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May 10, 2007

Cathy Catterson, Clerk of the Court
U.S. Court of Appeals for the 9th Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Newdow v. Carey*, Nos. 05-17257, 05-17344, 06-15093

Dear Ms. Catterson:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28-6, Plaintiffs-Appellees submit this supplemental authority regarding *Rosenbaum v. City and County of San Francisco*, No. 05-15266, slip op. (9th Cir. April 30, 2007).

Rosenbaum involved a challenge by religious adherents to the application of a city's "noise ordinance and permitting scheme." Slip op. at 4693. In the Court's discussion, the issue of viewpoint discrimination was reviewed. Because Plaintiffs-Appellees raised this same issue in the case at bar, *see* Answering Brief at 7 (n.8), the Ninth Circuit's discussion is worthy of comment.

Rosenbaum cited with apparent approval *American Jewish Cong. v. City of Beverly Hills*, 90 F.3d 379 (9th Cir. 1996), an Establishment Clause case in which "a preference for the Jewish religion," *Rosenbaum*, slip op. at 4716, was shown by government when only that one religious view was allowed within a government-controlled venue. Clearly, a preference for Monotheism is demonstrated when the only religious view allowed in the nation's sole official Pledge of Allegiance is that the United States is "one Nation under God." 4 U.S.C. § 4.

Furthermore, *Rosenbaum* noted that “[i]n *American Jewish Congress*, we held that the ‘ad hoc and structureless nature of the City’s permitting process leaves open the possibility of improper discrimination by the City.’ *Id.* at 385,” *Rosenbaum*, slip op. at 4716, and the Court went on to explain how the *Rosenbaum* defendants’ actions were permissible because there was “*guided discretion.*” *Id.* (emphasis in original). In the instant case, the decision to add “under God” to the Pledge was also “ad hoc and structureless,” with the only “guide” for Congress being the naked desire of politicians to espouse their own (and the nation’s) majoritarian religious view. This clearly violates the Supreme Court’s demand for governmental neutrality in terms of religion:

The touchstone for our analysis is the principle that the “First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.”

McCreary County v. ACLU, 125 S. Ct. 2722, 2733 (2005) (string citation omitted).
See Answering Brief at 22.

Thank you very much for your time and consideration.

Sincerely,

CA State Bar No. 220444

CERTIFICATE OF SERVICE

CASE NOS. 05-17257, 05-17344, 06-15093

I HEREBY CERTIFY that on this 10th day of May, 2007, true and correct copies of Plaintiff's letter of supplemental authority (*Rosenbaum v. City and County of San Francisco*, No. 05-15266, slip op. (9th Cir. April 30, 2007)) 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.

May 10, 2007

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