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6 Attorneys for George W. Bush
President of the United States
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9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 EASTERN DISTRICT OF CALIFORNIA
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12	REV. DR. MICHAEL A. NEWDOW,)	CIV. No. S-01-0218 LKK/GGH PS
13	Plaintiff,)	
14	v.)	OBJECTIONS TO MAGISTRATE
15	GEORGE W. BUSH, PRESIDENT OF)	JUDGE'S FINDINGS AND
16	THE UNITED STATES,)	RECOMMENDATIONS
17	Defendant.)	

18
19 Defendant George W. Bush, President of the United States,
20 files the following objections to the Findings and
21 Recommendations [hereafter "F&R"] filed by Magistrate Judge
22 Hollows on July 18, 2001.

23 I. ARGUMENT

24 A. Standing

25 1. Newdow suffered no particularized injury.

26 The Magistrate Judge found that plaintiff Michael Newdow,
27 who was offended when he heard Reverend Graham recite a prayer
28 during the televised inaugural festivities on January 20, 2001,

1 has satisfied the "injury in fact" requirement of standing. The
2 Magistrate Judge found that, like the school children who were
3 not required to leave their classroom during Bible readings ¹,
4 plaintiff was not required to turn off his television set to
5 avoid viewing televised inaugural activities he found offensive.
6 F& R, p. 6. The court equated Newdow's desire to watch the
7 televised proceedings with plaintiffs who have been found to have
8 standing when they alleged they avoided public places or services
9 to avoid public religious displays. ² However, the differences
10 between those plaintiffs and Newdow are clear: those plaintiffs
11 all lived or worked in the community where the religious symbols
12 were being displayed, or, in the case of the school children,
13 were in the classroom where the Bible readings occurred. Those
14 plaintiffs established that they were forced to make real changes
15 in their daily routines so as to avoid the displays they found
16 offensive. Newdow, in contrast, does not live or work in
17 Washington, D.C. and had to undertake no special burden for the
18 minute or so that the prayer was recited.

19 The Magistrate Judge rejected defendant's argument that
20 Newdow could simply have turned off the television to avoid
21

22 ¹ *School District of Abington v. Schempp*, 374 U.S. 203,
23 83 S.Ct. 1560 (1963).

24 ² E.g., *American Jewish Congress v. City of Beverly*
25 *Hills*, 90 F.3d 379, 382 (9th Cir. 1996) (persons who avoided
26 public park because of religious symbol had standing); *Hewitt v.*
27 *Joyner*, 940 F.2d 1561, 1564 (9th Cir. 1991) (same); cf. *Doe v.*
28 *Madison School Dist. No. 321*, 177 F.3d 789, 797 (9th Cir.
1999) (en banc) (parents lacked standing to protest school prayer
at graduation because she had no students remaining in the school
district and did not allege she would attend future graduations).

1 programming he found offensive, concluding that Newdow's exposure
2 to offensive material broadcast over the airwaves gave him
3 standing. F&R, p. 5. However, the Magistrate Judge cited no
4 case that holds that anyone viewing a televised event has
5 standing to challenge the constitutionality of the event.
6 Instead, the Magistrate Judge quotes a line from *Finley v.*
7 *National Endowment for the Arts*, 100 F.3d 671, 686 (9th Cir.
8 1996) (Kleinfeld, J. dissenting), rev. on other grounds, 524 U.S.
9 569, 118 S.Ct. 2168 (1998) in support of his broad view of
10 standing.³ However, the quote was taken out of context. The
11 quote related to how a public forum can be created, not to the
12 entirely different issue of who has standing to file a lawsuit.
13 *Finley*, at 686.

14 Moreover, the Magistrate Judge's broad view of the standing
15 requirement completely eviscerates long-standing principles that
16 one seeking to invoke the jurisdiction of the federal courts must
17 show that he has suffered an "...injury in fact" -- an invasion
18 of a legally protected interest which is (a) concrete and
19 particularized and (b) 'actual or imminent,' not 'conjectural'
20 or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. at
21 560, 112 S.Ct. at 2136 (citations omitted). An alleged injury to
22 an interest "which is held in common by all members of the
23 public" is not the sort of "[c]oncrete injury, whether actual or
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25 ³ "Defendant's 'in person' standing requirement is
26 unknown to the law. 'This is because [First Amendment] speech is
27 often disseminated by print and electronics, rather than by
28 standing in front of people and talking to them.' *Finley v.*
National Endowment for the Arts, 100 f.3d 671, 686 (9th Cir.
1996) (Kleinfeld, J. dissenting)." F&R at 5-6.

1 threatened" which "is that indispensable element of a dispute
2 which serves in part to cast it in a form traditionally capable
3 of judicial resolution." *Schlesinger v. Reservists Committee to*
4 *Stop the War*, 418 U.S. 208, 220-21 (1974).

5 Here, all Newdow alleged is an injury he holds in common
6 with other members of the public: an objection to the recitation
7 of a prayer at the presidential inauguration. His "injury" is no
8 different than the ideological injury millions of other atheists
9 and non-Christians may have experienced on January 20, 2001, and
10 is insufficiently "concrete and particularized" to establish
11 standing. Yet, under the Magistrate Judge's broad view of
12 standing, every person in the United States who viewed the
13 inaugural activities--potentially many millions of viewers--could
14 file a suit similar to Newdow's. But the specter of millions of
15 suits being brought in the 94 federal judicial districts
16 underscores the need for the requirement that a plaintiff suffer
17 a "particularized" injury before invoking the resources of the
18 courts.

19 2. The 2005 Inauguration is too distant in time to
20 satisfy the requirement that the threatened injury be
21 imminent.

22 The Magistrate Judge also rejected President Bush' argument
23 that Newdow could not satisfy the requirement that a party
24 seeking injunctive relief must demonstrate an imminent threat of
25 irreparable injury. *Adarand Constructors, Inc. v. Pena*, 515 U.S.
26 200, 210, 115 S.Ct. 2097, 2104 (1995); *Cole v. Oroville Union*
27 *High School District*, 228 F.3d 1092, 1100 (9th Cir.
28 2000) (dismissing complaint regarding prayer at graduation
ceremony for want of standing because plaintiffs had not shown a