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Court upholds pledge recital

■ Attempt to remove Pledge of Allegiance from public schools rebuffed

By Howard Mintz
San Jose Mercury News

SAN JOSE, Calif. — The Pledge of Allegiance in public schools has survived another legal challenge. A federal appeals court on Thursday ensured that the cherished classroom ritual isn't going away anytime soon, rejecting the latest attempt to remove the pledge from public schools. The sweeping ruling shut down the arguments of a Sacramento, Calif., atheist who has been trying in the courts for a decade to end the morning practice because he considers it government endorsement of religion.

In a 2-1 decision, the 9th U.S. Circuit Court of Appeals concluded that the pledge is constitutional and does not amount to a religious exercise. Atheist Michael Newdow had argued that the pledge should be banned from public schools because he maintains the inclusion of the phrase "under God" violates the constitutional separation between church and state.

The 9th Circuit ruling overturns a decision from a Sacramento federal judge who ruled in Newdow's favor earlier in the case.

"We find the pledge is one of allegiance to our Republic, not of allegiance to God or to any religion," wrote Judge Carlos Bea, joined by Judge Dorothy Nelson. "Congress' ostensible and predominant purpose when it enacted and amended the pledge over time was patriotic, not religious."

Newdow, a doctor-turned-lawyer who has represented himself in a long legal odyssey over the pledge, could not be reached for comment Thursday. But he has never given up in the past. He can ask the 9th Circuit to reconsider the ruling with an 11-judge panel, or seek review in the U.S. Supreme Court, which has never tackled the pledge question head-on.

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IN MEMORIAL

■ 3rd Battalion, 82nd Field Artillery Regiment honors its three fallen

By Amanda Kim Stairrett
Killeen Daily Herald

FORT HOOD — Lt. Col. Terry Cook offered the families of Sgt. 1st Class "Smoke" Johnny Polk, Staff Sgt. LeRoy Webster and Sgt. Christopher Kurth a nation's thanks Thursday evening.

The 1st Cavalry Division's 3rd Battalion, 82nd Field Artillery Regiment, 2nd Brigade Combat Team, hosted a memorial dedication ceremony in honor of the three fallen soldiers the night before the division's memorial rededication ceremony at Cooper Field.

Soldiers, loved ones and others will gather this morning at 10 to remember those who served and died during three deployments to Iraq with the division as it headed Multinational Division-Baghdad. Sixty-nine names of fallen service members — including Polk, Webster and Kurth — from the division's latest deployment were added to the memorial, located at the end of Cooper Field, in front of the 1st Cavalry's headquarters.

Families and loved ones of the three fallen 3rd Battalion, 82nd Field Artillery soldiers and more than 250 soldiers attended Thursday evening's ceremony at the Phantom Warrior Center.

The memorial, a soldier's cross, will be placed at the 1st Cavalry's memorial park near the division's museum. The museum is on post at the intersection of 56th Street and 761st Tank Battalion Avenue in Building 2218.

Polk, Webster and Kurth died while serving with the "Red Dragon" battalion in Kirkuk, Iraq. The brigade returned to Fort Hood in December.

"Thank you for allowing your husband, your son, your father, your battle buddy, your sergeant, your friend to serve this great nation of ours and thank you for supporting his sense of patriotism that made him desire to serve others," Cook said to those in attendance.

Praise for soldiers

Cook praised the three sol-



Herald photos/STEVEN DOLL



TOP: Sgt. Thomas Lathrop, 82nd Field Artillery Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, speaks during the regiment's memorial dedication ceremony Thursday evening.

ABOVE: Lt. Col. Terry Cook and Command Sgt. Maj. Carlos R. Soto Bonilla unveil the regiment's memorial during Thursday's ceremony.

diers, saying they were physically and morally strong. "They set aside self-interest to

benefit the whole," he went on. Please see Memorial, Page A3

Early Iraq results: Al-Maliki battling secular challenger

By Ben Hubbard and Qassim Abdul-Zahra
The Associated Press



Al-Maliki

BAGHDAD — First results from Iraq's parliamentary election showed the prime minister and his secular rival locked in an extremely tight contest Thursday amid fraud allegations by rival parties and a chaotic, unpredictable vote count.

The partial tallies came from only five of Iraq's 18 provinces.

However, Iraqi officials who have seen results from across the country said Prime Minister Nouri al-Maliki's coalition appeared to have a narrow edge, though not an outright majority.

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Highway deaths drop to lowest level since 1950s

By Ken Thomas and Natasha Metzler
The Associated Press

WASHINGTON — The roads today are full of hazards: Runaway Toyotas, teen drivers texting, commuters using the rearview mirror to check their hair while juggling cups of scalding coffee. Nonetheless, the number of people dying on the highway is the lowest since the 1950s.

The Transportation Department said Thursday that its projections show total traffic deaths declined nearly 9 percent in 2009 — to 33,963. That's the lowest toll since 1954. In 2008, an estimated 37,261 people died on the roadways.

The newest numbers fit into a trend of steady decreases since 2005, when an estimated 43,510

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Rising cost of tomatoes hits food chains

■ Cold spell in Florida wiped out season's crop

By Kimberly Pierceall
The Press-Enterprise

Typically a standard garnish for hamburgers, sandwiches and salads, tomatoes have become a scarce luxury.

Three out of five round, field-grown tomatoes come from Florida during the winter, but an unexpected and prolonged cold spell that froze Florida's crops in mid-January wiped out most of the state's tomato crop.

With less of the vine-ripened produce available, fast food chains and grocery stores have been scrambling to get hold of what they can for a much steeper price.

Restaurant chain Wendy's, for one, began warning customers about a week ago that if they didn't request a tomato slice, they wouldn't get one.

The cost of tomatoes has been "substantial," said Denny Lynch, Wendy's spokesman, refusing to say how much exactly. The biggest issue has been sheer supply, since getting any tomatoes at any cost has been a challenge, he said.

"We need tons of tomatoes, not bushels," he said. "No one expected such a prolonged freeze."

Defending the chain's decision to make tomatoes an option, Lynch said it was ultimately an issue of quality.

"We just think that we should let our customers know ... the supply that's available today may not meet their expectations," he said. And if you ask for a tomato, you won't be charged more to get "a bad tomato," Lynch said.

Tomato shipments from Florida were down 80 percent during the last week of January while imports from Mexico were up 32 percent. Total tomato supply was still down 14 percent, according to the U.S. Department of Agriculture.

The price of fresh tomatoes bought at grocery stores was 19 percent higher compared to the same week a year prior; about \$1.98 per pound compared to \$1.29 per pound.

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Today's Weather

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25 mph gusts
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In Entertainment

■ Elvis vs. the media
New museum exhibit is all about the rise of Elvis/A2

