

Appeal No. 05-36195

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COMMUNITY HOUSE, INC., MARLENE K. SMITH,
GREG A. LUTHER, and JAY D. BANTA,

Plaintiffs-Appellants,

v.

CITY OF BOISE, IDAHO; DAVID H. BIETER, Mayor; BOISE CITY COUNSEL;
MARYANN JORDAN, ELAINE CLEGG, VERNON BISTERFELDT, DAVID
EBERLE, JEROME MAPP, and ALAN SHEALY, Boise City Council Members;
BRUCE CHATTERTON, Director, Planning and Development Services; and
JIM BIRDSALL, Manager, Housing and Community Development,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Idaho
Case No. CV-05-00283-BLW

BRIEF OF *AMICI CURIAE* ANTI-DEFAMATION LEAGUE
AND AMERICANS UNITED FOR SEPARATION OF
CHURCH AND STATE ON BEHALF OF PLAINTIFFS-
APPELLANTS IN SUPPORT OF AN INJUNCTION
RESTORING THE *STATUS QUO*

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**CORPORATE DISCLOSURE STATEMENT PURSUANT TO
FEDERAL RULES OF APPELLATE PROCEDURE, RULE 26.1**

Amici curiae Anti-Defamation League and Americans United for Separation of Church and State are both non-profit corporations whose goals include preserving religious liberty and the separation of church and state. Neither of the *amici* has any parent corporations. No publicly held corporation owns 10% or more of either of the *amici*.

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IDENTITIES AND INTERESTS OF *AMICI CURIAE*

The Anti-Defamation League (the “ADL”) and Americans United for Separation of Church and State (“Americans United”) submit this brief in support of Plaintiffs-Appellants Community House, Inc., Marlene K. Smith, Greg A. Luther, and Jay D. Banta.

Anti-Defamation League. Organized in 1913, the ADL is a national organization dedicated to advancing good will and mutual understanding among people of all creeds and races, and to combating racial, ethnic, and religious prejudice in the United States. Among the ADL’s core tenets is strict adherence to the separation of church and state embodied in the Establishment Clause of the First Amendment to the United States Constitution. The ADL firmly believes this separation preserves religious freedom and protects our democracy. To further this belief, the ADL has filed *amicus curiae* briefs in a number of important First Amendment cases in the last half-century, including *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); and *Engel v. Vitale*, 370 U.S. 421 (1962). A complete list of the ADL’s *amicus* briefs may be found at the ADL’s Web site at http://www.adl.org/civil_rights/ab/.

Americans United for Separation of Church and State. Founded in 1947, Americans United is a national, nonsectarian public interest organization committed to preserving religious freedom and the separation of church and state.

Americans United maintains active chapters in several states and has more than 75,000 members nationwide. Americans United members adhere to various religious beliefs, with some holding no religious affiliation. All members are united, however, in their commitment to the long-standing principle of church-state separation. Like the ADL, Americans United has participated as a party or *amicus curiae* in many of the leading Establishment Clause cases decided by the Supreme Court and Courts of Appeals of the United States.

SOURCE OF AUTHORITY TO FILE BRIEF

The ADL and Americans United have filed a motion for leave to file this brief.

INTRODUCTION

The City of Boise, Idaho (the “City”) has decided that it no longer wants to operate an emergency shelter or provide food for its homeless residents at the Community House facility. Instead, the City has leased the facility to a religious sect who is now using Community House for the impermissible purpose of indoctrinating United States citizens.

The District Court concluded that there are “serious questions” as to whether the City’s surrogate and lessee, the Boise Rescue Mission, Inc., d/b/a Boise Rescue

Mission Ministries (“the Ministry”), has been requiring attendance at religious meetings as a condition of providing food and shelter at Community House. Based on this finding, the District Court issued a limited and intermediate preliminary injunction that prohibits the City from continuing to operate the lease if the Ministry persists in such practices.

We agree that the Establishment Clause of the United States Constitution proscribes government-supported religious discrimination, and that such discrimination was established below. And Appellants’ argument to this Court correctly highlights the discriminatory aspect of the Ministry’s activities.¹ But because the Establishment Clause provides much broader protection to United States citizens than merely enjoining government-supported religious discrimination, and in order to highlight the additional Constitutional concerns that arise when the government leases property to religious organizations who then use that property to indoctrinate United States citizens, the ADL and AU respectfully submit this brief as *amici curiae*.

¹ Appellants also argue that the lease of Community House to the Ministry violates Article 9, section 5 of the Idaho Constitution, which prohibits *any* appropriation or payment of public funds “in aid of any church or sectarian or religious society.” We concur and note that the Supreme Court recently held that a similar provision in the Washington State Constitution does not violate the United States Constitution. *See Locke v. Davey*, 540 U.S. 712, 725 (2004).

SUMMARY OF ARGUMENT

When assessing whether government aid to sectarian organizations violates the Establishment Clause, the Supreme Court applies a “modified” version of the three-pronged test first articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Specifically, the Court asks: (i) whether there is a secular purpose for the government aid; and (ii) whether that aid has the “effect” of advancing or inhibiting religion. *See Agostini v. Felton*, 521 U.S. 203, 222-23 (1997); *see also Mitchell v. Helms*, 530 U.S. 793, 807-08 (2000). As to the second, or “effect,” prong of this test, the Court has identified three criteria for evaluating whether the government aid in question has the “effect” of advancing or inhibiting religion: (i) whether the aid results in government indoctrination; (ii) whether recipients of the aid are defined by reference to religion; and (iii) whether the aid creates excessive government entanglement with religion. *See Agostini*, 521 U.S. at 234.

Here, the City’s lease of Community House to the Ministry constitutes government aid to a sectarian organization that violates the “effect” prong of the *Mitchell/Agostini* test in at least two separate respects:

- First, the lease results in government-sponsored indoctrination because it provides the Ministry with a government-financed facility that the Ministry uses to achieve its stated mission of sharing the “Good News” of Jesus Christ; and

- Second, the lease creates excessive government entanglement with religion because nothing short of intimate and continuous supervision will suffice to ensure the Ministry is not using the facility to engage in religious indoctrination.

In addition, the City's lease of the Community House facility to the Ministry reasonably may be perceived as an impermissible government endorsement of religion because the City is allowing an overtly sectarian organization to manage and control a government-owned facility for religious purposes, including to religiously indoctrinate and proselytize the homeless. *See infra*, Section II.

For these reasons, the lease of Community House to the Ministry runs afoul of the Establishment Clause and must be set aside.

ARGUMENT

I. THE LEASE OF THE COMMUNITY HOUSE FACILITY TO THE MINISTRY HAS THE EFFECT OF ADVANCING RELIGION.

The Community House facility was constructed at a total cost of approximately \$2.7 million, which included over \$1.6 million of public funds. [ER 468-470.] Further, this facility has generated revenues of up to \$125,000 per year. [ER 442.] Nevertheless, the City has bestowed upon the Ministry the sole and exclusive use of that furnished facility *for an annual "rent" payment of \$1*. Only after five years does the lease require the Ministry to pay a negotiated "fair rental

value,” and even then the Ministry has the option of simply walking away. [ER 500.] The City also has given the Ministry a twenty-month option to purchase the property for \$2 million [ER 513], \$500,000 less than the minimum value that the City had established for the property in July 2005 [ER 460]. Moreover, the Community House facility is more than just another building; rather, because the 34,000 square foot furnished facility historically has been operated as a homeless shelter [ER 468-69], it comes with a substantial amount of “goodwill” and recognition that ensures a steady supply of potential candidates for indoctrination.

In short, the City has awarded the Ministry at no cost for five years a facility and furnishings valued by the City at (at least) \$2.5 million. At the time it was provided with these resources, the Ministry sorely needed the aid. Its existing men’s facility was overcrowded and it anticipated increased demand in winter. [ER 369.] The Ministry informed the City that it planned to move its men's program's guests to Community House. [ER 205.] The District Court found that many of the Ministry’s existing residents from its overcrowded facility have since moved to Community House. [ER 381.] Moreover, due to the Ministry’s “limited facilities” and gender segregation policy, it wanted and needed to buy another shelter to service its existing “mixed sex” families, whom it housed in hotels. [ER 224-225.] The government aid immediately helped meet the Ministry’s needs.

But, as is the case with any form of government aid, the government may not allow a sectarian organization to use a tax-supported facility for religious instruction or otherwise for any activities that advance religion. *See Committee for Public Education v. Nyquist*, 413 U.S. 756, 774 (1973); *Tilton v. Richardson*, 403 U.S. 672, 683 (1971); *McCullum v. Board of Education*, 333 U.S. 203, 212 (1948). As explained below, the lease of the Community House facility to the Ministry impermissibly has advanced—and continues to advance—religion in at least two separate respects.

A. The Ministry is using Community House to indoctrinate the homeless.

“Although Establishment Clause jurisprudence is characterized by few absolutes, the Clause does absolutely prohibit government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.” *Grand Rapids School District v. Ball*, 473 U.S. 373, 386 (1985), *overruled in part by Agostini v. Felton*, 521 U.S. 203 (1997). In recognition of this absolute prohibition, the Supreme Court historically has held that government aid to sectarian schools violates the Establishment Clause where such aid creates a “substantial” or otherwise “unacceptable” risk of government-sponsored indoctrination. *See Ball*, 473 U.S. at 386-87 (declaring unconstitutional a government program that subsidized classes taught by private school employees in classrooms located in private schools); *Wolman v. Walter*, 433 U.S. 229, 253-54

(1977), *overruled in part by Mitchell*, 530 U.S. at 793 (declaring unconstitutional a government program that funded field trips for students at private schools); *Levitt v. Committee for Public Education*, 413 U.S. 472, 479-80 (1973) (declaring unconstitutional a government program that reimbursed private schools for the costs of administering certain internally prepared tests and examinations).

Ultimately, however, this Court need not rely on the mere *risk* of indoctrination to decide this case. Rather, the record plainly establishes that the Ministry *in fact* has been using Community House—which it renamed “River of Life Rescue Mission” after the gospel adage—to indoctrinate and even proselytize the homeless. Indeed, in its “intake application,” the Ministry announces to those entering the facility for the first time that “[w]e are here to share the Good News [of Jesus Christ.]” [ER 364.] In furtherance of that mission, the Ministry holds a Christian chapel service prior to each evening’s meal at Community House, and another prayer session and Scripture reading each morning. [ER 227, 268.] At the hour-long chapel service, the Ministry offers “scripture reading,” “testimonies” and “preaching,” all for the purpose of “remind[ing] or inform[ing] our guests that God loves them and offers salvation, hope and help in their predicament.” [ER 226.] And at the end of each month, the Ministry publishes a religious conversion “scorecard” that reports the numbers and percentages of the homeless who have entered the facility and have “decided for Christ.” [ER 365.]

The fact that the Ministry *actually* is using Community House to indoctrinate the homeless should erase any doubt that the City's lease of that facility to the Ministry has the effect of advancing religion. *See Mitchell*, 530 U.S. at 840-41 (O'Connor, J., concurring in judgment) (“[W]e have long been concerned that secular government aid not be diverted to the advancement of religion”). Notably, while the Supreme Court has upheld government programs that finance the construction of facilities at sectarian schools, the Court consistently has done so only where the government expressly prohibited use of the aid for religious purposes. *See Roemer v. Board of Public Works*, 426 U.S. 736, 760-61 (1976); *Hunt v. McNair*, 413 U.S. 734, 744-45 (1973). Moreover, the Court's rulings in those cases relied on the absence of any evidence that such facilities were being used for impermissible religious purposes. *See Roemer*, 426 U.S. at 760-61; *Hunt*, 413 U.S. at 744-45.

Similarly, in those cases where the Court has upheld loans of government property to sectarian schools, the Court consistently has cited the absence of evidence that such property was being used to support religious indoctrination. *See Mitchell*, 530 U.S. at 861 (O'Connor, J.) (evidence that educational materials loaned to sectarian schools actually were diverted to religious use was *de minimis* and insufficient to give rise to a constitutional violation); *Board of Education v.*

Allen, 392 U.S. 236, 248 (1968) (no evidence that textbooks lent to sectarian schools were used to teach religion).

Moreover, in those rare cases where the Supreme Court has upheld government aid that is used for religious indoctrination, it has done so only where such aid has flowed to a sectarian organization as a result of the “genuinely independent and private choices of aid recipients.” See *Mitchell*, 530 U.S. at 841 (O’Connor, J.) (discussing *Witters v. Washington Department of Services for Blind*, 474 U.S. 481, 488 (1986) and *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 10-12 (1993)). Here, however, the government aid is not contingent upon the choices of private individuals; rather, the Ministry gets the \$1-a-year lease to the Community House facility regardless of whether anybody actually uses the facility. [ER 501.] Indeed, even if the aid was somehow contingent upon homeless persons choosing to come to Community House, it cannot be said that such a choice would be “genuinely independent.” Given the lack of any secular shelters in Boise, the City’s decision to lease the facility to the Ministry effectively has left the homeless with no choice but to accept the Ministry’s sectarian management policies and practices. [ER 287 ¶ 13; 281 ¶ 8; 276 ¶ 8.]

Notably, in *Bowen v. Kendrick*, the Supreme Court acknowledged that government aid to a *non-educational* sectarian organization (such as the Ministry) would run afoul of the Establishment Clause if such aid is used for indoctrination.

487 U.S. 589, 611-12 (1988). *Bowen* involved a challenge to the Adolescent Family Life Act (“AFLA”), a federal statute that authorized grants of federal funds to public or nonprofit private organizations who provide services in the area of premarital adolescent sexual relations and pregnancy. While the Court held the statute “on its face” did not violate the Establishment Clause, the Court remanded the action for a determination as to whether AFLA funds in fact were being used to advance religion. The Court specifically instructed the District Court to consider whether any AFLA participants were using materials “that have an explicitly religious content or are designed to inculcate the views of a particular religious faith.” *Id.* at 621.

Here, no such remand is required. The record is replete with evidence that the Ministry has been using Community House to inculcate the homeless in its religious views and otherwise engage in religious indoctrination. Indeed, the Ministry reports on its Web site that there were at least two new conversions at this facility in the month of December 2005 alone, clearly demonstrating the effectiveness of the Ministry’s indoctrination efforts to date. [See <http://www.boiserescuemission.org/December%202005%20Stats.pdf> (last visited

2/13/06).]² Indoctrination of the homeless is occurring at Community House, with the backing and support of the City of Boise.

B. The lease of Community House to the Ministry will create excessive government entanglement with religion.

In assessing whether a particular form of government aid to sectarian organizations gives rise to excessive government entanglement, the Court must consider “the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority.” *Agostini*, 521 U.S. at 232 (quoting *Lemon*, 403 U.S. at 615). Here, the character and purposes of the beneficiary institution and the nature of the government aid are such that the City will have no choice but to engage in extensive monitoring of the Community House facility to ensure no part of it is being used for religious indoctrination. Thus, the lease of the facility to the Ministry inevitably will create an excessive entanglement between government and religion.

When the government gives aid to a sectarian organization, it is constitutionally obligated to assure itself that the aid will not be used for

² A copy of the relevant page from that Web site is attached as Appendix A. *Amici curiae* respectfully request that the Court take judicial notice of the fact that the Ministry has claimed two conversions in the month of December 2005, as a matter that is “not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *See* Fed. R. Evid. 201(b)(2).

impermissible religious purposes. *See, e.g., Lemon*, 403 U.S. at 619; *Levitt*, 413 U.S. at 480. Given that the Ministry has expressly announced its plan to share the “Good News” of Jesus Christ with the homeless at the Community House facility, the City will have to be particularly vigilant in its efforts to ensure that facility is not being used for religious indoctrination.

Moreover, the government aid here consists of a 34,000 square foot facility for which the list of “permitted uses” covers a broad range of different activities. [ER 523.] Many of these “permitted uses” will in all likelihood give rise to opportunities for indoctrination, including but not limited to “Missions,” “Social Care Facilities,” “Homeless Shelter/Emergency Shelter,” “Religious Services/Sanctuary,” “Programs for Recovery from Homeless,” “Programs for Adult Education,” and “Programs for Recovery from Alcohol and/or Drug Abuse” (such as the Bible-based “New Life” program [ER 504 §13.2; 203]). Because the City’s lease of the Community House facility to the Ministry will support so many different activities, each of which carries the risk of indoctrination, the City’s monitoring will have to be equally broad in its scope.

The sheer breadth of the range of activities supported by the government aid in question distinguishes this case from those cases where the Supreme Court previously has declined to find excessive entanglement. *See Agostini*, 521 U.S. at 209-10 (Title I funding limited to supplemental remedial education classes);

Bowen, 487 U.S. at 593 (AFLA grants supported only services in the area of premarital adolescent sexual relations and pregnancy). The extremely personal and “around the clock” nature of some of the Ministry's programs and activities further heightens the concern about indoctrination and the need for government surveillance. The Ministry sees itself as a caretaker for the homeless who come to Community House, a role that necessarily will touch upon all aspects of their lives. This unique relationship creates a situation where indoctrination could occur at any time, day or night, and at any place within Community House where Ministry personnel may come into contact with the homeless, including wherever they eat, bathe and sleep. [See, e.g., ER 369 (24 hour supervision; Chaplains and case managers available to “pray for and counsel” residents).]

Under these circumstances, occasional government inspections of one or two selected areas within the Community House facility plainly will not suffice. In order to assure itself that the Ministry is not engaging in impermissible religious activities at Community House, the City would have to monitor the entire facility, continuously and intimately. Such close and persistent supervision entangles government and religion in a manner that cannot be reconciled with the prohibitions of the Establishment Clause.

II. THE LEASE REASONABLY MAY BE VIEWED AS A GOVERNMENT ENDORSEMENT OF RELIGION.

Contrary to its duty to remain neutral, the City has conveyed a clear message that it “endorses” religion by allowing the Ministry to operate the Community House facility, notwithstanding that the Ministry is conducting bible studies, chapel services and other religious programs on the premises as part of its stated mission to share the “Good News.”

At a minimum, the “wall of separation between church and state” contemplated by the Establishment Clause requires that the government remain *neutral* in its dealings with religion. This requirement of neutrality derives from “the essential command of the Establishment Clause, namely, that government must not make a person’s religious beliefs relevant to his or her standing in the political community by conveying a message ‘that religion or a particular religious belief is favored or preferred.’” *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 627 (1989) (O’Connor, J., concurring). “It follows that an important concern of the [Establishment Clause] is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the non-adherents as a disapproval, of their individual religious choices.” *Ball*, 473 U.S. at 390.

In considering whether government action results in an impermissible endorsement of religion, the Supreme Court has asked whether a reasonably informed observer would perceive it as such. *See Capitol Square Review & Advisory Board v. Pinette*, 515 U.S. 753, 780-81 (1995) (O'Connor, J., concurring in judgment). Such a reasonably informed observer is deemed to be acquainted with the text, history, and implementation of the statute or other challenged government action. *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 308 (2000). Thus, any assessment of whether the Community House lease would be perceived as government endorsement of religion must take into account the terms of the lease, its history and its implementation. In viewing the relationship created by the lease and the Ministry's stated purposes, the District Court itself found that the Ministry acted as the City's surrogate. [ER 385.]

The history of the lease is particularly telling. Any third-party observer familiar with the history of the Community House lease would know that the City built the Community House facility with public funds, operated it for over ten years as part of what the City termed a "cooperative public/private partnership," previously managed the facility, and now owns the property while transferring "management" to the Ministry. [ER 395 (partnership); *see, e.g.*, ER 316, 321, 330-331, 342-343 (communicating the City's intent to transfer management of the facility).] In light of this history, a reasonably informed observer naturally (and

correctly) would assume the City approves of and endorses the Ministry's ongoing religious indoctrination at the Community House facility.

The perception that the public/private partnership is continuing between the City and the Ministry is further evident by the terms of the Community House lease. The facility is being used for the same functions as before. By specifically identifying the "permitted uses" of the facility, as before, the lease gives the City oversight over the Ministry's activities at Community House. Moreover, the lease imposes a number of duties and obligations on the City with regard to the premises, including but not limited to an obligation to insure the premises and pay for necessary repairs. [ER 502-503.] These continuing rights and responsibilities give rise to a close and symbiotic relationship between the City and the Ministry that is not unlike a partnership or joint venture. *Cf. Burton v. Wilmington Parking Authority*, 365 U.S. 715, 725 (1961) (viewing the "interdependence" between a government lessor and its lessee as evidence of "joint participation" in the lessee's discriminatory policies).

Government endorsement of religion is prohibited because "it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community'" *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 309-310 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). Obviously the

perception of being an “outsider” could be particularly harmful for a person who comes to a homeless shelter and, realistically speaking, has no place else to go. Thus, it is all the more important for the government to maintain a position of complete and absolute neutrality when it operates such a facility (or provides government resources to somebody else to do so). Instead, the City has given its apparent “stamp of approval” to the religious indoctrination and other religious conduct that is occurring on a daily basis at the government-owned Community House. The clear and unmistakable implication is one of government endorsement of religion that cannot be allowed to stand.

CONCLUSION AND PROPER RELIEF


For these reasons, the lease of the Community House facility to the Ministry runs afoul of the Establishment Clause of the United States Constitution. Under these circumstances, nothing less than a *status quo* preliminary injunction requiring

the City to treat the lease as void will suffice to prevent the City from continuing to violate the constitutional rights of United States citizens.

Dated: February 13, 2006

Respectfully submitted,

JONES DAY

By: 
Brent D. Sokol

Attorneys for *Amici Curiae*
ANTI-DEFAMATION LEAGUE and
AMERICANS UNITED FOR
SEPARATION OF CHURCH AND STATE


**CERTIFICATE OF COMPLIANCE FOR CASE NUMBER 05-36195
(NINTH CIRCUIT RULE 32-1)**

I certify that this brief is proportionately spaced, has a typeface of 14 points or more and contains 4,058 words.

Dated: February 13, 2006

Respectfully submitted,

JONES DAY

By: 
Brent D. Sokol

Attorneys for *Amici Curiae*
ANTI-DEFAMATION LEAGUE and
AMERICANS UNITED FOR
SEPARATION OF CHURCH AND STATE

APPENDIX A

**Boise Rescue Mission Ministries
Statistics
December 2005**

Front Street

Meals Served: 7,729 (children: 0)
Overnight Stays- Guests:1,706 Program: 233
Clothing Issued: 1,253
Decisions for Christ: 5

"December " 04

7,849
Guests: 1,952 Program: 558
1,879
7

City Light Home for Women & Children

Meals Served: 4,317 (children: 772 18 %)
Overnight Stays- Guests: 668 Program: 750
Clothing Issued: 366
Decisions for Christ: 2

3,580
Guests: 624 Program:868
331
0

Lighthouse Rescue Mission (Nampa)

Meals Served: 5,955 (children: 57 1 %)
Overnight Stays- Guests: 956 Program: 689
Clothing Issued: 1,335
Decisions for Christ: 78

8,611
Guests: 1,607 Program: 750
2,398
6

River of Life

Meals Served: 5,942
Overnight Stays-Guests:2,252 Program: 723
Clothing Issued: 810
Decisions for Christ: 2

n/a

Transitional Housing- Families in Residence: 4

Total Food Boxes Given Away this Month: 1,146
ERP: 7

4
1,840

Monthly Totals with W&C %

Total Meals Served: 23,943
(Women & Children: 5,562 @ 23%)
Total Overnight Stays: 7,977
(Women & Children: 668 @ 8 %)

20,040
(W&C:5,761 @ 29%)
6,359
(W&C: 1,492 @ 23%)

Monthly Totals

Avg # Meals Per Day (31 days) 772
Avg # Overnight Per Day (31 days) 257

Avg per day: 538
Avg per day: 205

2005 Totals

Meals:219,925 Avg # Per Day (365 days):603
Overnight Stays:73,145 Avg # Per Month 12 mos): 6,095
Decisions for Christ: 573 Avg # Per Month (12mos): 48

Total:196,348
Total: 67,153
Total:325

Holiday Meals served Christmas Banquet

Boise 771

Nampa 2,150

Christmas Toys Given: Boise: 1,053

Food Boxes

Boise 530

Nampa 575

Nampa: 2,594

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On February 13, 2006, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within documents:

1. **BRIEF OF *AMICI CURIAE* ANTI-DEFAMATION LEAGUE AND AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE ON BEHALF OF PLAINTIFFS-APPELLANTS IN SUPPORT OF AN INJUNCTION RESTORING THE STATUS QUO; AND**

2. **MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* ON BEHALF OF APPELLANTS IN SUPPORT OF AN INJUNCTION RESTORING THE *STATUS QUO*,**

by placing the documents in a sealed envelope, postage fully paid, addressed as follows:

Robert Anderson*
Phillip Collaer
Anderson, Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707-7426
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***Also sent by courtesy
facsimile**

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 13, 2006, at Los Angeles, California.

A handwritten signature in cursive script that reads "Susan Ballard". The signature is written in black ink and is positioned above a horizontal line.

Susan Ballard