

**Michael Newdow, JD
PO Box 233345
Sacramento, CA 95823**

Phone: (916) 427-6669

Fax: (916) 392-7382

e-mail: FirstAmendmist@cs.com

October 1, 2006

Cathy Catterson, Clerk of the Court
U.S. Court of Appeals for the 9th Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Newdow v. Carey*, Nos. 05-17257, 05-17344, 06-15093

Dear Ms. Catterson:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28-6, Plaintiffs-Appellees herein respond to the Federal Defendants' September 26, 2006 letter regarding *Habecker v. Town of Estes Park*, No. 05-cv-00153 (D. Col. September 21, 2006).

Presented with "jumbled and myriad claims," Slip op. at 7, from plaintiffs who "patently did not follow this court's practice standards," *id.* at 9 (n.4), *Habecker* "decline[d] to reach the underlying merits of the parties' positions and decide[d] the case on technical, but well-established, legal doctrines ... [including] that Plaintiffs do not have standing to challenge the Pledge." *Id.* at 11.

Habecker found *Lee v. Weisman*, 505 U.S. 577 (1992) and *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000) to be inapplicable primarily because (unlike the instant action) **no children were involved**. Slip op. at 18. Furthermore, it contended that "the Pledge is a patriotic utterance, not a religious one," *id.*, without addressing the "under God" verbiage, and by ignoring that Congress and President Bush, among others, consider the Pledge a prayer. (*Plaintiffs-Appellees* ') *Answering Brief* at 12-14.

Unlike *Habecker*, the case at bar involves recitations by **a child in the public schools**. The dicta from *County of Allegheny v. ACLU*, 492 U.S. 573, 602-03 (1989), therefore, do not apply. Endorsement – as well as the *Lemon* (purpose or effects), coercion, outsider and imprimatur tests – is unquestionably violated when **governmental agents lead small children in claiming that we are “one Nation under God” every school morning**.

Moreover, *Allegheny*'s dicta were described as “recent and not enfeebled by other statements.” Slip op. at 23 (citation omitted). Yet *Allegheny* is seventeen years old and **is** “enfeebled by other statements.” Most glaring is that from *McCreary County v. ACLU*, 125 S. Ct. 2722, 2733 (2005) (citation omitted):

The touchstone for our analysis is the principle that the “First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.”

It is anything but neutrality between religion (i.e., Monotheism) and nonreligion (i.e., Atheism) for the government to claim that we are “under God” ... especially in the midst of the nation's sole Pledge of Allegiance.

Thank you very much for your time and consideration.

Sincerely,

CA State Bar No. 220444

CERTIFICATE OF SERVICE

CASE NOS. 05-17257, 05-17344, 06-15093

I HEREBY CERTIFY that on this 1st day of October, 2006, true and correct copies of Plaintiff's letter in response to the Federal Defendants' September 26, 2006 letter regarding *Habecker v. Town of Estes Park*, No. 05-cv-00153 (D. Col. September 21, 2006) were delivered by e-mail to the following individuals:

Terence John Cassidy (tcassidy@pswdlaw.com)

Michael William Pott (mpott@pswdlaw.com)

Lowell Sturgill (lowell.sturgill@usdoj.gov)

Theodore Charles Hirt (theodore.hirt@usdoj.gov)

Autumn Owens (autumn.owens@doj.ca.gov)

Derek Lewis Gaubatz (dgaubatz@becketfund.org)

Anthony R. Picarello (apicarello@becketfund.org)

Jared N. Leland (jleland@becketfund.org)

Eric C. Rassbach (erassbach@becketfund.org)

Jill Bowers (jill.bowers@doj.ca.gov)

Pursuant to Ninth Circuit Rule 25-3.3, the undersigned has received a completed and signed Form 13 (Consent to Electronic Service) from counsel for each of the parties.

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Michael Newdow, in pro per
CA SBN: 220444
PO Box 233345
Sacramento, CA 95823

Phone: (916) 427-6669

Fax: (916) 392-7382

E-mail: NewdowLaw@cs.com