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July 23, 2006

Clerk
United States Court of Appeals
Post Office Box 193939
San Francisco, California 94119-3939

Re: Case Nos. 05-17257, 05-17344, 06-15093

Dear Sir or Madam:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28-6, Plaintiffs-Appellees in the above-noted case(s) submit this letter of Supplemental Authority.

On July 19, 2006, the House of Representatives considered H.R. 2389, otherwise known as the “Pledge Protection Act.” This legislation passed the House by a vote of 260-167.¹ If also passed by the Senate and signed into law by the President, H.R. 2389 would remove from the federal courts – including the Supreme Court – the jurisdiction “to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance.”

¹ 152 Cong. Rec. H5433 (July 19, 2006).

The activity on this bill is relevant to the allegation that “under God” is “*de minimis*” and merely “ceremonial.”² In order to maintain those words in the Pledge – the House spent well over three full hours and thirty full pages of the Congressional Record³ to make “an all-out assault on the Constitution.” 152 Cong. Rec. H5394.

More important is the evidence provided relevant to the “neutrality test,”⁴ the “endorsement test,”⁵ and *Lemon*’s purpose prong.⁶ H.R. 2389’s sponsor, Rep. Todd Akin, spoke of “the importance of the Pledge or the words ‘under God,’” 152 Cong. Rec. H5390, stating, “[I]f you were to summarize what America stands for, we have always stood for the idea, the simple principle, that **there is a God.**” *Id.* (emphasis added). Similarly, Rep. Akin claimed that:

[I]nalienable rights are impossible without a recognition of God, and that is why the Pledge bill is important and not irrelevant or trivial.

152 Cong. Rec. H5391, thereby demonstrating that “under God” advocates seek to support “Monotheism – i.e., **their religion.**”⁷

² *Answering Brief* at 18.

³ This, of course, says nothing of the myriad other hours and Congressional Record pages already spent on this matter. *See, e.g.*, 148 Cong. Rec. H4045-51, S6089-91, S6100-12, H4121-36.

⁴ *Answering Brief* at 22 *et seq.*

⁵ *Id.* at 30 *et seq.*

⁶ *Id.* at 25 *et seq.*

⁷ *Answering Brief* at 15 (emphasis in original).

Lastly – regarding the issue of Supreme Court precedent⁸ – Rep Akin noted that, “We have every reason to believe that we do **not** have five Justices that will support the Pledge.” 152 Cong. Rec. H5418 (emphasis added).

Thank you very much for your time and consideration.

Sincerely,

Michael Newdow
CA State Bar No. 220444

⁸ *Answering Brief* at 37 *et seq.*

CERTIFICATE OF SERVICE
Case #05-17257, 05-17344, 06-15093

I HEREBY CERTIFY that on this 23rd day of July, 2006, true and correct copies of:

**PLAINTIFFS-APPELLEES' LETTER OF SUPPLEMENTAL AUTHORITY
REGARDING H.R. 2389.**

were delivered by e-mail to the following individuals:

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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 (i.e., Rio Linda Unified Sch. Dist., United States and John Carey *et al*).

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