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July 20, 2006

Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

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

To the Honorable Court:

Pursuant to the Note to Circuit Rule 29-1, this letter is submitted on behalf of the Freedom From Religion Foundation, Inc., David Habecker, and the undersigned, *pro se*, in support of Plaintiffs-Appellees arguments in the above-designated case.

The Freedom From Religion Foundation, Inc. is a nonprofit corporation with its principal office in Madison, Wisconsin. The Foundation, which has more than 5,000 members, promotes the constitutional separation of church and state. The Foundation submits that “under God” in the Pledge of Allegiance violates both the Establishment and Free Exercise Clauses of the United States Constitution. It, therefore, urges this Court to affirm the decision of the District Court below as argued in the brief filed by Plaintiffs-Appellees.

The Foundation has no parent corporation or publicly held corporation that owns 10% or more of its stock.

David Habecker is an atheist who was removed from office as a Town Trustee in Estes Park, Colorado on March 22, 2005 because he declined to recite the Pledge at official meetings of the Board of Trustees. His case demonstrates the mischief inherent in a government oath that includes reference to a deity which contradicts a conscientious atheist’s deepest religious convictions. Mr. Habecker has filed suit in the Federal District Court for the District of Colorado (Civil Action No. 05-CV-00153-EWN-MJW) seeking a judicial ruling that the Pledge is unconstitutional. That case has been pending a ruling by the Court on cross-motions for summary judgment since November, 2005. Mr. Habecker supports the arguments made in this case by the Plaintiffs-Appellees.

I, undersigned counsel, am 72 years of age. When I attended public school in the 1940s the Pledge of Allegiance did not include the phrase “under God.”

I was brought up as a Roman Catholic, was an altar boy, and attended a Jesuit College (LeMoyne College) and a Jesuit law school (Boston College). After serving two years in the US Army (1958-

1960), I became an advance man for then Senator John F. Kennedy in the 1960 presidential campaign. Over a period of three months in the summer of 1960, I advanced Omaha, Nebraska; Des Moines, Iowa; Spokane and Seattle, Washington; Portland, Salem, and Eugene, Oregon; Los Angeles, California; New York City; and Minneapolis/St. Paul, Hibbing, and Duluth, Minnesota. My duties were to make all necessary arrangements for Senator Kennedy's campaign stops including physical accommodations, transportation; to coordinate with local Democratic leaders, with law enforcement, with media; and to advise the candidate of issues pertinent to the locality being visited by him.

I also advanced San Diego, California. However, Senator Kennedy cancelled that stop at the last minute and went, instead, to Houston, Texas where he made his famous statement on separation of church and state before the Greater Houston Ministerial Association. Among other things, Kennedy stated that he believed in the "absolute" separation of church and state. This was crucial at the time because many feared that, because of Kennedy's faith, the Roman Catholic church would influence public policy were he to become President.

The Pledge of Allegiance is the very antithesis of church/state separation. By stating that this is a nation "under God", the Pledge breaks faith with the guarantee in our Bill of Rights against religious establishments. In so doing, the Pledge makes second class citizens of those who are not monotheistic. When recited in public school under the *aegis* of the state, it constitutes religious indoctrination by government thus infringing on the inherent right of parents to control the religious teaching of their children. The Pledge is also factually incorrect in that the Constitution of the United States makes it clear that this is a government created by and existing with the consent of the people. This is a secular government where people are free to practice the religion of their choice or no religion at all. The Pledge violates this principle.

The more religion is infused into government and government rituals, the greater the danger that religion will come under the hand of government. Religious people, above all, should resist government involvement with religion because of the danger that it will lead to religious favoritism and, ultimately, a national religion. Such a result would be anathema to the many different religions that are practiced in this country.

We support the arguments made by the Plaintiffs-Appellees in this case and join with them in asking the Court to rule that the phrase "under God" in the Pledge of Allegiance is unconstitutional.

Sincerely,

Robert R. Tiernan*, as counsel for the Freedom
From Religion Foundation, Inc., David Habecker,
and *Pro Se*

*Admitted to practice before the Supreme Court of the United States, the Tenth and Eleventh U.S. Circuit Courts of Appeals, The Federal District Courts of Colorado and the District of Columbia, and all Colorado Courts.

Certificate of Mailing

The undersigned hereby certifies that on the 20th of July, 2006, I served the foregoing letter upon the following counsel by placing same in the United States Mail, postage pre-paid, addressed as follows:

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