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October 5, 2006

Cathy Catterson, Clerk of the Court  
U.S. Court of Appeals for the 9<sup>th</sup> 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, Plaintiffs-Appellees submit this supplemental authority regarding *Faith Center Church v. Glover*, No. 05-16132, slip op. (9<sup>th</sup> Cir. September 20, 2006).

*Faith Center* was similar to the instant case inasmuch as it also involved the introduction of religion into a government-controlled arena where it doesn't belong. The Court recognized that this "may alienate patrons and undermine the [government's] purpose." Slip op. at 11648.<sup>1</sup> Thus, it can be seen that such introduction violates both the "effects" and the "purpose" prongs of *Lemon*. Answering Brief at 29-34. Similarly, "whether the government has excluded a perspective on a subject matter," slip op. at 11652, was deemed to be important. This question of viewpoint discrimination – which embraces the ideas found within the "imprimatur," "outsider" and "endorsement" tests – has been discussed by Plaintiffs. *See, e.g.*, Answering Brief at 7 (n.8).

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<sup>1</sup> Page numbers are those provided in the opinion as published by the Ninth Circuit on its website.

That “the subject of religion may be taught but religious speech is barred from the government speaker,” slip op. at 11659, is another essential point.<sup>2</sup> Its appearance in *Faith Central* is especially noteworthy because it referred to public schools, and the United States – as *amicus curiae* in that case – “argue[d] that these school cases are distinguishable because they involve religious speech broadcast to a captive audience.” *Id.* at 11660 (n.17). The United States, of course, is a Defendant-Intervenor in the case at bar, denying that the coercion test (where this “captivity” is key) has been violated.

Finally, attention is drawn to the words of the concurrence: “To assert an inability to conclude that purpose is religious in every sense, is to engage in the kind of sophistry that gives the law a bad name.” *Id.* at 11666 (Karlton, J., concurring).

Thank you very much for your time and consideration.

Sincerely,

CA State Bar No. 220444

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<sup>2</sup> Unlike “under God” in the Pledge – where the religious speech was made by the government – the religion in *Faith Center* came from by private actors.

## CERTIFICATE OF SERVICE

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

I HEREBY CERTIFY that on this 5<sup>th</sup> day of October, 2006, true and correct copies of Plaintiff's letter of supplemental authority (*Faith Center Church v. Glover*, No. 05-16132, slip op. (9<sup>th</sup> Cir. September 20, 2006) were delivered by e-mail to the following individuals:

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

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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.

October 5, 2006

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