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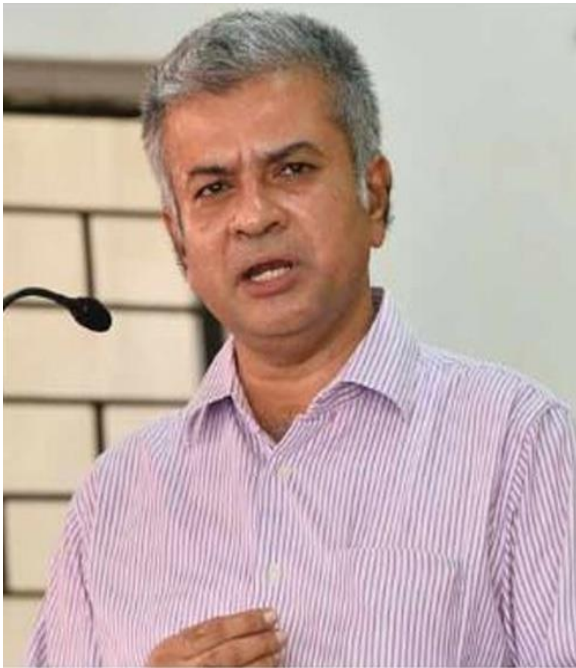
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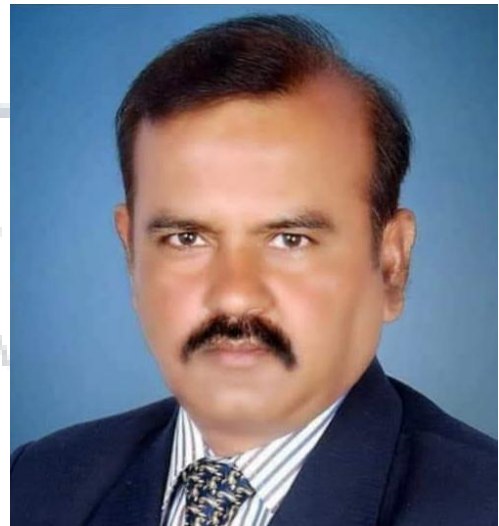


Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

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Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

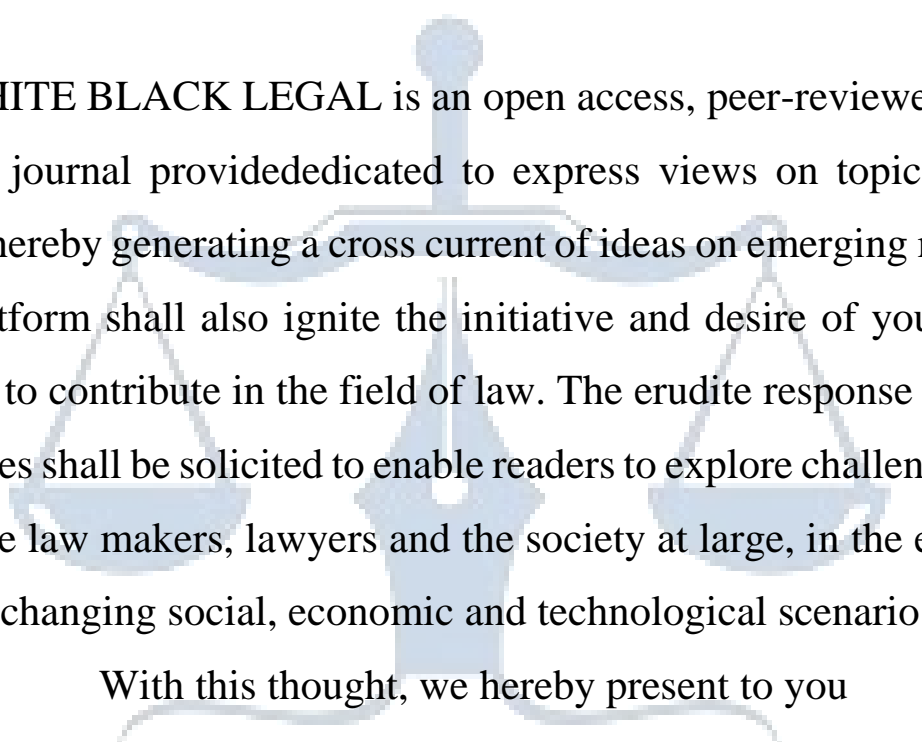


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

RIGHT OF REDEMPTION: UNDER THE CONTRACT OF PLEDGE

AUTHORED BY:- PRIYAM PRAKASH¹

ABSTRACT:

A promise is a short-term transfer of ownership between two parties. Loans, collateral for financial advances, and performance guarantees all fall under the category of pledges. Pledges are not the same as actual purchases. When something is sold, the buyer takes over both physical possession and legal ownership. The only thing that is transferred in a pledge is possession. Although the first party retains title to the property at issue, the second party has exclusive use of it until the conditions of the agreement are met. A contract of pledge details the debt or obligation, the property to be pledged, and the terms under which it must be repaid.

INTRODUCTION

The difference between pledges and bailments is the subject matter of the contract. A pledge is a type of bailment in which the goods are delivered in order to secure a loan or the performance of some other obligation. As defined in Section 172 of the Indian Contract Act of 1872, "pledge" refers to the deposit of goods as collateral for the payment of a debt or the performance of an obligation. In this context, the lender is referred to as the "Pawnor." The term pawnee is used to refer to the bailee. "A pawn or pledge is the use of personal property as collateral for a debt or obligation. A pawnor is a person who, being liable to an engagement, gives the person to whom he is liable an item as security for the payment of his debt or the performance of his obligation" according to the ruling of the Supreme Court of India in Lallan Prasad v. Rahmat Ali. The Pawnee has the right to the pledged property. Transferring possession can occur either tangibly or legally. The key to the storage location where the products are held would constitute constructive delivery. Delivery is sufficient if the items are in the custody of a third party who undertakes to hold them for the pledgee at the pledger's direction. The term attornment is used to characterise this procedure. It is also

¹ Priyam Prakash (B.com LL.B (hons)., UPES, Dehradun

possible to create pledges by delivering title documents that enable the pledgee to assume ownership. In the 2001 case *Morvi Mercantile Bank Ltd vs. Union of India, David L. and Brian T.* Supreme Court of India ruled that "delivery of railway receipts was the same as delivery of commodities, thus the pledge was lawful and the pledgee was permitted to claim for the loss." Hypothecation occurs when the pledged items remain in the pledger's possession for any reason. In the event of a default by the Pledger, the Pledgee will be required to physically seize the security and subsequently sell it. Auto financing is the most typical form of this agreement. In this scenario, the pledgee retains ownership of the automobile, but hypothecates it to the lender. The bank may repossess the vehicle, sell it, and apply the proceeds to the debt after giving notice of the pledgee's default.

PAWNEE'S RETENTION RIGHT

The Pawnee has the right to hold the items until the debt or interest is paid in full. Pawnee's right of retention was recognized in (Section 173 of the Contract Act). The Pawnee has the right to hold the collateral until the obligation or promise is paid in full, regardless of whether or not the Pawnee has incurred any costs in maintaining possession of the collateral. The Lender is entitled to keep the collateral until the obligation or promise secured by the collateral is paid in full, including all accrued interest and any reasonable costs associated with maintaining possession of the collateral. Unless otherwise agreed upon in writing, the pledgee may only keep the items to the extent necessary to satisfy the obligation secured by the pledge. On the other hand, if he keeps the products in exchange for more money, that's seen as an indication of an agreement to do so. Duty not to retain for debt or promise other than for which products committed - presumption in case of further loans, as described in Section 174 of the Act (Dennis K. Berman, September 15, 2008). The Pawnee must not keep the commodities pledged for any obligation or promise other than the debt or promise for which they are pledged; provided, however, that a contract to that effect will be inferred with respect to future advances made by the Pawnee¹⁴ in the absence of anything to the contrary. As Section 171 is a more narrowly tailored law, it takes precedence over the broader provisions of Section 174. So, even if the debtor has not paid off his balance on another loan, the Banker's lien under Section 171 will apply to all other pledges with the Bank, and the Bank may keep the pledged goods (Sec 174). Pledge has an absolute and irrevocable right to keep any and all funds, similar to a lien. Yet, a lien is not the same as a promise. "A lien is only a personal right, but a pledge offers to the pawnee a 'special property' in the items

pledged. a lien gives no power of sale or disposition of the goods, whereas a pawnee has the ability to sell in event of failure lien is not transferable, whereas a pledge is assignable." After the obligation is paid in full, the pawnee retains full ownership of the collateral. To the extent required to secure the obligation, the pledgee acquires the right to the property. Thus, no other creditor of the pawner has any right to remove the items or their price so long as the pawnee's claim is not met. Goods pledged to a bank were taken by the state of Bihar in the case *Bank of Bihar v. State of Bihar*. Pledgee's right to realize the amount for which commodities were pledged was upheld, and State was required to reimburse him up to the amount which would have been realised from the items if seizure had not occurred. The court further noted that there were no significant differences between English Law and Indian Law in this area. (Sheila Bair (1995). A loan may be secured by the goods, but only through hypothecation, which is a transaction under which goods are made available as security for a debt without actually transferring either the property or the possession thereof to the creditor, and in which the owners are under an obligation to discharge the debt within the stipulated time (Bebchuk, Lucian, Cohen, Alma and Ferrell. 2009).

Pawnee's right as to extortionary expenses incurred the Pawnee is entitled to receive from the pawnor extraordinary expenses he incurred for the preservation of the goods pledged, as provided in Section 175 of the Act: Pawnee's right as to extortionary expenses incurred the Pawnee is entitled to receive from the pawnor extraordinary expenses he incurred for the preservation of the goods pledged, as provided in Section 175 of the Act (2006).

When a debtor defaults on a promise or debt, the Pawnee has the legal right to sell the goods pledge as security for the debt or promise. This right is codified in Section 176 of the Uniform Commercial Code, which reads as follows: S 176. Pawnee's right where pawnor makes default. If the pawnor defaults in payment of the debt, or performance, at the stipulated time, or the promise, in respect of which the goods were.

According to Cremers and Nair (2006), "In *Lallan Prasad v. Rahmat All*, the defendant borrowed Rs 20,000 from the plaintiff on a promissory note and gave him aero scrapes worth about Rs 35,000. The plaintiff sued for repayment of the loan, but was unable to produce the security, having sold it, and, therefore, his action for the loan was rejected" (1997).

In the case of *Prabhat Bank v. Babu Ram*, heard before the Allahabad High Court, one of the loan agreement's terms allowed the lending banker to sell the securities without any notice

to the pawner. The pawner challenged this provision, arguing that the requirement of 'reasonable notice' is a statutory obligation and, therefore, cannot be excluded by a contract to the contrary. Every such notification must be written in plain English. The pawner's obligation to repay the debt or commitment remains even if the profits of the sale fall short of the full amount owed. The pawnee is obligated to return any excess funds to the pawner if the sale's revenues exceed the amount owed. Reference: (Gompers, Paul, Joy Ishii, and Andrew Metrick. 2003).

When security goods are lost owing to the carelessness of the pledgee, the pledger's obligation is reduced to the amount of the value of the lost commodities. *Gurbax Rai v. Punjab National Bank* is an upcoming Supreme Court case. A bank had a security interest in certain inventory stored in the warehouse of a company. The bunker included fire protection coverage. The fire destroyed several of them. Insurance money was given to the bank to cover the full amount of the blaze. According to (Andrew S. Schleifer and Robert W. (1997).

Hypothecates are not the legal owners of the things being sold. The borrower has his permission to utilize it. If the debtor defaults on the loan, he is entitled to repossess the items. Then, in his function as a pledge, he may sell them. There's no need to involve the justice system. Hypothecation: In *Bank of Chittor V. Narasimbulu* (1966), a cinema projector and accessories were pledged with the bank; the bank allowed the property to remain with the pledgers because it was part of the equipment of a functioning theater; the pledgers subsequently sold the machinery; and the bank accepted the sale as constructive delivery.

THE REDEEMING RIGHT OF THE PAWNER: -

The Act's Section 177 guarantees the pawnshop's most valuable legal claim: §177. The pawner has the right to redeem the pledged goods at any time prior to their actual sale, even if he has failed to pay the debt or perform the promise by the agreed upon deadline; however, in this case, he must also pay any additional costs that have resulted from the pawnshop's decision to sell the goods. This clause is intended to augment the preceding one. The pawner retains the right to redeem the pledged goods until they are sold, even after the deadline for payment of the debt or fulfilment of the promise has passed; nevertheless, he must also pay any expenditures that emerge from his failure. The Supreme Court noted in the case of *Jaswantrai Manilal Akhaney v. State of Bombay* that the pledger has the right to have the title to corpus

of the pledgor returned to them once the debt secured by the pledge has been paid in full. This right remains in effect until the thing pledged is lawfully sold. If no redemption period is specified, the pledger has the right to redeem the pledge at any time by paying the full amount secured by the pledge. If you want to use this remedy rather than only have the right of redemption declared, you'll need to bring an action for redemption (Tran, Mark July 22, 2002).

HEREDITARY RIGHT

Some gold jewelry was used to secure a gold loan at the bank. The pawnor was killed. His wife had the intention of returning the debt in order to fulfill the vow. To prove her point, she provided her husband's purported will. The judge ruled that she may exercise her right to redemption. She was not required to provide the bank with proof of will probate or a succession certificate. In the event that the pawnor redeems before the end of the stipulated time, he will still be obligated by the conditions of the loan, if any, including any prepayment penalty. Her children did not complain. A court has ruled that a bank may attach and sell an employer's property to recoup employees' wages where the property has been pledged as collateral for the repayment of a loan. Insurance premiums paid into a Provident Fund. A mortgage may be foreclosed on under Section 11(2) of the Provident Fund Act (1952).

THE PLEDGER'S RESPONSIBILITIES

- The pledger is responsible for paying for it.
- The pledger gives their assent.

(a) not to take, or permit the taking of any action that would harm the rights under the Pledge in favour of the Pledgees, and not to take any action that might damage the rights under the Pledge.

(b) to perform all other obligations under the Pledge (the priority of the Secured Obligations, the enforceability of the Pledge, the legal nature of the Shares, rights attaching to them or the like); the Pledgee agrees to this provision until the Secured Obligations have been fully and finally satisfied.

(c) to refrain from selling, transferring, encumbering, establishing any preemptive right over, exchanging, or otherwise disposing of the Shares in any other manner.

(d) to refuse to agree to the formation or imposition of any charge or encumbrance, right or option, or limitation on the transferability of the Shares in any form whatever.

e) to take any action or sign any public or private document that may be required by the Agent to maintain the Pledge and its priority in force, and in particular to keep the Pledge and its priority in force to pay the Agent any compensation that may be due to the Agent under this Agreement.

(f) to take any and all activities necessary on its part in order to create and formalise the Pledge in accordance with the terms of the Pledge Agreement is required to disclose to the Agent any events or conditions that may lead to an official insolvency proceeding involving the Company to provide immediate notification in the event that any default occurs in accordance with the Pledge Agreement, the Secured Agreement, or any of the other Transaction Documents.

I at any time, at the request of the Agent and at the sole cost and expense of the Pledger, to sign, seal, execute, grant, and perform any and all deeds, notary-attested agreements, notices, documents, and acts as the Agent may reasonably request in connection with the Pledge; this obligation is in addition to the Pledger's obligation to sign, seal, execute, grant, and perform all such deeds in connection with the Pledge. Zingales, Luigi (2008)

The Pledge is legally binding and cannot be split between the Pledges; rather, each Pledgee has an equal part of the Pledge in line with their percentage ownership stake in the Secured Agreement. The Pledge is legally binding and

cannot be divided between the Pledgees. It is not possible for any of the Pledgees to terminate or cancel the Pledge in whole or in part until all of the Secured Obligations have been paid in full and the Pledgees have been satisfied with the terms of the Pledge.

Pledgee shall not be entitled to seek the partial release of the Pledge upon the partial payment in full of any of the Secured Obligations. This is because the Pledge guarantees

that all Secured Obligations will be paid in full, and the Pledgee shall not be entitled to seek the partial release of the Pledge. The pledger is not permitted to seek the release of the pledge until all of the Secured Obligations have been paid in full. According to the findings of study done by Pankaj K. Maskara in 2005.

THE UNBROKEN CHAIN OF THE VOW:

The Pledge made hereunder shall assure the payment and timely execution by the Pledger of any monetary restitution and reimbursement obligations claimable due of the voidness or invalidity of any of the Secured Obligations, in whole or in part, as a matter of law. The Parties agree that the Pledge shall remain in full force, validity, and effectiveness notwithstanding the fact that any payment of the Secured Obligations may be declared null and void or ineffective as a result of an insolvency process commenced against the company making such payment. Pledger or any other entity with the Pledgees' permission) and that such declaration of invalidity occurs prior to the execution by the Pledgees of the instruments cancelling the Pledge.

The Pledger thus assigns to the Pledgees any and all rights and remedies the Pledger may have against any third parties as a consequence of the granting of the Pledge. The Pledger hereby irrevocably allows the Pledgees, via the Agent, to exercise any and all remedies to which they may be entitled as owners of the Collateral in line with the above and article 18 of the Civil Code. So, the Pledger agrees to provide the Agent with whatever help the Pledgees may reasonably need (Article 18 of the Civil Code)

The Pledge will expire after the Secured Obligations have been fulfilled in full. When the Secured Obligations have been paid in full, the Pledgees undertake to execute, at the Pledger's expense and within five business days of receiving a written request from the Pledger for such purpose, any public documents necessary to terminate the Pledge. According to studies (Dr. Pankaj K. Maskara & Maskara, 2009), the obligation entered into by the Parties under the Pledge Agreement shall not be affected by any act, omission, matter, or issue which, except as provided in this clause indices, releases or alters any of the respective obligation's incumbent on them by virtue of the Pledge Agreement and or the Secured Agreement without any limitation whatsoever and regalities of what the parties thus to u say of.

In no event shall the Pledger, any obligor under the Secured Obligations, or any other person be entitled to;

(a) any extension of time, waiver, or permission;

(b) the release of any obligor from the Secured Obligations or of any other person pursuant to any settlement or agreement with any creditor of any member of the group of, or linked to, the Pledger.

(c) Security over the assets of any obligor under the Secured Obligations or any other person, or the assumption, perfection, enforcement, acceptance, modification, settlement, exchange, extension, or release of any such rights or security.

(e) the incapacity, lack of power, authority, legal personality, dissolution, change of ownership, or change of legal form of any obligor under the Secured Obligations or of any other person.

(f) the novation, replacement, or alteration of the Secured Agreement or any other instrument or security (regardless of the extent of such change).

(g) any obligation of any obligor under the Secured Agreement being rendered ineffective, illegal, or null and void

(h) bankruptcy proceedings in court or before an administrative body. Nothing in this Pledge Agreement is intended to, and nothing in this Pledge Agreement will be considered to, impair or influence the rights of the Pledges with regard to any guarantee, indemnification, or other security made to them to protect any right, remedy, or privilege available to them.

EXAMPLE PLEDGES

1. There was a case called Engel v. Vitale that was 370 U.S. 421 June 25, 1962

The court's decision to overturn a legislation mandating school administrators in New York State to commence the school day with prayer was 5 to 2. In these and subsequent instances,

the courts have ruled that many religious practices violate the Establishment Clause. Justice Potter Stewart wrote in his dissenting opinion, "There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents like the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems. School prayers violate the Establishment Clause regardless of whether they are optional or secular.

2. CASE: ABINGTON V. SCHEMPP, FILED 6/17/1963, 374 U.S. 203

Bible reading in public schools was deemed unlawful by a vote of 8-1. When explaining the Court's decision, Justice Goldberg said, "The First Amendment does not prohibit practices, which by any realistic measure, create none of the dangers which it is designed to prevent and which do not directly or substantially involve the state in religious exercises or in the favoring of religion as to have me fear for my safety³⁸." Reciting the pledge may not be any more religious than reading an address by Abraham Lincoln that makes reference to the same historical event (Gettysburg).

3. Marsh v. Chambers (463 U.S. 783) was decided on July 5, 1983.

The Supreme Court upheld the practice of having a publicly financed chaplain offer a prayer to open the Nebraska state legislature's session by a decision of 6-3. As time went on, the ritual morphed from a religious observance into more of a way to express shared ideals. As the words "under God" in the Pledge of Allegiance "have lost any meaningful religious import," Judge Brennan reaffirmed his prior conclusion that they did not violate the Establishment Clause. Justice O'Connor argued that the inclusion of the words "under God" in the Pledge is not unconstitutional because they "serve as an acknowledgment of religion with the legitimate secular purpose of solemnizing public occasions, and expressing confidence in the future." The Court, however, rejected this argument by a 6-3 vote in *Wallace v. Jaffree* (472 U.S. 11.5, 38 (June 4, 1985)), which overturned Alabama's moment of silence statute.

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