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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. 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 *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 indicated that a "prosecution's invocation of 'higher law,'" slip op. at 11984, is impermissible because such a "reference"¹ to God is equivalent to "extra-

¹ Throughout the Brief for Federal Government Appellees, the invocation of God's name in the Motto is alluded to as a mere "reference."

judicial authority.” *Id.* Such a view is obviously inconsistent with the basic argument upon which Appellees in the case at bar have relied – i.e., that such a “reference” is merely “a ceremonial acknowledgment of the Nation’s religious history and character.” Brief for Federal Government Appellees at 44. *See also* Brief of Intervenor/Appellee Pacific Justice Institute at 13 (asserting that “the Nation’s religious history ... presupposes the existence of God.”).

If “references” to God were merely “ceremonial acknowledgment[s]” and our history “presupposes the existence of God,” there would be no reason to proscribe a prosecutor’s invocation of God’s law.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

CASE NO. 06-16344

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:

Lowell Sturgill (lowell.sturgill@usdoj.gov)
Theodore Charles Hirt (theodore.hirt@usdoj.gov)
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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.

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