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September 21, 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 *Fields v. Brown*, ___ F.3d ___, Nos. 00-99005 and 00-99006 (9th Cir. September 10, 2007) (en banc).

Fields involved a jury's consideration of Biblical references brought by the jury foreperson during the penalty phase of a trial. Relevant to the case at bar was *Fields*' affirmation of the holding in *Sandoval v. Calderon*, 241 F.3d 765, 776-77 (9th Cir. 2000), that "it is improper and prejudicial for the *prosecution* to invoke God or to paraphrase a Biblical passage in closing argument in the penalty phase of a capital case." Slip op. at 11984 (emphasis in original).

Fields highlighted that "the prosecutor is constrained in ways that a juror is not." *Id.* This is analogous to the case at bar, where the government (i.e., Congress, a school district and/or a teacher) is constrained in ways that a student is not. See Answering Brief at 56 ("[I]f a religious leaven is to be worked into the affairs of

our people, it is to be done by individuals and groups, not by the Government.””

(Citation omitted.)

Furthermore, in reconfirming that a “prosecution’s invocation of ‘higher law,’” slip op. at 11984, is impermissible, *Fields* indicated that such a “reference”¹ to God is equivalent to “extra-judicial authority.” *Id.* This view is obviously at odds with the basic arguments upon which Appellants in the case at bar have continually relied – i.e., that such “references” are “consistent with the unbroken history of official acknowledgment of the role of religion in American life,” Opening Brief of Appellant RLUSD at 35; that America’s “political philosophy of inalienable rights and limited government ... includes a concept of ‘God,’” Opening Brief of Appellant/Intervenor John Carey *et al* at 36; and that “under God” in the Pledge is permissible because it allegedly is an “official acknowledgment of the role that religion has played in the foundation of the Country, the formation of its governmental institutions, and the cultural heritage of its people.” Opening Brief of Appellant The United States at 27.

Respectfully submitted,

Michael Newdow, Counsel for Plaintiffs
CA State Bar No. 220444

¹ Throughout each of the Appellants’ briefs (more than 60 times (!) total), the invocation of God’s name in the Pledge of Allegiance is alluded to as a mere “reference.”

CERTIFICATE OF SERVICE

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

I HEREBY CERTIFY that on this 21st day of September, 2007, true and correct copies of Plaintiff's letter of Supplemental Authority regarding *Fields v. Brown*, ___ F.3d ___, Nos. 00-99005 and 00-99006 (9th Cir. September 10, 2007) (en banc) were delivered by e-mail to the following individuals:

Terence John Cassidy (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.

September 21, 2007

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