AMERICAN HUMANIST ASSOCIATION
Appignani Humanist Legal Center

July 17, 2006

Ms. Cathy A. Catterson
Clerk of Court
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, CA 94119-3939

Re: Michael Newdow, et al. v. John Carey, et al., No. 05-17257 (DC CV-05-00017-LKK)

Dear Ms. Catterson:

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure and the Circuit Advisory Committee Note to Rule 29-1 of the Rules of this Court, The Appignani Humanist Legal Center of the American Humanist Association (AHA) respectfully submits this letter of amicus curiae supporting plaintiff-appellees in the above-referenced case. Amici present this letter to argue that plaintiff-appellees have presented a sufficient factual showing and legal analysis to support their argument that the Elk Grove Unified School District and the Rio Linda Unified School District requirements that schoolchildren recite the monotheistic Pledge of Allegiance is unconstitutional.

I. The Nature of the Applicant's Interest

The American Humanist Association is the oldest and largest Humanist organization in the nation, dedicated to ensuring a voice for those with a positive nontheistic outlook. Humanism is a progressive philosophy of life that, without supernaturalism, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity. The mission of the AHA is to promote the spread of humanism, raise public awareness and acceptance of humanism, and encourage the continued refinement of the humanist philosophy.

The AHA provides a unique viewpoint concerning the coercion involved in reciting the Pledge of Allegiance, as well as the history of religious freedom in the United States of America. AHA leadership feels that this case addresses core Humanist concerns about compassion, respect, egalitarianism, and rational analysis. Many AHA members with children in public schools where the Pledge of Allegiance is recited are especially concerned about the outcome of this case. The AHA wishes to bolster the principle of church-state separation and the separation of government from religion and ideology, especially in the public schools, in order to prevent our own disenfranchisement, as well as to best allow for religious liberty in America.

II. Why This Court Should Rule in Favor of Plaintiff-Appellees

The AHA filed an amicus brief in plaintiff-appellee Newdow's former case regarding the same concerns, *Elk Grove Unified School District et al v. Michael A. Newdow*, No. 02-1624 in the United States Supreme Court. We here summarize our former and current arguments for supporting plaintiff-appellees in the current case:

A. **Why This Case is Important**

This case is not only a benchmark in upholding the constitutionally protected separation of church and state; its ruling is extremely important to protecting the interests of nontheists and religious minorities. It is not right for nearly 30 million American citizens who are not monotheists to be urged by compulsion or peer pressure to say the words "one nation under God" in order to feel like fully participating citizens in their communities. Americans come from all walks of life and backgrounds. What unites us should be a civic bond, not a religious belief.

1. The United States has always had a rich and honorable history of protecting the rights and interests of minorities. The very fabric of our secular government was woven with this in mind. In 1960, four years before the 88th Congress passed sweeping civil rights legislation, there were 18.4 million African Americans in the United States. Clearly, looking back, we recognize, as did the 88th Congress, that racial bias is unconstitutional and intolerable.

   However, religious monotheistic bias is still prevalent and tolerated by our government. Recent polls[1] show that there are 28.1 million Americans to whom an official endorsement of monotheism does not apply. It is not right for these people to be urged to say the words "one nation under God" in order to feel like fully participating citizens in their communities. Americans come from all walks of life and backgrounds; what unites us should be a civic bond, not a religious belief. We implore the Court to respect the rights and interests of these Americans in its ruling and to apply the principles of equality to all citizens.

   2. Having "under God" and "indivisible" in the same oath is contradictory. Rather than uniting the people, the Pledge discriminates between religious Americans and the non-religious. The "under God" portion of the current pledge implies second-class citizenship (or less) toward U.S. citizens holding a particular outlook on religion. Former President George Bush, Sr. has said that he does not "know that atheists should be considered citizens, nor should they be considered patriots. This is one nation under God." This creation of a division along religious lines creates a class of outsiders that face a pressing social and political pressure to conformity in order to achieve a relative equality. As Mr. Newdow states in his Complaint, it is abundantly clear that atheists face discrimination in public office; the government should not maintain and promote this inequity by maintaining religious language in the Pledge.

B. **Why the Actions of Defendants Violate the Establishment Clause**

The American Humanist Association believes that Defendants' actions violate the Establishment Clause of the First Amendment in numerous ways, elucidated below:

1. "One nation under God" is an unconstitutional endorsement of religion. The First Amendment does not require hostility toward religion but mandates government neutrality toward religion.

2. The Ninth Circuit Court of Appeal's ruling in *Elk Grove Unified School District et al v. Michael A. Newdow* declared the inclusion of "under God" in the Pledge unconstitutional because it effectively made students feel coerced into giving false statements of sectarian belief in public school. Students without sectarian faith can thus be placed in the intimidating position of either refusing in front of their peers to recite the Pledge or being forced to pledge to something they do not believe, and when one must alter behavior to avoid governmental infusion with religion, there lies a violation of the Establishment Clause. While the implied coercive force of recitation alone presents a violation of the Establishment Clause, recitation is not a requirement; the enactment of any governmental endorsement of such a religious reference is sufficient, whether or not recitation is required.

3. The ruling in *Elk Grove Unified School District et al v. Michael A. Newdow* also declared that the use of "under God" in the Pledge is an endorsement of monotheism. This acknowledged that nearly 30 million Americans identify with no religion, and that there are many Buddhists, Hindus, and others who do not subscribe to monotheism.

4. The words "under God" in the current Pledge of Allegiance were added in 1954, after successful lobbying by the Knights of Columbus. The current version of the Pledge does not reflect its original and intended form, thus the US government's argument that the Pledge in its current form is a reflection of the founders' intent and not a theistic endorsement of religion is false. Indeed, removing the words "under God" would restore the Pledge to its original message, as intended by its author when he wrote it in 1892.

   The First Amendment to the Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This means that the government allows people to freely exercise their beliefs if they so choose. However, it also means that the government cannot endorse one religion over another religion, nor can it endorse religion in general over non-religion. The Pledge violates this standard by declaring "one nation under God." Due to the specific monotheistic reference in the current version of the Pledge, equality under the Establishment Clause is not only jeopardized for those who do not endorse any religious beliefs, but for those citizens whose religions are based on a polytheistic foundation that do not make reference to the deity of the Roman Catholic Church.

5. Although no one is required to recite the pledge, there is no alternative wording for patriotic Americans who want to express allegiance to their country, without involving a deity. While the US Supreme Court has ruled in the past that it is not a requirement of public school students to recite the Pledge of Allegiance, there is no alternative wording for patriotic students who want to express allegiance to their country without involving a deity.

6. The current version of the Pledge, which was amended in 1954 to include the words "under God," fails the endorsement test. The phrasing indicates that the country is

currently one nation under God; it does not make an historical reference to being a nation founded under God. Further, the intent of the 1954 Congress and Executive Branch is clearly theistic in stating its intent to have children "proclaim… the dedication of our Nation and our people to the Almighty."[2] Restoring the Pledge to its original form – which served Americans for 62 years – would retain the patriotic value of the Pledge and avoid constitutional conflicts.

7. Recent case history holds that the words "under God" in the Pledge are an unconstitutional breach of the Establishment Clause. The Ninth Circuit Court of Appeal's June 2002 ruling declared that reciting the Pledge of Allegiance in public schools was an unconstitutional endorsement of religion. The U.S. District Court, Eastern District of California also ruled on September 15, 2005 that reciting the Pledge of Allegiance in public schools was an unconstitutional endorsement of religion. In the ruling, U.S. District Judge Lawrence Karlton said that the words "under God" violate the right of public schoolchildren to be "free from a coercive requirement to affirm God." Further, prior case law regarding the Pledge is not binding, but the last case[3] involving it was heard over 30 years ago; since then the Supreme Court has held that ostracism as a result of governmental endorsement of religion is sufficient to show Establishment Clause violation. The AHA urges this Court to uphold the judicial precedents established in this case.[4]

III. Conclusion

The sanctity of political and social equality must be affirmed through the freedom of religious choice and the right to government neutrality. The governmental endorsement of religion in the Pledge violates the principles that comprise the foundations of the legally upheld freedom to religious preference. Embedded within our Constitution lies the framework for a government that allows its citizenry to choose its own path, and the inclusion of the Establishment Clause by our Framers protects this interest. Through the removal of the religious credence "under God," the unintended negative consequences are lifted and equal access to religious choice is reaffirmed. We thus request that the court acknowledge and consider our arguments on behalf of the plaintiff-appellees. Thank you.

Sincerely,

Melvin S. Lipman

Melvin S. Lipman
President
American Humanist Association

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[1] American Religious Identification Survey 2001, Barry A Kosmin, Egon Mayer and Azriel Keysar, The Graduate Center of the City University of New York.
[2] 100 Cong. Rec. 7, 8618 (1954), statement of Sen. Ferguson incorporating signing statement of President Eisenhower.
[3] Smith v. Denny, 417 F.2d 614 (9th Cir., 1969).
[4] Lynch v. Donnelly, 465 U.S. 668, 104 S.Ct. 1355 (1984); Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 17, 2006, two copies of this letter of amicus curiae have been served on counsel (listed below) for each party, via Federal Express, and that an original and fifteen copies of this letter have been sent to the Clerk of the United States Court of Appeals for the Ninth Circuit, via Federal Express.

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