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September 3, 2007

Office of the Clerk  
U.S. Court of Appeals  
Post Office Box 193939  
San Francisco, CA 94119-3939

Re: *Newdow v. Congress*, Case No. 06-16344

Dear Sir or Madam:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28-6, Plaintiff-Appellant submits this supplemental authority regarding *The Access Fund v. USDA*, \_\_\_ F.3d \_\_\_, No. 05-15585 (9<sup>th</sup> Cir. August 27, 2007).

According to *Access Fund*, “The *Lemon* test remains the benchmark to gauge whether a particular government activity violates the Establishment Clause.” Slip op. at 10535-36. With a “focus ... on purpose and effect,” *id.* at 10536, *Access Fund* first asked if the government’s action “was taken for the predominant purpose of advancing ... religion.” Slip op. at 10538 (citation omitted). Even accepting this construction (as opposed to “the actual purpose,” as given in *Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1191 (9th Cir. 2006)), Plaintiff here has shown beyond doubt that “the predominant purpose” of having “In God We Trust” as the nation’s sole official motto was purely religious. AOB at 36-37.

Regarding *Lemon*'s "effects" prong, *Access Fund* looked at "whether, irrespective of the government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval," slip op. at 10540 (citation omitted), and "whether nonadherents might view the challenged action as disapproval of their religious choices." *Id.* (citation omitted). Having a national motto that states "In God We Trust" obviously, grossly and unequivocally fails these criteria. AOB at 40-42.

Referencing the religion under consideration, *Access Fund* phrased the question alternatively, asking if "non-Washoe could credibly view the action as preferring the Washoe religion over other religious choices." Slip op. at 10541. What cannot be credibly viewed is that having a national motto that states "In God We Trust" is not manifestly preferring Monotheism over Atheism.

Respectfully submitted,

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Michael Newdow, *in pro per*  
CA State Bar No. 220444

# CERTIFICATE OF SERVICE

CASE NO. 06-16344

I HEREBY CERTIFY that on this 3rd day of September, 2007, true and correct copies of Plaintiff's letter of Supplemental Authority regarding *The Access Fund v. USDA*, \_\_\_ F.3d \_\_\_, No. 05-15585 (9<sup>th</sup> Cir. August 27, 2007), were delivered by e-mail to the following individuals:

Lowell Sturgill ([lowell.sturgill@usdoj.gov](mailto:lowell.sturgill@usdoj.gov))  
Theodore Charles Hirt ([theodore.hirt@usdoj.gov](mailto:theodore.hirt@usdoj.gov))  
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Brad Dacus ([braddacus@pacificjustice.org](mailto:braddacus@pacificjustice.org))

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 3, 2007

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