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June 19, 2007

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, Plaintiff-Appellant submits this supplemental authority regarding *Community House v. City of Boise*, ___ F.3d ___, No. 05-36195, slip op. (amended) at 6973 (9th Cir. June 8, 2007).

City of Boise again reaffirms that this Circuit uses the *Lemon* test for Establishment Clause challenges. “The Supreme Court ... has not expressly overruled or discarded the *Lemon* test. ... Accordingly, we continue to apply it here.” Slip op. at 6997 (n.8).

A modified form of the test – i.e., the *Lemon-Agostini* test – was used in *City of Boise*, “ask[ing] (1) ‘whether the government acted with the purpose of advancing or inhibiting religion,’ and (2) ‘whether the [governmental] aid has the “effect” of advancing or inhibiting religion.’” Slip op. at 6997. In the case at bar,

there is no question that “the government acted with the purpose of advancing or inhibiting religion,” since (a) the only thing the Act of 1954 did was add the two purely religious words, “under God,” to the nation’s sole Pledge of Allegiance, (b) Congress specifically stated such a purpose in its Report accompanying the legislation, and (c) President Eisenhower stated such a purpose as he was signing it into law. Answering Brief at 16.

As far as “the ‘effect’ of advancing or inhibiting religion,” *City of Boise* pointed out that a key issue is “whether governmental aid results in government indoctrination.” Slip op. at 6997-98. It then reviewed at relative length what government-sponsored indoctrination entails. Slip op. at 7000-06. Having public school teachers standing up their young pupils *en masse*, and having them recite – more than 2,000 times! (Answering Brief at 37 (n. 49)) – that this nation is “under God” (while they face their nation’s flag with their hands placed over their hearts, no less) clearly meets the criteria set forth.

Respectfully submitted,

CERTIFICATE OF SERVICE

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

I HEREBY CERTIFY that on this 19th day of June, 2007, true and correct copies of Plaintiff's letter of supplemental authority (*Community House v. City of Boise*, ___ F.3d ___, No. 05-36195, slip op. (amended) at 6973 (9th Cir. June 8, 2007)) were delivered by e-mail to the following individuals:

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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.

June 19, 2007

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