



U.S. Department of Justice  
Civil Division

LVSturgill  
DJ# 145-11-687

Washington, D.C. 20530

Phone: (202)514-3427

Fax: (202)514-7964

September 26, 2006

Ms. Cathy Catterson  
Clerk, United States Court of Appeals  
for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: Jan Roe and Rochild-2 v. Rio Linda School Dist., Nos. 05-17344,  
06-15093, 05-17257 (9<sup>th</sup> Cir.)

Dear Ms. Catterson:

Pursuant to Federal Rule of Appellate Procedure 28(j), we are enclosing four copies of the recent decision in Habecker v. Town of Estes Park, No. 05-cv-00153 (D. Col. Sept. 21, 2006). The district court in Habecker held, among other things, that Lee v. Weisman, 505 U.S. 577 (1992), and Santa Fe Independent School Dist. v. Doe, 530 U.S. 290 (2000), have no relevance to the constitutionality of recitation of the Pledge of Allegiance because the Pledge is a patriotic utterance and not a prayer. See Slip op. at 18. The district court also held that the Supreme Court's dicta in County of Allegheny v. ACLU, 492 U.S. 573, 602-03 (1989), approving of the Pledge is binding on the lower courts, and defeats any claim that recitation of the Pledge violates the Establishment Clause. See Slip op. at 23. The United States makes the same arguments in its briefs in this case, and thus wishes to bring the Habecker decision to the Court's attention.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lowell Sturgill".

Lowell V. Sturgill Jr.  
Attorney, Appellate Staff  
Civil Division, Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530