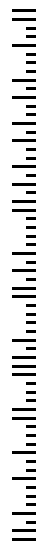


M. Newdow  
PO Box 233345  
Sac, CA 95823



**OFFICE OF THE CLERK  
U.S. COURT OF APPEALS  
POST OFFICE BOX 193939  
SAN FRANCISCO, CA 94119-3939**

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

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

e-mail: NewdowLaw@gmail.com

September 3, 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 *The Access Fund v. USDA*, \_\_\_ F.3d \_\_\_, No. 05-15585 (9<sup>th</sup> Cir. August 27, 2007).

According to *Access Fund*, “The *Lemon* test remains the benchmark to gauge whether a particular government activity violates the Establishment Clause.” Slip op. at 10535-36. With a “focus ... on purpose and effect,” *id.* at 10536, *Access Fund* first asked if the government’s action “was taken for the predominant purpose of advancing ... religion.” Slip op. at 10538 (citation omitted). Even accepting this construction (as opposed to “the actual purpose,” as given in *Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1191 (9th Cir. 2006)), advancing religion is the only purpose a statute can ever have when it does nothing but add the two words, “under God,” to existing secular verbiage. Answering Brief at 30-32 (discussing Congress’s Act of 1954). Additionally, noting that “the Constitution ... forbids hostility toward any [religious view],” slip op. at 10535

(citation omitted), *Access Fund* can certainly be read to invalidate the Pledge statute, which Congress openly admitted was enacted because it “would deny ... atheistic ... concepts.” Answering Brief at 32.

Regarding *Lemon*’s “effects” prong, *Access Fund* looked at “whether, irrespective of the government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval,” slip op. at 10540 (citation omitted), and “whether nonadherents might view the challenged action as disapproval of their religious choices.” *Id.* (citation omitted). Having a national pledge that states we are “one Nation under God” obviously, grossly and unequivocally fails these criteria. Answering Brief at 32-34.

Referencing the religion under consideration, *Access Fund* phrased the question alternatively, asking if “non-Washoe could credibly view the action as preferring the Washoe religion over other religious choices.” Slip op. at 10541. What cannot be credibly viewed is that having “under God” in the Pledge is not manifestly preferring Monotheism over Atheism.

Respectfully submitted,

---

Michael Newdow, *in pro per*  
CA State Bar No. 220444

## CERTIFICATE OF SERVICE

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

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of September, 2007, true and correct copies of Plaintiff's letter of Supplemental Authority regarding *The Access Fund v. USDA*, \_\_\_ F.3d \_\_\_, No. 05-15585 (9<sup>th</sup> Cir. August 27, 2007) were delivered by e-mail to the following individuals:

Terence John Cassidy ([tcassidy@pswdlaw.com](mailto:tcassidy@pswdlaw.com))

Michael William Pott ([mpott@pswdlaw.com](mailto:mpott@pswdlaw.com))

Lowell Sturgill ([lowell.sturgill@usdoj.gov](mailto:lowell.sturgill@usdoj.gov))

Theodore Charles Hirt ([theodore.hirt@usdoj.gov](mailto:theodore.hirt@usdoj.gov))

Anthony R. Picarello ([apicarello@becketfund.org](mailto:apicarello@becketfund.org))

Eric C. Rassbach ([erassbach@becketfund.org](mailto:erassbach@becketfund.org))

Autumn Owens ([autumn.owens@doj.ca.gov](mailto: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 3, 2007

---

Michael Newdow, *in pro per*

CA SBN: 220444

PO Box 233345

Sacramento, CA 95823

Phone: (916) 427-6669

(916) 273-3798

E-mail: [NewdowLaw@gmail.com](mailto:NewdowLaw@gmail.com)