from the public schools—as implicated by this lawsuit concerning the constitutionality of the Pledge—is an interest that provides a sufficient basis for intervention. Indeed, New Jersey courts have recognized the right of parents and their school-aged children to represent their interests in the nature and content of their care and education in court. See, e.g., Tudor v. Bd. of Educ. of Borough of Rutherford, 14 N.J. 31, 35 (1953) (parents, acting on behalf of children in Rutherford public schools, sued Board of Education to prevent the distribution of Bibles in schools).

Numerous federal courts, including the U.S. Supreme Court, have also acknowledged student and parental rights to intervene, even in cases in which a school district is already a party to the action. See, e.g., Zelman v. Simmons-Harris, 536 U.S. 639 (2002); Agostini v. Felton, 521 U.S. 203 (1997). Indeed, federal courts (as well as Massachusetts state courts) have uniformly allowed interventions by parents and the Knights in other lawsuits specifically challenging the constitutionality of the Pledge. See supra at 6.

As for Intervenor the Knights of Columbus, it was due to their efforts over several years that Congress amended the Pledge of Allegiance in 1954 to include the words “under God” in the Pledge. Accordingly, the Knights have a particular and special interest in defending the constitutionality of the Pledge. Where the role that a particular organization has played in

influencing a law is at stake, courts have repeatedly granted intervenor status as of right to defend its interests in the law. See, e.g., Yniguez v. Arizona, 939 F.2d 727 (9th Cir. 1991) (intervention as of right by sponsors of ballot initiative declaring English to be the official language in litigation challenging the constitutionality of that statute); see also, Newdow v. Congress of the U.S., 2006 WL 47307, at \*3 (E.D. Cal. Jan. 6, 2006) (granting intervenor status to public interest group because of its interest in “public expressions of the nation’s religious history and heritage”). The Knights themselves were permitted to intervene in Acton-Boxborough Regional School District because of their role in instituting “under God” in the Pledge. 468 Mass. at 67. The Knights also have a strong associational interest in representing the rights of their members who live in New Jersey. Int’l Union v. Brock, 477 U.S. 274, 281 (1986).

**B. The disposition of this action may practically impair or impede the Intervenor’s ability to protect their interests.**

“It generally is agreed that in determining whether disposition of the action will impede or impair the movant’s ability to protect its interest *the question must be put in practical terms rather than in legal terms.*” 7C Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1908.2 (2007) (emphasis added). The New Jersey courts have adopted this fact-based approach consistent with the “liberal” construction of the statute. Allstate N.J. Ins. Co., 418 N.J. Super. at 255 (“Rule 4:33-1 is construed ‘liberally.’ . . . Consistent with this liberal construction, our courts take a practical approach in determining whether a moving party has a cognizable interest in litigation that it is entitled to protect by intervention.”) (citation omitted).

In interpreting the analogous rule of Fed. R. Civ. P. 24(a), the Third Circuit has used this practical approach and also considered whether the impairment could be remedied by means other than intervention. Kleissler v. U.S. Forest Serv., 157 F.3d 964, 979 (3d Cir. 1998). Though

Intervenors could challenge any decision in a future suit, “a contrary decision in the present case would have a stare decisis effect on this potential future litigation, leaving the proposed intervenors without legal recourse to protect their interests.” Id. at 980. See also, Cold Indian Springs Corp. v. Ocean Tp., 154 N.J. Super. 75, 89 (1977) (stare decisis would prevent proposed intervenors from filing a subsequent suit); Sierra Club v. EPA, 995 F.2d 1478, 1486 (9th Cir. 1993) (same); Sierra Club v. Espy, 18 F.3d 1202, 1207 (5th Cir. 1994) (stare decisis effect of decision is sufficient potential impairment to satisfy requirements of Fed. R. Civ. P. 24(a)(2)).

Practically speaking, it is evident that the Intervenors’ interests would be impaired by a judgment that inclusion of the words “under God” in the Pledge is unconstitutional. Student- and Parent-Intervenors’ significant interest in preserving the present language of the Pledge as an important component of their education would be completely extinguished by a declaration that the Pledge is unconstitutional and an injunction prohibiting recitation of the Pledge. Indeed, the effect on their education would be direct and dramatic. The Pledge that Student-Intervenors began reciting on a daily basis when they first entered the public school system would suddenly be altered to strip out the words “under God.” Without those words, the Pledge would no longer serve to teach and remind Student-Intervenors (and others) of the political philosophy that has guided this country since its Founding: that government is limited in its power and may not take away the inalienable rights endowed by a Creator. Accordingly, Student- and Parent-Intervenors should have a full and fair opportunity to defend their interest in the Pledge because it is they, rather than the school districts, who will be directly affected by the outcome of this litigation and unable to file a separate suit because of *stare decisis*. Once decided, there would be no alternative means of reversing the impact of this impairment.

Similarly, in addition to the impact on the members of the Knights' organization, it is evident that the interests of the Knights would be significantly impacted by a holding that declares unconstitutional the very language of the Pledge that they succeeded in having added to the Pledge in 1954. Consistent with the precedent cited above governing the intervention of organizations in cases challenging laws that they helped to enact, Knights must also be afforded the full and fair opportunity to defend the constitutionality of the Pledge.

**C. The Intervenors' interests are not adequately represented by the existing parties.**

Intervenors' interest in being able to continue to benefit from the educational value of the Pledge is unique and cannot be adequately represented by the present Defendants, consistent with New Jersey courts' interpretation of this requirement. See, Allstate N.J. Insur. Co., 418 N.J. Super. at 255-56 (determining that the proposed intervenors' interest was unique).

"Typically, an intervenor need only make a 'minimal' showing that the representation afforded by a named party would prove inadequate." B. Fernandez & Hnos., Inc. v. Kellogg, 440 F.3d 541, 545 (1st Cir. 2006) (citing, Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972)). In other words, the moving party "ordinarily should be allowed [to intervene] unless it is clear that the [existing] party will provide adequate representation for the absentee." 7C Wright, Miller & Kane § 1909. For instance, it may be in the school district's interest to alter or end Pledge recitation in order to avoid the difficulty and expense of continued litigation. It is unclear whether the Defendant school district shares interest in continuing the practice of reciting the Pledge in New Jersey schools, as opposed to defending the constitutionality of its compliance with governing New Jersey statutes. Whatever the case, the school district's interest in maintaining the Pledge differs in kind, degree and perhaps intensity from Intervenors':

One way for the intervenor to show inadequate representation is to demonstrate that its interests are sufficiently different in kind or

degree from those of the named party. See, United Nuclear Corp. v. Cannon, 696 F.2d 141, 144 (1st Cir. 1982); Glancy v. Taubman Cts., Inc., 373 F.3d 656, 675 (6th Cir. 2004) (“Asymmetry in the intensity . . . of interest can prevent a named party from representing the interests of the absentee.”).

Kellogg, 440 F.3d at 546.

For example, Student- and Parent-Intervenors are uniquely situated to make arguments from the perspective of public school students who recite the Pledge daily. Similarly, the Knights are uniquely situated to provide information and offer arguments from the perspective of an entity that was instrumental in the inclusion of the words “under God” in the Pledge. Finally, undersigned counsel for Intervenors litigates extensively on religious liberty issues in state and federal courts throughout the country, and thus is capable of presenting information and arguments that would shed additional light on the various issues before the Court.

**D. The motion to intervene is timely.**

The timeliness of the motion to intervene is based on whether granting the motion would result in prejudice to the other parties and the stage in the proceedings at which the motion is made. Clarke v. Brown, 101 N.J. Super. 404, 410-11 (Law Div. 1968) (citing, State v. Lanza, 74 N.J. Super. 362, 372 (App. Div 1962)). For example, the court should consider any rulings made prior to the motion. ACLU of N.J., 352 N.J. Super. at 69.

Since this case is still in its early stages, and Plaintiffs will not be prejudiced by the motion, Intervenors’ motion is timely. The addition of Intervenors to the case will not make a material difference to Plaintiffs’ preparation of the case. Defendants have not yet answered the complaint or made any substantive filings or dispositive motions. Moreover, this case does not rely heavily on factual questions, but legal ones, and Intervenors’ entry into the case will not delay discovery. Intervenors will comply with any existing scheduling orders. Further, no substantive rulings have been made.



**II. In the alternative, Intervenors satisfy the requirements of R. 4:33-2 for permissive intervention.**

Permissive intervention in New Jersey is appropriate “if the claim or defense and the main action have a question of law or fact in common.” R. 4:33-2. The Intervenors’ interests and proposed defenses involve questions of law and fact related to the main action. As students and parents of students in the New Jersey public school system, Student- and Parent-Intervenors will undoubtedly be affected by the outcome of this proceeding. A determination regarding the constitutionality of the Pledge will directly impact the way in which they begin each school day and affect the nature of their public school education. The Knights’ interest in the issue before the Court, namely the constitutionality of the Pledge that they helped to amend in 1954, will be significantly impaired by a determination finding the Pledge and its recitation unconstitutional.

Permissive intervention is to be “liberally construed by trial courts with a view to whether intervention will unduly delay or prejudice the adjudication of the rights of the parties.” ACLU of N.J., 352 N.J. Super. at 69 (quoting Zinger v. Gen. Accident Ins. Co., 144 N.J. 327 (1996)). See also N.J. Div. of Youth v. Family Serv., 422 N.J. Super. 583, 590 (App. Div. 2011) (trial court is to “liberally determine” permissive intervention). The opposing party would not be unduly prejudiced nor the case unduly delayed because it is in its early stages and no major rulings or discovery have yet been made. See supra Part I.D.

If denied the opportunity to intervene and defend their interests in this case, Intervenors would be impaired in their ability to defend the Pledge in any subsequent proceeding. Permissive intervention is designed to protect parties from such impairment. See 7C Wright, Miller & Kane § 1911 (where intervention as of right would be improper, the scales of justice may nevertheless

be tipped “in favor of allowing permissive intervention” when the doctrine of *stare decisis* would bar the protection of interest in subsequent suit).

CONCLUSION

For the reasons set forth above, Intervenors meet all the requirements for intervention as of right under R. 4:33-1 and satisfy the criteria for permissive intervention under R. 4:33-2. Intervenors, therefore, respectfully request that their Motion to Intervene be granted.

Respectfully submitted,



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Diana M. Verm (*pro hac vice* to be filed)  
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AMERICAN HUMANIST ASSOCIATION and  
JOHN DOE and JANE DOE, individually and as  
parents and next friends of DOECHILD,

Plaintiffs,

v.

MATAWAN ABERDEEN REGIONAL SCHOOL  
DISTRICT and DAVID M. HEALY, in his capacity  
as Superintendent of Schools,

Defendants,

and

FRANK JONES and MICHELE JONES,  
individually and as parents of next friends of S.  
JONES, F. JONES and H. JONES and THE  
KNIGHTS OF COLUMBUS, a Connecticut tax-  
exempt corporation,

Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-001317-14

*Civil Action*

**CERTIFICATION OF JAMES  
STOEVER IN SUPPORT OF THE  
MOTION TO INTERVENE**

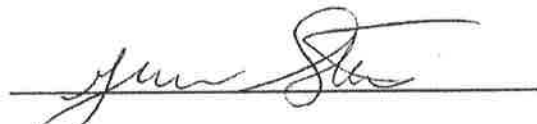
I, James Stoever, of full age, by way of Certification in lieu of oath, depose and say:

1. I am an Officer of the New Jersey State Council of the Knights of Columbus.

2. There are members of the Knights of Columbus residing within the Matawan-Aberdeen Regional School District in New Jersey.
3. More than one member has a child attending Matawan-Aberdeen public schools. Those members have stated that they want their children to be allowed to continue to say the Pledge of Allegiance in full, as set forth in Title 4 United States Code, Section 4.
4. I make this Certification on behalf of the Knights of Columbus and its members, in support of the application to intervene in this lawsuit.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 28, 2014

  
JAMES STOEVER

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ATTORNEYS FOR DEFENDANT-INTERVENORS

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parents and next friends of DOECHILD,

Plaintiffs,

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Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-001317-14

*Civil Action*

**CERTIFICATION OF  
FACSIMILE SIGNATURE**

The undersigned attorney for Defendant-Intervenors, hereby certifies that the affiant acknowledged the genuineness of the signature of James Stoeber and that the within document or a copy of an original signature will be filed if required by the Court or a party.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Lomurro, Davison, Eastman &  
Muñoz, P.A.,  
Attorneys for Defendant-Intervenors

By: 

\_\_\_\_\_  
JAMES A. PAONE, II

Dated: 7/27/14

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Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-001317-14

*Civil Action*

**CERTIFICATION OF CHARLES  
MAURER, OFFICER OF THE  
KNIGHTS OF COLUMBUS, IN  
SUPPORT OF THE MOTION TO  
INTERVENE**

I, Charles Maurer, of full age, by way of Certification in lieu of oath, depose and say:



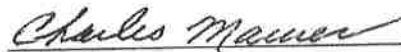
1. I am an Officer of the Knights of Columbus, a Connecticut corporation operating as a tax-exempt fraternal benefit society (“the Order”).
2. The Order is the world’s largest lay Catholic fraternal organization, with more than 1.8 million members. Through numerous service projects and charitable endeavors throughout the United States and in many countries around the world, the members of the Order live out its foundational principles of charity, unity, fraternity, and patriotism. Last year, the Order contributed more than \$170 million to charitable causes and its members performed more than 70 million hours of volunteer service.
3. The Order has more than 63,000 members in New Jersey.
4. The Knights of Columbus helped organize a nationwide effort in the early 1950s to insert the words “under God” into the Pledge of Allegiance, an effort that came to a successful conclusion in 1954 when Congress passed and President Eisenhower signed a bill formally changing the Pledge to include these words. The Order believes that the words “under God” represent an accurate summary of this country’s political philosophy, and an understanding of our historical national identity that has been reaffirmed thousands of times by judges, legislators, and presidents: that our rights come from God, not from the State, and that governments are accountable to “Nature and Nature’s God,” as our Founding Fathers expressed it in the Declaration of Independence.
5. The order believes that it is critical to retain the words “under God” in the Pledge in order to safeguard the principle that every person is endowed with inalienable rights that must be respected by the state precisely because they are prior to the state.
6. The Order believes that the Pledge, in its current form, stands as a public witness to the foundational principles of the republic, and that altering it by eliminating the words

“under God” would promote an inaccurate and incomplete understanding of the basis for our civic life.

7. The Order has previously defended the Pledge of Allegiance against constitutional challenges as a defendant-intervenor in federal courts in California and New Hampshire, and in Massachusetts state court: *Newdow v. Rio Linda Union School District*, 597 F.3d 1007 (9th Cir. 2010), *Freedom From Religion Foundation v. Hanover School District*, 626 F.3d 1 (1st Cir. 2010), *cert. denied*, 131 S. Ct. 2992 (2011), *Doe v. Acton-Boxborough Regional School District*, 468 Mass. 64 (2014).
8. I make this Certification on behalf of the Order and its members, in support of the application to intervene in this lawsuit.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 28, 2014



CHARLES MAURER

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ATTORNEYS FOR DEFENDANT-INTERVENORS

AMERICAN HUMANIST ASSOCIATION and  
JOHN DOE and JANE DOE, individually and as  
parents and next friends of DOECHILD,

Plaintiffs,

v.

MATAWAN ABERDEEN REGIONAL SCHOOL  
DISTRICT and DAVID M. HEALY, in his capacity  
as Superintendent of Schools,

Defendants,

and

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

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*Civil Action*

**CERTIFICATION OF  
FACSIMILE SIGNATURE**

The undersigned attorney for Defendant-Intervenors, hereby certifies that the affiant acknowledged the genuineness of the signature of Charles Maurer and that the within document or a copy of an original signature will be filed if required by the Court or a party.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Lomurro, Davison, Eastman &  
Muñoz, P.A.,  
Attorneys for Defendant-Intervenors

By: \_\_\_\_\_

JAMES A. PAONE, II

Dated: \_\_\_\_\_

7/29/19

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*Civil Action*

**CERTIFICATION OF FRANK  
JONES IN SUPPORT OF  
MOTION TO INTERVENE**

I, Frank Jones, of full age, hereby certify as follows:

1. I am a parent and next friend of S. Jones, F. Jones and H. Jones, my children, along with my wife, Michele Jones.
2. I pay federal, state, and local taxes, including taxes to New Jersey public schools.
3. I reside in Blackwood, New Jersey.
4. I am the father of H. Jones. H. is a third grade student in the Gloucester Township Public School District.
5. I am the father of F. Jones. F. is a ninth grade student in the Black Horse Pike Regional School District.
6. I am the father of S. Jones. S. is a twelfth grade student in the Black Horse Pike Regional School District.
7. Both of these school districts are in New Jersey and would be affected by any change to N.J.S.A. 18A:36-3.
8. I understand from my children that their classes regularly recite the Pledge of Allegiance, including the phrase "one nation under God." I view this as an important part of my children's education in citizenship.
9. I understand the phrase "one nation under God" to echo the teaching of the Declaration of Independence that we are "endowed by our Creator with certain unalienable rights." I recognize that at least since the Declaration of Independence was written, our national ethos has held that we have inalienable rights that the State cannot take away, because the source of those inalienable rights is an authority greater than the state.
10. It is our belief that the phrase "under God" contained in the Pledge of Allegiance ("Pledge"), like the Declaration of Independence, is a statement of political philosophy, not of theology.

11. I recognize that this political philosophy depends for its force on the premise that our rights are only inalienable because they inhere in a human nature that has been “endowed” with such rights by a “Creator.”

12. We further believe that the continued recitation of the Pledge is an important element of public school education in order to teach our children and reaffirm for them the limited nature of the American Republic. As such, it teaches the children that it is important for them to remind their government, each time they pledge allegiance, that it is a limited government that must respect their rights because those rights come from a higher source than the government itself.

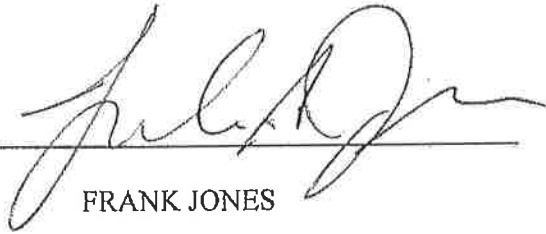
13. We encourage our children to participate in the voluntary recitation of the Pledge at their respective schools and we desire to continue to have our children recite the Pledge in full at those schools.

14. We firmly believe that our children’s education will be diminished if their schools alter the Pledge. We also believe that by editing the words “under God” out of the Pledge, the government would send a message of unreasoning hostility towards religion by stating that any government use of the words “God”—religious or not—is unconstitutional.

15. We have legitimate and personal interests in continuing to have our children recite the Pledge and thus, respectfully request that the Court grant our Motion to Intervene in this case.

16. I certify that the foregoing statements made by are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 25, 2014



FRANK JONES



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and

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MONMOUTH COUNTY

DOCKET NO. MON-L-001317-14

*Civil Action*

**CERTIFICATION OF  
FACSIMILE SIGNATURE**

The undersigned attorney for Defendant-Intervenors, hereby certifies that the affiant acknowledged the genuineness of the signature of Frank Jones and that the within document or a copy of an original signature will be filed if required by the Court or a party.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Lomurro, Davison, Eastman &  
Muñoz, P.A.,  
Attorneys for Defendant-Intervenors

By:

  
JAMES A. PAONE, II

Dated:

8/19/14

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*and*

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**ORDER**

**THIS MATTER** having been brought before the Court by Defendant-Intervenors, Frank Jones, Michele Jones, S. Jones, F. Jones, and H. Jones, and the Knights of Columbus' Notice of

Motion to Intervene pursuant to R. 4:33, and the Court having considered opposition and all other moving papers; and having heard argument of the parties; and for good cause having been shown;

**IT IS ON THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2014

**ORDERED** that Defendant-Intervenors Frank Jones, Michele Jones, S. Jones, F. Jones and H. Jones and the Knights of Columbus' Motion to Intervene is **GRANTED**.



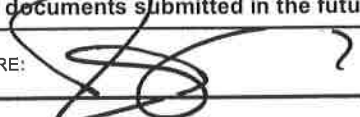
**IT IS FURTHER ORDERED** that a copy of this Order be served upon all counsel of record within seven (7) days of the date of receipt of this Order.

\_\_\_\_\_  
, J.S.C.

**PAPERS CONSIDERED:**

- \_\_\_\_\_ NOTICE OF MOTION
- \_\_\_\_\_ MOVANT'S CERTIFICATIONS
- \_\_\_\_\_ MOVANT'S BRIEF
- \_\_\_\_\_ ANSWERING CERTIFICATIONS
- \_\_\_\_\_ ANSWERING BRIEF
- \_\_\_\_\_ MOVANT'S REPLY
- \_\_\_\_\_ OTHER

**Appendix XII-B1**

	<b>CIVIL CASE INFORMATION STATEMENT (CIS)</b>		<b>FOR USE BY CLERK'S OFFICE ONLY</b>	
			PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO.	
			AMOUNT:	
			OVERPAYMENT:	
		BATCH NUMBER:		
ATTORNEY / PRO SE NAME James A. Paone, II, Esq.		TELEPHONE NUMBER 732-462-7170	COUNTY OF VENUE	
FIRM NAME (if applicable) Lomurro, Davison, Eastman & Munoz, P.A.		DOCKET NUMBER (when available) MON-L-1317-14		
OFFICE ADDRESS 100 Willow Brook Road, Suite 100 Freehold, NJ 07728		DOCUMENT TYPE Answer		
		JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
NAME OF PARTY (e.g., John Doe, Plaintiff) Frank Jones, Michele Jones, S. Jones, F. Jones, and H. Jones, and the Knights of Columbus,		CAPTION American Humanist Association v. Matawan-Aberdeen Regional School District		
CASE TYPE NUMBER (See reverse side for listing) 005	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
		DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
 Do you or your client need any disability accommodations? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
Will an interpreter be needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).				
ATTORNEY SIGNATURE: 				



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)

**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

**Track II - 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

**Track III - 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Multicounty Litigation (Track IV)**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>266 HORMONE REPLACEMENT THERAPY (HRT)</li> <li>271 ACCUTANE/ISOTRETINOIN</li> <li>274 RISPERDAL/SEROQUEL/ZYPREXA</li> <li>278 ZOMETA/AREZIA</li> <li>279 GADOLINIUM</li> <li>281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL</li> <li>282 FOSAMAX</li> <li>284 NUVARING</li> <li>285 STRYKER TRIDENT HIP IMPLANTS</li> <li>286 I.EVAQUIN</li> <li>287 YAZ/YASMIN/OCELLA</li> </ul> | <ul style="list-style-type: none"> <li>288 PRUDENTIAL TORT LITIGATION</li> <li>289 REGLAN</li> <li>290 POMPTON LAKES ENVIRONMENTAL LITIGATION</li> <li>291 PELVIC MESH/GYNECARE</li> <li>292 PELVIC MESH/BARD</li> <li>293 DEPUY ASR HIP IMPLANT LITIGATION</li> <li>295 ALLODERM REGENERATIVE TISSUE MATRIX</li> <li>296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS</li> <li>297 MIRENA CONTRACEPTIVE DEVICE</li> <li>601 ASBESTOS</li> <li>623 PROPECIA</li> </ul> |
|--|---|

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category     Putative Class Action     Title 59

JAMES A. PAONE, II, ESQ. -I.D. # 30901989  
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*and*

Eric C. Rassbach (pro hac vice to be filed)  
Diana M. Verm (pro hac vice to be filed)  
The Becket Fund for Religious Liberty  
3000 K Street NW, Suite 220  
Washington, DC 20007  
Tel: (202) 955-0095  
Fax: (202) 955-0090

ATTORNEYS FOR DEFENDANT-INTERVENORS

AMERICAN HUMANIST ASSOCIATION and  
JOHN DOE and JANE DOE, individually and as  
parents and next friends of DOECHILD,

Plaintiffs,

v.

MATAWAN ABERDEEN REGIONAL SCHOOL  
DISTRICT and DAVID M. HEALY, in his capacity  
as Superintendent of Schools,

Defendants,

and

FRANK JONES and MICHELE JONES,  
individually and as parents of next friends of S.  
JONES, F. JONES and H. JONES and THE  
KNIGHTS OF COLUMBUS, a Connecticut tax-  
exempt corporation,

Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO. MON-L-001317-14

*Civil Action*

**ANSWER TO THE COMPLAINT**

Defendant-Intervenors, Frank Jones, Michele Jones, individually and as parents and next friends of S. Jones, F. Jones and H. Jones, and The Knights of Columbus (collectively "Intervenors"), by way of Answer to the Complaint of the Plaintiffs, say as follows:

1. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 1 of the Complaint.

2. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 2 of the Complaint.

3. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 3 of the Complaint.

4. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 4 of the Complaint.

5. Upon information and belief, the Intervenors admit the allegations contained in paragraph 5 of the Complaint.

6. Upon information and belief, the Intervenors admit the allegations contained in paragraph 6 of the Complaint, adding that Student-Intervenors are residents of Blackwood, New Jersey. Student-Intervenor H. Jones attends school in the Gloucester Township Public School District, and Student-Intervenors F. Jones and S. Jones attend school in the Black Horse Pike Regional School District. Intervenors, The Knights of Columbus (“Knights”), are the largest Catholic laymen’s organization with approximately 1.8 million members in a dozen countries. The Knights has over 63,000 members in New Jersey, including members with children in Matawan-Aberdeen public schools. Those members have stated that they want their children to continue saying the Pledge of Allegiance in full. The Knights of Columbus is one of the organizations responsible for the adoption of the words “under God” into the Pledge of Allegiance in 1954. The Knights understood that including the phrase “under God” in the Pledge would represent the “natural rights” philosophy of the Founders as expressed in the Declaration



of Independence that every person is endowed with inalienable rights that must be respected by the state precisely because they are prior to the state.

7. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 7 of the Complaint.

8. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 8 of the Complaint.

9. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 9 of the Complaint.

10. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 10 of the Complaint.

11. Upon information and belief, the Intervenors admit the allegations contained in paragraph 11 of the Complaint.

12. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 12 of the Complaint.

13. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 13 of the Complaint.

14. The Intervenors deny the allegations in paragraph 14 for lack of knowledge or information sufficient to form a belief as to their truth.

15. The Intervenors deny the allegations in paragraph 15 for lack of knowledge or information sufficient to form a belief as to their truth.

16. The Intervenors deny the allegations in paragraph 16 for lack of knowledge or information sufficient to form a belief as to their truth.

17. The Intervenors deny the allegations in paragraph 17 for lack of knowledge or information sufficient to form a belief as to their truth.

18. The Intervenors deny the allegations in paragraph 18 for lack of knowledge or information sufficient to form a belief as to their truth.

19. The Intervenors deny the allegations in paragraph 19 for lack of knowledge or information sufficient to form a belief as to their truth.

20. The Intervenors state that the past and present terms of the cited statute speak for themselves, and are their own best evidence of their content and import.

21. The Intervenors state that the past and present terms of the cited statute speak for themselves, and are their own best evidence of their content and import.

22. The Intervenors deny the allegations in paragraph 22 for lack of knowledge or information sufficient to form a belief as to their truth.

23. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 23 of the Complaint, except to state that the political philosophy that motivates the Pledge depends for its force on the premise that our rights are only inalienable because they inhere in a human nature that has been “endowed” with such rights by a “Creator.” As such, it teaches the children that it is important for them to remind their government, each time they pledge allegiance, that it is a limited government that must respect their rights because those rights come from a higher source than the government itself. It is not a statement of religious belief and does not send a religious message to students respecting any religion.

24. The Intervenors deny the allegations in paragraph 24 for lack of knowledge or information sufficient to form a belief as to their truth. The Intervenors repeat that the Pledge of Allegiance is not a religious statement and does not exclude Plaintiffs.

25. The Intervenors deny the allegations in paragraph 25 for lack of knowledge or information sufficient to form a belief as to their truth. The Intervenors believe that by editing the words “under God” out of the Pledge, the government would send a message of unreasoning hostility towards religion by stating that any government use of the word “God”—religious or not—is unconstitutional.

26. The Intervenors deny the allegations in paragraph 26 for lack of knowledge or information sufficient to form a belief as to their truth.

27. The Intervenors admit that school children in New Jersey public schools have the right to refuse participation in the flag-salute ceremony and Pledge recitation; the Intervenors lack sufficient knowledge to respond to the remaining allegations contained in paragraph 27 of the Complaint.

28. The Intervenors deny the allegations contained in paragraph 28 of the Complaint.

29. The Intervenors admit that the Pledge was originally written in 1892 and the words “under God” were not added to it until 1954.

30. The Intervenors admit that the language “under God” was added at the height of the Cold War between the United States and Soviet Union, to distinguish the nature and extent of human rights in the United States from that in communist Russia. The Intervenors deny the remaining allegations contained in paragraph 30 of the Complaint.

31. The Intervenors admit that the Soviet Union dissolved in 1991. The Intervenors deny the remaining allegations contained in paragraph 31 of the Complaint.

32. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 32.

33. The intervenors admit that the State of New Jersey 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.” The Intervenor deny the remaining allegations in paragraph 33 for lack of knowledge or information sufficient to form a belief as to their truth. The rational basis for including the phrase “under God” in the Pledge was meant to draw a distinction between the “natural rights” philosophy of Madison, Jefferson, and other Founders on which the American system is based and the Soviet philosophy that rights, such as they are, are conferred by the State. Despite the fall of the Soviet Union in 1991, the inclusion of “under God” remains relevant because it expresses the political philosophy that our rights are only inalienable because they inhere in a human nature that has been “endowed” with such rights by a “Creator.” As such, it represents that the United States government is limited and must respect the rights of its people because those rights come from a higher source than the government itself.

34. The Intervenor deny the allegations in paragraph 34 for lack of knowledge or information sufficient to form a belief as to their truth. The Intervenor repeat that the Pledge of Allegiance is not a religious statement and does not exclude Plaintiffs. The Intervenor also repeat their belief that by editing the words “under God” out of the Pledge, the government would send a message of unreasoning hostility towards religion by stating that any government use of the word “God”—religious or not—is unconstitutional.

35. The Intervenor deny the allegations in paragraph 35.

36. The Intervenor deny the allegations in paragraph 36.

37. The Intervenor lack sufficient knowledge to respond to the allegations contained in paragraph 37.

38. The Intervenors lack sufficient knowledge to respond to the allegations contained in paragraph 38.

39. The Intervenors deny the allegations in paragraph 39 for lack of knowledge or information sufficient to form a belief as to their truth.

40. The Intervenors deny the allegations in paragraph 40 for lack of knowledge or information sufficient to form a belief as to their truth.

41. Paragraph 41 of the Complaint contains only legal arguments to which no response is required, except that the Intervenors note that federal law is relevant to Plaintiffs' claims.

#### COUNT I

42. The Intervenors hereby repeat, reallege, and incorporate by reference their responses to paragraphs 1 through 41 of the Complaint as if fully and expressly stated herein.

43. Paragraph 43 of the Complaint contains only legal arguments to which no response is required.

44. Paragraph 44 of the Complaint contains only legal arguments to which no response is required.

45. Paragraph 45 of the Complaint contains only legal arguments to which no response is required.

46. The Intervenors deny the allegations in paragraph 46 for lack of knowledge or information sufficient to form a belief as to their truth.

47. The Intervenors deny the allegations contained in paragraph 47 of the Complaint.

48. The Intervenors deny the allegations contained in paragraph 48 of the Complaint.

WHEREFORE, the Intervenors hereby respectfully request that the Court (i) dismiss all of the claims in the Complaint and deny all relief sought in the Complaint, and (ii) award the Intervenors such other relief as is proper, just and/or equitable—including but not limited to its costs and attorneys' fees.

## COUNT II

49. The Intervenors hereby repeat, reallege, and incorporate by reference their responses to paragraphs 1 through 48 of the Complaint as if fully and expressly stated herein.

50. Paragraph 50 of the Complaint contains only legal arguments to which no response is required.

51. Paragraph 51 of the Complaint contains only legal arguments to which no response is required.

52. Paragraph 52 of the Complaint contains only legal arguments to which no response is required.

53. The Intervenors deny the allegations in paragraph 53 for lack of knowledge or information sufficient to form a belief as to their truth.

54. The Intervenors deny the allegations contained in paragraph 54 of the Complaint.

55. The Intervenors deny the allegations contained in paragraph 55 of the Complaint.

WHEREFORE, the Intervenors hereby respectfully request that the Court (i) dismiss all of the claims in the Complaint and deny all relief sought in the Complaint, and (ii) award the Intervenors such other relief as is proper, just and/or equitable – including but not limited to its costs and attorneys' fees.

COUNT III

56. The Intervenors hereby repeat, reallege, and incorporate by reference their responses to paragraphs 1 through 55 of the Complaint as if fully and expressly stated herein.

57. The Intervenors deny the allegations contained in paragraph 57 of the Complaint.

58. The Intervenors deny the allegations contained in paragraph 58 of the Complaint.

59. The Intervenors deny the allegations contained in paragraph 59 of the Complaint.

60. Paragraph 60 of the Complaint contains only legal arguments to which no response is required.

61. The Intervenors deny the allegations contained in paragraph 61 of the Complaint.

62. The Intervenors deny the allegations contained in paragraph 62 of the Complaint.

WHEREFORE, the Intervenors hereby respectfully request that the Court (i) dismiss all of the claims in the Complaint and deny all relief sought in the Complaint, and (ii) award the Intervenors such other relief as is proper, just and/or equitable – including but not limited to its costs and attorneys' fees.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Plaintiffs have no right to a trial by jury for their claims.

**SECOND AFFIRMATIVE DEFENSE**

All counts of the Complaint must be dismissed since some or all of the Plaintiffs, including but not limited to the AHA, lack standing to bring the claims raised in the Complaint.

### THIRD AFFIRMATIVE DEFENSE

All counts of the Complaint must be dismissed as the Plaintiffs are not, and have not been, treated any differently than other students, parents and organizations by the Matawan-Aberdeen Regional School District. Accordingly, there can be no violation of equal protection.

### FOURTH AFFIRMATIVE DEFENSE

All counts of the Complaint must be dismissed since the Plaintiffs' request that the Court impose the pre-1954 version of the Pledge of Allegiance on the Matawan-Aberdeen Regional School District and Intervenors is contrary to law.

### FIFTH AFFIRMATIVE DEFENSE

All counts of the Complaint must be dismissed since the Plaintiffs' claim that the use of the phrase "under God" in the Pledge of Allegiance violates the New Jersey Constitution (even though it does not violate the United States Constitution) ignores and is rebutted by the fact that the New Jersey Constitution makes several references to God. In fact, the preamble provides as follows:

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

N.J. Const. pmbl.

### SIXTH AFFIRMATIVE DEFENSE

Even if, arguendo, the phrase "under God" does implicate valid equal protection rights of the Plaintiffs under the New Jersey Constitution (which is denied), all counts of the Complaint must be dismissed as there are rational, indeed compelling, justifications for reciting the Pledge in the Intervenors' schools exactly as worded by Federal Law, as provided by the U.S. Code. 4 U.S.C. § 4.



**JURY DEMAND**

A demand is hereby made for a trial by jury.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, James A. Paone, II is hereby designated as trial counsel on behalf of the Defendant-Intervenors, Frank Jones, Michele Jones, individually and as parents and next friends of S. Jones, F. Jones and H. Jones, and The Knights of Columbus in the within action.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

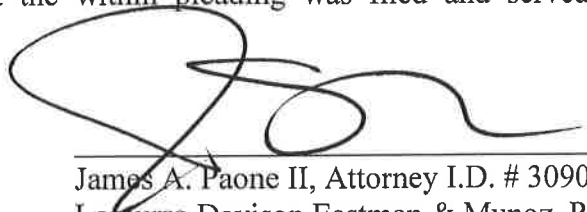
I hereby certify in accordance with R. 4:5-1 that I am not aware of any other civil proceedings either pending or contemplated with respect to the matter in controversy herein, and that there are no other parties who shall be joined in this action at this time.

**CERTIFICATION PURSUANT TO RULE 1:38-7(c)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents in the future in accordance with Rule 1:38-7(b).

**CERTIFICATION**

We hereby certify that the within pleading was filed and served within the time required by R.4:6.



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*and*

Eric C. Rassbach (*pro hac vice* to be filed)

Diana M. Verm (*pro hac vice* to be filed)

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