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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No. 2:05-CV-2339-FCD-PAN

THE REV. DR. MICHAEL A. NEWDOW, IN PRO PER;

Plaintiff,

v.

THE CONGRESS OF THE UNITED STATES OF AMERICA;
PETER LEFEVRE, LAW REVISION COUNSEL;
THE UNITED STATES OF AMERICA;
JOHN WILLIAM SNOW, SECRETARY OF THE TREASURY;
HENRIETTA HOLSMAN FORE, DIRECTOR, UNITED STATES MINT;
THOMAS A. FERGUSON, DIRECTOR, BUREAU OF ENGRAVING AND PRINTING;

Defendants, and

PACIFIC JUSTICE INSTITUTE;

Intervenor-Defendant.

PLAINTIFF'S SUBMISSION OF SUPPLEMENTAL AUTHORITY:
HARPER V. POWAY UNIFIED SCHOOL DISTRICT,

Date: June 16, 2006
Time: 10:00 a.m.
Judge: Hon. Frank C. Damrell, Jr.
Court: Courtroom 2

On April 20, 2006, the Ninth Circuit Court of Appeals handed down its decision in Harper v. Poway Unified School District, No. 04-57037 (9th Cir. Cal. April 20, 2006). Plaintiff respectfully submits this case as supplemental authority in the instant action, with attention directed to the following:

(1) Slip op. at 38-49 (discussing the Free Exercise Clause), especially:

a. Discussion of "neutral" laws, at 40, including note 33 ("A law is one of neutrality and general applicability if … it does not 'in a selective manner impose burdens only on conduct motivated by religious belief'") (citations omitted).

b. Notation, at 43, that the "substantial burden" of religious belief includes "'compell[ing] affirmation of a repugnant belief,'" "'discriminate[ing] against [an individual] because [he] hold[s] religious views abhorrent to the authorities,'" and "condition[ing] the availability of benefits upon [the individual's] willingness to violate a cardinal principle of [his] religious faith." (citing Sherbert v. Verner, 374 U.S. 398 (1963)).

c. Citation, at 43, of Employment Div., Dep't of Human Res. of Oregon v. Smith, 494 U.S. 872, 877 (1990) for the proposition that government may not "'lend its power to one or the other side in controversies over religious authority or dogma.'"

d. "The Constitution does not authorize one group of persons to force its religious views on others," at 44.

e. Discussion of the government's purpose, at 46-48, where the Court indicates that the Constitution is violated when the challenged governmental act is "associated with a religious, as opposed to a secular, purpose," at 48, or seeks "to advance religion." Id.

(2) Slip op. at 49-51 (discussing the Establishment Clause)

a. Notation that "governmental efforts to *benefit* religion" raise Establishment Clause concerns. At 49 (emphasis in original).

b. Reiteration, at 50, that "**at a minimum**, the Constitution guarantees that government may not … act in a way which 'establishes a [state] religion or

religious faith, or tends to do so.'" (citations omitted) (emphasis added). The challenged governmental conduct was consistent with the Establishment Clause because it had "an entirely secular and legitimate aim," at 50, and "[t]here [wa]s certainly no evidence (or even allegation) that [the government] sought to … encourage [the plaintiff] to participate in some other religion or to adopt some state-supported or other religious faith."

c. Continuation of the Ninth Circuit's reliance upon Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971), with its purpose and effects prongs:

> Government conduct does not violate the Establishment Clause when (1) it has a secular purpose, (2) its principal and primary effect neither advances nor inhibits religion.

Slip op. at 51.

(3) Slip op. at 20 (citations omitted):

> [T]he "recognizable privacy interest in avoiding unwanted communication" is perhaps most important "when persons are powerless to avoid it."

(4) Slip op. at 25 (citations omitted):

> "[Y]ou don't need an expert witness to figure out" the self-evident effect of certain policies or messages.

Respectfully submitted,

/s/ - Michael Newdow

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