

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

Phone: (916) 427-6669; 916-273-3798

e-mail: NewdowLaw@gmail.com

September 13, 2007

Office of the Clerk
U.S. Court of Appeals
Post Office Box 193939
San Francisco, CA 94119-3939

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

Dear Sir or Madam:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28-6, Plaintiff-Appellant submits this supplemental authority regarding *Buono v. Kempthorne*, ___ F.3d ___, No. 05-55852 (9th Cir. September 6, 2007).

Buono – an ongoing case involving the government’s involvement in displaying a Latin cross – highlighted a number of issues relevant to the case at bar. First, it repeatedly referenced “[a] reasonably informed observer aware of the history.” Slip op. at 11805. *See, also, id.* at 11823. It not only strains, but it decimates, credulity to contend that any such observer considering the case at bar would not find that “under God” was placed into the Pledge to endorse Monotheism. Answering Brief at 16, 29.

Citing *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 316 (2000), *Buono* noted that “the mere enactment of the policy [that did no more than allow students to vote for “a student-delivered invocation” outside of the classroom before football games] ... was a sufficient constitutional injury.” Slip op. at 11810. This is

far less of an Establishment Clause violation than having governmental agents, themselves, lead students **every day** in claiming we are “one Nation under God.” Thus *Buono* reveals that the challenge in the instant litigation involves an infirmity that exceeds many of those held unconstitutional by the Supreme Court in nine of nine cases involving religion in the public schools. Answering Brief at 38.

Although the case concerned the deeding of the cross to a private group, the unanimous *Buono* panel highlighted that the government maintained “general supervisory and managerial responsibilities.” Slip op. at 11818. In the case at bar, government absolutely controls the religious claim that we are “one Nation under God,” made in a group recitation by young children. Answering Brief at 39.

Finally, there is the basic holding of the *Buono* litigation: “the presence of the cross in the Preserve violates the Establishment Clause.” Slip op. at 11823. A five foot passive symbol sitting a football field away from a road in the middle of the desert simply doesn’t compare to the **daily, active, teacher-led, group verbalization in the public schools** that we are “under God.”

Respectfully submitted,

Michael Newdow, Counsel for Plaintiffs
CA State Bar No. 220444

CERTIFICATE OF SERVICE

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

I HEREBY CERTIFY that on this 13th day of September, 2007, true and correct copies of Plaintiff's letter of Supplemental Authority regarding *Buono v. Kempthorne*, ___ F.3d ___, No. 05-55852 (9th Cir. September 6, 2007) 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)

Anthony R. Picarello (apicarello@becketfund.org)

Eric C. Rassbach (erassbach@becketfund.org)

Autumn Owens (autumn.owens@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.

September 13, 2007

Michael Newdow, Counsel for Plaintiffs
CA SBN: 220444
PO Box 233345
Sacramento, CA 95823

Phone: (916) 427-6669
(916) 273-3798

E-mail: NewdowLaw@gmail.com