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February 17, 2014

VIA ECF

Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1526

**Re: *Dariano v. Morgan Hill Unified School District*
U.S. Court of Appeals No. 11-17858**

Dear Clerk:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28-6, Plaintiffs/Appellants ("Plaintiffs") bring to this court's attention the recent decision from this circuit in *Frudden v. Pilling*, No. 12-15403, 2014 U.S. App. LEXIS 2832 (9th Cir. Feb. 14, 2014), in which the court reversed the district court's dismissal of a student free speech cause of action for failure to state a claim, concluding that a public school's mandatory uniform policy was a content- and viewpoint-based restriction on student speech under the First Amendment, thereby requiring strict scrutiny review.

More specifically for purposes of the present case, the panel in *Frudden* reaffirmed that public "school students 'do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,'" *id.* at *16 (quoting *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988)), and that a content- or viewpoint-based restriction on student speech (even "in light of the special characteristics of the school environment") must pass "the most exacting scrutiny" to

survive a First Amendment challenge, *Frudden*, 2014 U.S. App. LEXIS 2832, at *21 (quoting *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994)). That is, a school district's restriction on student speech that is content or viewpoint based "must be 'a narrowly tailored means of serving a compelling state interest.'" *Frudden*, 2014 U.S. App. LEXIS 2832, at *20-*21 (quoting *Rounds v. Or. State Bd. of Higher Educ.*, 166 F.3d 1032, 1038 n.4 (9th Cir. 1999)).

The school district's content- and viewpoint-based prior restraint on Plaintiffs' speech at issue here cannot pass this most exacting scrutiny. (See Pls.' Br. at 29-37; Pls.' Reply Br. at 9-17).

Sincerely,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.

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/s/ William Becker
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Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2014, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I also certify that all participants in this case are registered CM/ECF users.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.