

ORAL ARGUMENT DESIRED – NOT YET SCHEDULED

CASE NO. 09-5126

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MICHAEL NEWDOW, et al.

Plaintiffs-Appellants,

v.

**HON. JOHN ROBERTS, JR., CHIEF JUSTICE OF THE U.S.
SUPREME COURT, et al.**

Defendants-Appellees,

**On Appeal from the United States District Court
for the District of Columbia**

(District Court #1:08-cv-02248)

APPENDIX TO THE BRIEFS

PUBLIC COPY – MATERIAL UNDER SEAL DELETED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No.

COMPLAINT

MICHAEL NEWDOW;
ELLERY SCHEMPP;
MEL LIPMAN;
DAN BARKER AND
ANNIE-LAURIE GAYLOR;
ROBERT SHERMAN;
MARGARET DOWNEY;
AUGUST BERKSHIRE;
MARIE CASTLE;
STUART BECHMAN;
HERB SILVERMAN;
JASON TORPY;

¹ *Pro hac vice* application pending

HARRY GREENBERGER;
KIRK HORNBECK;
JIM CORBETT;
CATHARINE LAMM;
RICHARD WINGROVE;
CHRISTOPHER ARNTZEN;
JOHN STOLTENBERG;
KATHERINE LACLAIR;
LOUIS ALTMAN;
PAUL CASE;
JERRY SCHIFFELBEIN;
ANNE, PHILIP AND JAY RICHARDSON;
DAN DUGAN;
ANNA MAE ANDREWS;
ELIZA SUTTON;
RICHARD RESSMAN;
“UNNAMED CHILDREN;”

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PLAINTIFFS,

v.

HON. JOHN ROBERTS, JR.
CHIEF JUSTICE OF THE U.S. SUPREME COURT
SUPREME COURT OF THE UNITED STATES
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WASHINGTON, DC 20543

PRESIDENTIAL INAUGURAL COMMITTEE ("PIC")
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EMMETT BELIVEAU, EXECUTIVE DIRECTOR, PIC
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JOINT CONGRESSIONAL COMMITTEE
ON INAUGURAL CEREMONIES ("JCCIC")
UNITED STATES SENATE
331 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510

SENATOR DIANNE FEINSTEIN, CHAIRPERSON, JCCIC
UNITED STATES SENATE
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ARMED FORCES INAUGURAL COMMITTEE (“AFIC”)
JOINT FORCE HEADQUARTERS - NATIONAL CAPITAL REGION
US ARMY MILITARY DISTRICT OF WASHINGTON
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WASHINGTON, DC 20319-5058

MAJOR GENERAL RICHARD J. ROWE JR., CHAIRPERSON, AFIC;
JOINT FORCE HEADQUARTERS - NATIONAL CAPITAL REGION
US ARMY MILITARY DISTRICT OF WASHINGTON
103 THIRD AVENUE - FORT LESLEY J. MCNAIR
WASHINGTON, DC 20319-5058

REV. RICK WARREN;
REV. JOE LOWERY;

DEFENDANTS.

COMPLAINT

Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This is a civil action claiming violations of the First and Fifth Amendments of the Constitution of the United States of America. As such, this Court has jurisdiction under 28 U.S.C. § 1331.
2. This action is founded upon the Constitution of the United States of America. As such, this Court has jurisdiction over Defendants under 28 U.S.C. § 1346(a)(2).
3. This is a civil action claiming violations of 42 U.S.C. §§ 2000bb et seq. (Religious Freedom Restoration Act (RFRA)). As such, this Court has jurisdiction under 42 U.S.C. §§ 2000bb-1(c) and 28 U.S.C. § 1331.
4. This action seeks declaratory relief. As such, this Court has jurisdiction under 28 U.S.C. § 2201(a) and 28 U.S.C. § 2202.²
5. This action seeks injunctive relief. As such, this Court has jurisdiction under 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1343(a)(4).
6. This action is in the nature of mandamus, and seeks to compel those Defendants who are “officer[s] or employee[s] of the United States or any agency thereof” to perform their duties owed Plaintiffs under the terms of the First and Fifth Amendments of the Constitution of the United States. As such, this Court has jurisdiction under 28 U.S.C. § 1361.
7. Defendants PIC, JCCIC and AFIC all reside in this judicial district.³ The events giving rise to this claim all have taken place, are taking place or will be taking place in this judicial district. Venue is therefore proper under 28 U.S.C. § 1391(b).

² It might be noted that Fed. R. Civ. P. Rule 57 states in pertinent part that, “The court may order a speedy hearing of a declaratory-judgment action.”

³ The remaining defendants may or may not reside in this judicial district.

PARTIES

I. Plaintiffs

8. Plaintiff Michael Newdow is a citizen of the United States, a resident of the State of California, Reverend of the First Atheist Church of True Science (“FACTS”), a member of the Freedom From Religion Foundation (“FFRF”) and the American Humanist Association (“AHA”), and an Atheist. He is awaiting responses from Senators Dianne Feinstein and Barbara Boxer to learn if he will be getting a ticket to the inauguration on January 20, 2009. If he does, he will attend the actual event. If he does not, he plans to view the ceremony via the large video displays being set up on the Capitol mall.
9. Plaintiff Ellery Schempp is a citizen of the United States, a resident of the State of Massachusetts, a member of the Unitarian-Universalist Church, First Parish, in Bedford, Massachusetts, a member of the Freedom From Religion Foundation (“FFRF”), the American Humanist Association (“AHA”), the National Center for Science Education (“NCSE”), Americans United for Separation of Church and State (“AUC&S”), the Secular Coalition for America (“SCA”), the Center for Naturalism, and the Skeptic Society, and a Secularist, Humanist and Atheist. He will view the inauguration at via cable television and on the Internet, in the company of friends, on January 20, 2009.
10. Plaintiff Mel Lipman is a citizen of the United States, a resident of the State of Florida, president of AHA, Vice President of the International Humanist and Ethical Union, a member of American Atheists (“AA”) and FFRF and a Jewish Atheist, Humanist and Free-thinker. He plans to view the inauguration at home on television on January 20, 2009.
11. Plaintiffs Dan Barker and Annie-Laurie Gaylor are citizens of the United States, residents of the State of Wisconsin, co-Presidents of FFRF, and Atheists. They plan to view the inauguration at home on television on January 20, 2009.

12. Plaintiff Robert Sherman is a citizen of the United States, a resident of the State of Illinois, and an Atheist. He plans to view the inauguration on a big screen television in Washington, DC on January 20, 2009.
13. Plaintiff Margaret Downey is a citizen of the United States, a resident of the State of Pennsylvania, a member of AHA, FFRF, SCA, AA and AAI, and an Atheist. She plans to view the inauguration with a family on television on January 20, 2009.
14. Plaintiff August Berkshire is a citizen of the United States, a resident of the State of Minnesota, president of Minnesota Atheists, a member of AHA, FFRF and AAI, and an Atheist. He plans to view the inauguration at home on television on January 20, 2009.
15. Plaintiff Marie Castle is a citizen of the United States, a resident of the State of Minnesota, communications director of Atheists For Human Rights (“AFHR”), a member of FFRF and AA, and a “Valiant Atheist.” She plans to view the inauguration with other AFHR members on a big-screen television on January 20, 2009.
16. Plaintiff Stuart Bechman is a citizen of the United States, a resident of the State of California, President of Atheist Alliance International (“AAI”), President of Atheists United (“AU”), a member of FFRF and AA, and an Atheist. He will not be viewing the inauguration because “I find the presence of religious authorities in the ceremony to be exceptionally offensive and a violation of my rights as a US citizen to expect our elected leaders to adhere to the First Amendment of our Constitution.”
17. Plaintiff Herb Silverman is a citizen of the United States, a resident of the State of South Carolina, President of the Secular Coalition for America (“SCA”), a member of AHA and FFRF, and an Atheist. He plans to view the inauguration at home on television on January 20, 2009.

18. Plaintiff Jason Torpy is a citizen of the United States, a resident of the State of New York, President of the Military Association of Atheists & Freethinkers (“MAAF”) and board member of AHA, graduate of West Point, Iraq War veteran and a Nontheist. He plans to view the inauguration with other Nontheists at a group event in New York City.
19. Secular Coalition for America (“SCA”), a member of AHA and FFRF, and an Atheist. He plans to view the inauguration at home on television on January 20, 2009.
20. Plaintiff Harry Greenberger is a citizen of the United States, a resident of the State of Louisiana, President of the New Orleans Secular Humanist Association (“NOSHA”), a member of AHA, FFRF and AA, and an Atheist. He plans to view the inauguration at home on television on January 20, 2009.
21. Plaintiff Kirk Hornbeck is a citizen of the United States, a resident of the State of Maryland, a member of FFRF and AHA, and an Atheist. He plans to view the inauguration on January 20, 2009, via the large video displays being set up on the Capitol mall.
22. Plaintiff Jim Corbett is a citizen of the United States, a resident of the State of Washington, a member of AHA and AA, and an Atheist and a humanist. He plans to view the inauguration at home on television on January 20, 2009.
23. Plaintiff Catharine Lamm is a citizen of the United States, a resident of the State of New Hampshire, a member of FFRF, and a Secular Humanist. She plans to view the inauguration at home on television on January 20, 2009.
24. Plaintiff Richard Wingrove is a citizen of the United States, a resident of the State of Virginia, a member of FFRF, and an Atheist. He plans to view the inauguration on January 20, 2009, via the large video displays being set up on the Capitol mall.

25. Plaintiff Christopher Arntzen is a citizen of the United States, a resident of the District of Columbia, a member of AHA and FFRF, and an Atheist. He plans to view the inauguration on January 20, 2009, via the large video displays being set up on the Capitol mall.
26. Plaintiff John Stoltenberg is a citizen of the United States, a resident of the State of Wisconsin, a member of AHA and FFRF, and a Freethinker/Atheist. He plans to view the inauguration at home on television on January 20, 2009.
27. Plaintiff Katherine LaClair is a citizen of the United States, a resident of the State of New Jersey, and a Humanist. She will be attending the actual inaugural ceremony on January 20, 2009.
28. Plaintiff Louis Altman is a citizen of the United States, a resident of the State of Illinois, a member of the Board of AHA, a member of FFRF, and an Atheist, a Humanist, a Freethinker and a nontheistic American. He will be watching the inaugural ceremony at home on television on January 20, 2009.
29. Plaintiff Paul Case is a citizen of the United States, a resident of the State of Washington, a member AA and Seattle Atheists (“SA”), and an Atheist. He will be watching the inaugural ceremony at home on television on January 20, 2009.
30. Plaintiff Jerry Schiffelbein is a citizen of the United States, a resident of the State of Washington, Treasurer of Seattle Atheists (“SA”), Vice President of Humanists of Washington, and a Secular Humanist, Atheist and Freethinker. He will be watching the inaugural ceremony at home on television on January 20, 2009.
31. Plaintiffs Anne M. Richardson, Philip I. Richardson, Jay R. Richardson are citizens of the United States, residents of the State of Virginia, members of Washington Area Secular Humanists (“WASH”), and Atheists. They will view the ceremony via the large video displays being set up on the Capitol mall.

32. Plaintiff Dan Dugan is a citizen of the United States, a resident of the State of California, and a secular Humanist. He will be watching the inaugural ceremony at home on television on January 20, 2009.
33. Plaintiff Anna Mae Andrews is a citizen of the United States, a resident of the State of California, a member of AHA and a Humanist and an Atheist. She will be watching the inaugural ceremony at home on television on January 20, 2009.
34. Plaintiff Eliza Sutton is a citizen of the United States, a resident of the State of Washington, a member of AHA, FFRF and Seattle Atheists, and an Atheist. She will be watching the inaugural ceremony at home on the Internet or listening on the radio on January 20, 2009.
35. Plaintiff Richard Ressman is a citizen of the United States, a resident of the State of California, and an “occasional-practicing Jew.” He will be watching the inaugural ceremony at home on television on January 20, 2009.
36. Plaintiffs “Unnamed Children” are the children of one or more of the above-mentioned adult plaintiffs (and/or members of AHA and/or FFRF), who will be watching the inaugural exercises along with their parents.
37. Plaintiff American Humanist Association (“AHA”) is dedicated to ensuring a voice for those with a positive, nontheistic outlook. Founded in 1941 and headquartered in Washington, D.C., its work is extended through more than 100 local chapters and affiliates across America. Humanism is a progressive philosophy of life that, without theism and other supernatural beliefs, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity. The mission of the American Humanist Association is to promote the spread of humanism, raise public awareness and acceptance of humanism and encourage the continued refinement of the humanist

philosophy. AHA has more than 10,000 members in every state as well as the District of Columbia.

38. Plaintiff Freedom From Religion Foundation (“FFRF”) is a national association of Freethinkers (Atheists and Agnostics), established as a 501(c)(3) educational group in 1978, which works to protect its members by keeping church and state separate. The Foundation, based in Madison, Wisconsin, has members in every state as well as the District of Columbia. Current total membership is more than 13,000.
39. Plaintiff Minnesota Atheists (“MNA”) is the oldest, largest, and most active Atheist organization in the state of Minnesota. It was founded in 1991 and is a 501(c)3 nonprofit educational organization. Its purposes are: to provide a community for Atheists; to educate the public about Atheism; and to promote separation of state and church.
40. Plaintiff Atheists for Human Rights (“AFHR”) is a staunch advocate for religion-free government uninfluenced by sectarian religious beliefs, that supports an inclusive society that does not give preferential treatment to any religious group. It has membership throughout the United States, many of whom will be watching the inaugural events on the big screen TV at its headquarters in Minneapolis, Minnesota.
41. Plaintiff Atheist Alliance International (“AAI”) is an umbrella group of over 60 Atheist and humanist organizations across the United States, founded in 1992 and dedicated to promoting the worldview of positive Atheism and pursuing the restoration of the First Amendment.
42. Plaintiff Atheists United (“AU”) is the preeminent Atheist organization in southern California, founded in 1982 and dedicated to providing a community for Atheists and others with a reality-based worldview and fighting the societal stigmas and stereotypes about Atheism through education and advocacy.

43. Plaintiff New Orleans Secular Humanist Association (“NOSHA”) is the only secular organization covering Southern Louisiana and the Mississippi Gulf coast, providing monthly meetings, quarterly newsletters, informative website and public access television programs. Without supernaturalism, its members celebrate reason and humanity.
44. Plaintiff University of Washington Secular Student Union (“UWSSU”) was formed in the summer of 2006 to provide students at the University of Washington in Seattle, Washington, who are Atheist, Agnostic, and otherwise nonreligious students with a place to discuss their lack of faith, and to provide all students with a forum to discuss and debate general issues of religion and philosophy. The Secular Student Union is a student-created and student-run organization. Almost every major college and university campus across the nation has an organization that is similar to the Secular Student Union and members of these organizations communicate via the Internet, Facebook and other electronic media to share ideas and programs around their philosophical perspective. Members of the group include self-described Atheists, Agnostics, Freethinkers, and other non-theists perspectives.
45. Plaintiff Seattle Atheists (“SA”) is a nonprofit educational corporation organized to develop and support the Atheist, Rationalist, secular Humanist, Agnostic, Skeptic and non-theist communities; to provide opportunities for socializing and friendship among these groups; to promote and defend their views; to protect the first amendment principle of state-church separation; to oppose any discrimination based upon religious conviction, particularly when it is directed at the non-religious; to expose the dangers of supernaturalism and superstition; to promote science; and to work with other organizations in pursuit of common goals.
46. Plaintiff Atheists of Florida (“AOF”), is a 501(c)(3) nonprofit, educational corporation founded to heighten public awareness about Atheism and to monitor state/church separation issues.

II. Defendants

47. Defendant Hon. John Roberts, Jr., the Chief Justice of the United States, is the nation's highest judicial officer. He is being sued in his official and in his individual capacity.
48. Defendant Presidential Inaugural Committee ("PIC") is the quasi-governmental⁴ "committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the ceremony."⁵
49. Defendant Emmett Beliveau is the executive director of PIC.
50. Defendant Joint Congressional Committee on Inaugural Ceremonies ("JCCIC") is the committee established by S. Con. Res. 67, 110th Cong., 2d Sess., 154 Cong. Rec. 21, S820-21 (Feb 8, 2008) "authorized to utilize appropriate equipment and the services of appropriate personnel of departments and agencies of the Federal Government, under arrangements between the joint committee and the heads of the departments and agencies, in connection with the inaugural proceedings and ceremonies."
51. Defendant Dianne Feinstein is a United States Senator who is serving as chairperson of JCCIC.
52. Defendant Armed Forces Inaugural Committee ("AFIC") is "a joint service committee charged with coordinating all military ceremonial support for the presidential inaugural."⁶
53. Defendant Major General Richard J. Rowe Jr. is the Commander of AFIC.

⁴ See 36 U.S.C. § 501 et seq. See, also, 69 Fed. Reg. (No. 193) 59775 (October 6, 2004) (to be codified at 11 C.F.R. pts. 104 & 110) ("The inaugural committee ... receives special privileges in the District of Columbia beginning five days before and ending four days after the inaugural ceremony.")

⁵ 36 U.S.C. § 501(1).

⁶ As described at the AFIC website, accessed at <http://www.afic.northcom.mil/about.html> on December 20, 2008.

54. Defendant Rev. Rick Warren is a clergyman who has been chosen to provide the invocation at the upcoming presidential inaugural exercises.

55. Defendant Rev. Joe Lowery is a clergyman who has been chosen to provide the benediction at the upcoming presidential inaugural exercises.

INTRODUCTION

56. The First Amendment of the United States Constitution states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...”

57. The United States Supreme Court has extended the ambit of these words to include any governmental actor.⁷

58. In explaining the Establishment Clause, the Supreme Court has stated, “[t]he touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’”⁸ It is clearly not neutral when the government places “so help me God” in its oaths or sponsors prayers to God, knowing that some individuals believe that God does not exist.

59. The Supreme Court has similarly claimed that “The government may not ... lend its power to one or the other side in controversies over religious authority or dogma.”⁹ By placing “so help me God” in its oaths and sponsoring prayers to God, government is lending its power to one side of perhaps the greatest religious controversy: God’s existence or non-existence.

⁷ “To be sure, the First Amendment is phrased as a restriction on Congress’ legislative authority ... [but it] binds the Government as a whole, regardless of which branch is at work in a particular instance.” Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 511 (1982) (Brennan, J., dissenting).

⁸ McCreary County v. ACLU, 545 U.S. 844, 860 (2005) (citation omitted).

⁹ Employment Div. v. Smith, 494 U.S. 872, 877 (1990).

71. If the declarations of God's glory were meant merely as positive reflections of the Monotheistic views of believers, they would still violate the First Amendment's religion clauses. Plaintiffs, however, contend that the "real meaning" of these declarations goes far beyond that unconstitutional "benignity," for they contain an element analogous to the "real meaning" of the "separate but equal" laws of our nation's earlier history and tradition. Specifically, the "real meaning" is that Atheists are "so inferior and so degraded"²⁰ that their religious views warrant no respect.
72. That "real meaning" has been exhibited time and again in our past. Congress, itself, when it interlarded the Pledge of Allegiance with the words "under God" in 1954, specifically noted that it was acting "to deny ... Atheistic ... concepts."²¹
73. Along these same lines, Defendant Rev. Rick Warren has repeatedly asserted, "I could not vote for an Atheist because an Atheist says, 'I don't need God.'"²²
74. It is well known that Defendant Roberts is a Catholic. In Catholicism, many similar examples of the "real meaning" of proclamations of God's glory and/or importance exist. For instance, in a relatively recent encyclical, the Pope spoke of how he had "frequently and with urgent insistence denounced the current trend to Atheism which is alarmingly on the increase."²³

²⁰ Plessy v. Ferguson, 163 U.S. 537, 560 (1896) (Harlan, J., dissenting) ("What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens. That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.").

²¹ H.R. 1693, 83rd Cong., 2d Sess., at 2).

²² Tran, My-Thuan. *Warren: Character is key*. Los Angeles Times (August 18, 2008), p. B-1. Rev. Warren also made this claim on national television on the Larry King Show: "I couldn't vote for a person who is an Atheist." August 18, 2008. Accessed on December 25, 2008, at <http://transcripts.cnn.com/TRANSCRIPTS/080818/lk1.01.html>.

²³ Encyclical DIVINI REDEMPTORIS (On Atheistic Communism) of Pope Pius XI, dated March 19, 1937, and accessed at <http://www.ewtn.com/library/encyc/p11divin.htm> on December 27, 2008.

CAUSES OF ACTION

COUNT 1: THE ALTERATION OF THE PRESIDENTIAL OATH OF OFFICE SPECIFIED IN ARTICLE II OF THE CONSTITUTION, TO BE PERPETRATED BY DEFENDANT ROBERTS WITH NO AUTHORITY WHATSOEVER, VIOLATES THE ESTABLISHMENT CLAUSE

99. The introductory allegations set forth in paragraphs 1-98 are realleged herein.

100. Of all governmental officials, the one who most personifies the rule of law and the supremacy of the Constitution is the Chief Justice of the United States. 28 U.S.C. § 1. One might argue that he, more than anyone, has a duty to maintain the document's purity.

101. The oath of office for the President of the United States is specified in the Constitution's Article II, Section 1. In its entirety, it reads:

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

102. It is to be noted that the words, “so help me God” are not included in this oath.

103. That “so help me God” was added to the presidential oath by George Washington is a myth. There is no contemporaneous account supporting this claim, which was first made in 1854,³⁸ apparently on the basis of a recollection of Washington Irving. Irving was six years old in 1789, when the first inaugural was held. A historical claim based upon nothing but the alleged recollection of a six year old, first made more than six decades later, is of highly questionable validity. Combined with the fact that Irving's report of where he was standing during the inauguration would have made it impossible for him to have heard the oath at all, that validity falls to zero.

³⁸ Griswold RW. *The Republican Court: American Society in the Days of Washington* (New York: D. Appleton & Co.; 1856), p. 141.

104. In fact, it isn't until 1881, ninety-two years after George Washington's initial ceremony, that the first use of the "so help me God" phrase can be verified. That occurred when Vice President Chester A. Arthur took the oath upon hearing of President James Garfield's death.³⁹
105. The phrase, if used at all during the next half century, was apparently used only intermittently until 1933, at President Franklin Roosevelt's first inauguration. (It is known that neither President Herbert Hoover nor Chief Justice William Howard Taft used those words at Hoover's inauguration in 1929.⁴⁰)
106. Since 1933, "so help me God" has been used at every public inaugural ceremony, with that unauthorized alteration interposed each time by the Chief Justice of the United States.⁴¹
107. If President-elect Obama (as a black man fully aware of the vile effects that stem from a majority's disregard of a minority's rights, and as a Democrat fully aware of the efficacy his Republican predecessor's "so help me God" oath additions) feels that the verbiage formulated by the Founders is so inadequate that he needs to interlard his oath with a purely religious phrase deemed unnecessary by the first twenty presidents, Plaintiffs have no objection at this time. The President, like all other individuals, has Free Exercise rights, which might permit such an alteration.
108. No such Free Exercise rights, however, come into play on the part of the individual administering the oath to the President.

³⁹ *Arthur Inaugurated*. The Washington Post (1877-1954); Sep 23, 1881; ProQuest Historical Newspapers, The Washington Post (1877 - 1989) pg. 1.

⁴⁰ Bendat J. *Democracy's Big Day: The Inauguration of Our President 1789-2009*. (iUniverse Star: New York; 2008) at 30-32.

⁴¹ Accessed at http://www.aoc.gov/aoc/inaugural/pres_list.cfm?RenderForPrint=1 on December 28, 2008.

Plaintiffs is a concrete injury that furthers their marginalization and disenfranchisement before their very eyes.

122. For those Plaintiffs watching the inaugural ceremony with their children, this action – by the nation’s highest judicial official – is especially intrusive and harmful.
123. An oath-administrator’s addition of “so help me God” to the constitutionally-prescribed presidential oath of office violates every Establishment Clause test enunciated by the Supreme Court, including the neutrality test, the purpose prong of the Lemon test, the effects prong of the Lemon test, the endorsement test, the outsider test and the imprimatur test.
124. Additionally, especially with impressionable children watching, this addition violates the coercion test.
125. Plaintiffs have a right to view the inauguration of their president without having their Chief Justice “degrad[ing them] from the equal rank of Citizens.”

COUNT 2: GOVERNMENT-SPONSORED INVOCATIONS TO GOD AND BENEDICTIONS IN THE NAME OF GOD, PROVIDED AT THE INAUGURATION OF THE PRESIDENT BY GOVERNMENT-INVITED CLERGY, VIOLATE THE ESTABLISHMENT CLAUSE

126. The allegations set forth in paragraphs 1-125 are realleged herein.
127. On December 17, 2008, Defendant JCCIC announced that Defendant Warren and Defendant Lowery would be providing, respectively, an invocation and benediction at the inauguration. Appendix D.
128. The invocation and the benediction will infuse the inaugural exercises with explicitly religious dogma.

129. Specifically, Defendants Warren and Lowery, with the support of and facilitation by their codefendants, will be giving one or more religious prayers during that governmental ceremony.
130. Although the Supreme Court has noted that “no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it,” Walz v. Tax Commission, 397 U.S. 664, 678 (1970), it has, in one case which “clearly demonstrates the utter inconsistency of our Establishment Clause jurisprudence,” McCreary, 545 U.S. at 899 (n.8) (Scalia, J., dissenting), permitted legislative chaplain-led prayers.
131. That permission was based largely on that practice’s “unambiguous and unbroken history of more than 200 years,” Marsh v. Chambers, 463 U.S. 783, 792 (1983), which is totally different from clergy-led prayers at presidential inaugurations. “Not until January 20, 1937, was a prayer offered as an official part of the American ceremony of inauguration.”⁵³ Furthermore, of the nation’s 57 public presidential inaugurations, 39 were devoid of clergy-led prayers. Only 18 included them.⁵⁴
132. Thus – even accepting for the moment that historically-based violations of the principles underlying the Establishment Clause are permissible, Marsh – the practice at issue in this litigation is not historically-based.
133. Other “[i]nherent differences” from Marsh, noted to be important by the Supreme Court, exist in this case. In a state legislature, members are exclusively “adults.” Lee v. Weisman,

⁵³ Medhurst MJ. “*God Bless the President: The Rhetoric of Inaugural Prayer.*” (The Pennsylvania State University, 1980). (Available on microfilm from University Microfilms International, Ann Arbor, MI (800-521-0600). At 71.

⁵⁴ Gleaned by analyzing the data at <http://memory.loc.gov/ammem/pihtml/pioaths.html>.

APPENDIX B

Inaugural Clergy, 1937-2005

(1) January 20, 1937 inaugural of Franklin D. Roosevelt¹

Invocation by: Chaplain ZeBarney Phillips
Benediction by: Father John A. Ryan

(2) January 20, 1941 inaugural of Franklin D. Roosevelt²

Invocation by: Chaplain ZeBarney Phillips
Benediction by: Father Michael J. Ready

(3) January 20, 1945 inaugural of Franklin D. Roosevelt³

Invocation by: Bishop Angus Dun
Benediction by: Monsignor John A. Ryan

(4) January 20, 1949 inaugural of Harry S. Truman⁴

Invocation by: Rev. Edward Hughes Pruden
Prayer by: Rabbi Samuel Thurman
Benediction by: Father Patick A. O'Boyle

(5) January 20, 1953 inaugural of Dwight D. Eisenhower⁵

Invocation by: Father Patrick A. O'Boyle
Prayer by: Rabbi Abba Hillel Silver
Prayer by: President Eisenhower⁶
Benediction by: Rev. Henry Know Sherrill⁷

¹ Medhurst MJ. "*God Bless the President: The Rhetoric of Inaugural Prayer.*" (The Pennsylvania State University, 1980). (Available on microfilm from University Microfilms International, Ann Arbor, MI (800-521-0600). At 97 *et seq.* Father Ryan prayed, "'through Christ our Lord.'"

² *Id.* at 115 *et seq.* Chaplain Phillips prayed, "In the name of Him who is the Prince of Peace, Jesus Christ, Thy Son, Our Lord. Amen." Father Ready prayed, "In the name of the Father, and of the Son, and of the Holy Ghost ... Through Jesus Christ our Lord."

³ *Id.* at 133 *et seq.* Monsignor Ryan prayed, "In the name of the Father, and of the Son, and of the Holy Ghost ... Through Jesus Christ our Lord."

⁴ *Id.* at 171 *et seq.* Rev. Pruden prayed, "Through Jesus Christ, Our Redeemer, we pray."

⁵ *Id.* at 210 *et seq.* Father O'Boyle prayed, "In the name of the Father, and of the Son, and of the Holy Ghost"

⁶ At his 1953 inauguration, President Eisenhower became "the first president in history to utter a public prayer at his own inauguration." *Id.* at 201. His atheistic constituency was obviously invisible to the President, who claimed "our common faith in God is a common bond among us." *Public Papers of the Presidents of the United States: Dwight D. Eisenhower, 1954*, p. 244.

(6) January 21, 1957 inaugural of Dwight D. Eisenhower⁸

Invocation by:	Rev. Edward L. R. Elson
Prayer by:	His Eminence Michael
Prayer by	Rabbi Louis Finkelstein
Benediction by:	Edward Cardinal Mooney

(7) January 20, 1961 inaugural of John F. Kennedy⁹

Invocation by:	Richard Cardinal Cushing
Prayer by:	His Eminence Iakovos
Prayer by	John Barclay
Benediction by:	Rabbi Nelson Glueck

(8) January 20, 1965 inaugural of Lyndon B. Johnson¹⁰

Invocation by:	Archbishop Robert E. Lucey
Prayer by:	Rabbi Hyman Judah Schachtel
Prayer by	Rev. Dr. George R. Davis
Benediction by:	His Eminence Iakovos

(9) January 20, 1969 inaugural of Richard M. Nixon¹¹

Invocation by:	Rev. Charles Ewbank Tucker
Prayer by:	Rabbi Edgar F. Magnin
Prayer by	His Eminence Iakovos
Prayer by	Rev. Billy Graham
Benediction by:	Archbishop Terence J. Cooke

⁷ Rev. Sherrill – who gave the shortest inaugural prayer ever – stated, “I think it’s absurd to have all those prayers and I think it’s a bore. I think it’s bad for religion.” Medhurst, at 230.

⁸ *Id.* 235 *et seq.* Rev. Elson prayed, “through Jesus Christ, our Lord.” His Eminence Michael prayed, “Thy dear Son, Jesus Christ, our Lord.” Cardinal Mooney prayed, “through Christ, our Lord.”

⁹ *Id.* at 288 *et seq.* Cardinal Cushing – who invoked the Father, Son and Holy Spirit – spoke for twelve minutes. Combined, all the prayers lasted twenty-eight minutes ... more than twice the length of President Kennedy’s address! His Eminence Iakovos prayed, “In the name of the Father, and of the Son, and of the Holy Ghost.”

¹⁰ *Id.* at 357 *et seq.* Rev. Dr. Daviss’ prayer referenced “the Prince of Peace.” His Eminence Iakovos – prayed, “in the name of the Father, and of the Son, and of the Holy Ghost, the life-giving Trinity.”

¹¹ *Id.* at 407 *et seq.* Rev. Tucker prayed, “in the name of the Father, and of the Son, and of the Holy Ghost.” His Eminence Iakovos prayed, “to the Father, to the Son, and to the Holy Spirit.” Rev. Billy Graham referenced the “Prince of Peace.”

(10) January 20, 1973 inaugural of Richard M. Nixon¹²

Invocation by: Rev. E.V. Hill
 Prayer by: Rabbi Seymour Siegel
 Prayer by: His Eminence Iakovos
 Benediction by: Archbishop Terence J. Cooke

(11) January 20, 1977 inaugural of James E. Carter¹³

Invocation by: Rev. William Cannon
 Benediction by: Rev. John R. Roach

(12) January 20, 1981 inaugural of Ronald W. Reagan¹⁴

Invocation by: Rev. Donn. Moomaw
 Benediction by: Rev. Donn. Moomaw

(13) January 21, 1985 inaugural of Ronald W. Reagan¹⁵

Invocation by: Rev. Timothy S. Healy
 Prayer by: Rabbi Alfred Gottschalk
 Prayer by: Rev. Donn. Moomaw
 Benediction by: Rev. Peter Gomes

(14) January 20, 1989 inaugural of George H. W. Bush¹⁶

Invocation by: Rev. Billy Graham
 Benediction by: Rev. Billy Graham

¹² Id. at 443 *et seq.* Rev. Hill prayed, “in the name of our Lord and Saviour Jesus Christ.” His Eminence Iakovos prayed, “Oh Triune God, Father, Son and Holy Spirit.”

¹³ Id. at 496 *et seq.* “Instead of the traditional four clerics representing four religious groups, Carter opted for only two pray-ers. The reason for this change was personal and religious, yet it had political ramifications. Excluded groups felt as though they had been cheated, mistreated, and discriminated against. By violating one traditional restraint of the rhetoric of inaugural prayer, Carter alienated two large religious groups.” Id. at 518.

Rev. Cannon prayed, “In the name of Jesus Christ, Thy Son and our Savior.”

¹⁴ 127 Cong. Rec. 540-543 (97th Cong., 1st Sess.). Rev. Moomaw prayed, “in the name of the Lord of lords and King of kings, even Jesus Christ.” Additionally, the U.S. Marine Band played *God of Our Father*. President Reagan, himself, included in his inaugural address: “We are a nation under God, and I believe God intended for us to be free. It would be fitting and good, I think, if on each Inauguration Day in future years it should be declared a day of prayer.” Id. at 542.

¹⁵ 131 Cong. Rec. 630-633 (99th Cong., 1st Sess.). The U.S. Marine Band played *The God Who Gave Us Life*. Rev. Moomaw prayed, “in the name of the King, even Jesus Christ our Lord.” President Reagan – commemorating the passing of Rep. Gillis Long of Louisiana – asked the audience to engage in a moment of silent prayer: “... let us stand as one today: One people under God.”

¹⁶ 135 Cong. Rec. 303-306 (101st Cong., 1st Sess.). Rev. Graham prayed, “in the name of the Father, the Son, and the Holy Spirit” in the Invocation. The U.S. Army Band played *God Bless America*. President Bush stated, “My first act as President is a prayer. I ask you to bow your heads: Heavenly Father, we bow our heads and thank You for Your love ...”

(15) January 20, 1993 inaugural of William J. Clinton¹⁷

Invocation by: Rev. Billy Graham

Benediction by: Rev. Billy Graham

(16) January 20, 1997 inaugural of William J. Clinton¹⁸

Invocation by: Rev. Billy Graham

Benediction by: Rev. Gardner C. Taylor

(17) January 20, 2001 inaugural of George W. Bush¹⁹

Invocation by: Rev. Franklin Graham

Benediction by: Pastor Kirbyjon H. Caldwell

(18) January 20, 2005 inaugural of George W. Bush²⁰

Invocation by: Rev. Luis Leon

Benediction by: Pastor Kirbyjon H. Caldwell

¹⁷ 139 Cong. Rec. 383-85 (103rd Cong., 1st Sess.). The Philander Smith Collegiate Choir sang *City on the Hill*. Rev. Graham prayed to “the Prince of Peace” in the Invocation, and “[i]n the name of the Father and of the Son and of the Holy Spirit” in the Benediction.

¹⁸ 143 Cong. Rec. 4, S119-22 (January 21, 1997). Additionally, the Immanuel Baptist Church Sanctuary Choir sang “The Battle Hymn of the Republic.” Rev. Graham prayed, “in the name of the Father, the Son, and the Holy Spirit.”

¹⁹ 147 Cong. Rec. 7, S423-23. (January 22, 2001). Rev. Graham prayed, “in the name of the Father, and of the Son, the Lord Jesus Christ, and of the Holy Spirit.” Pastor Caldwell prayed, “in the name that’s above all other names, Jesus the Christ.”

²⁰ 151 Cong. Rec. 3, S101-05. (January 20, 2005). Pastor Caldwell concluded, “I humbly submit this prayer in the name of Jesus Christ. Amen.”



JCCIC: News Release

For Immediate Release
Wednesday, December 17, 2008

JCCIC ANNOUNCES INAUGURAL PROGRAM

Line-up Includes Musical Greats Aretha Franklin, Yo-Yo Ma and Itzhak Perlman

WASHINGTON, DC - The Joint Congressional Committee on Inaugural Ceremonies, today announced the program for the 56th Presidential Inauguration, which will take place on the West Front of the U.S. Capitol on January 20, 2009.

The program participants were based on requests from the President-elect and the Vice President-elect.

The order of the program will be as follows:

Musical Selections

The United States Marine Band

Musical Selections

The San Francisco Boys Chorus and the San Francisco Girls Chorus

Call to Order and Welcoming Remarks

The Honorable Dianne Feinstein

Invocation

Dr. Rick Warren, Saddleback Church, Lake Forest, CA

Musical Selection

Aretha Franklin

Oath of Office Administered to Vice President-elect Joseph R. Biden, Jr.

By Associate Justice of the Supreme Court

The Honorable John Paul Stevens

Musical Selection, John Williams, composer/arranger

Itzhak Perlman, *Violin*

Yo-Yo Ma, *Cello*

Gabriela Montero, *Piano*

Anthony McGill, *Clarinet*

Oath of Office Administered to President-elect Barack H. Obama

By the Chief Justice of the United States

The Honorable John G. Roberts, Jr.

Inaugural Address

The President of the United States, The Honorable Barack H. Obama

Poem

Elizabeth Alexander

Benediction

The Reverend Dr. Joseph E. Lowery

The National Anthem

The United States Navy Band "Sea Chanters"

Biographies

Elizabeth Alexander is a poet, essayist, playwright, and teacher. She is the author of four books and was a finalist for the 2005 Pulitzer Prize. She has received many grants and honors, most recently the Alphonse Fletcher, Sr. Fellowship for work that "contributes to improving race relations in American society and furthers the broad social goals of the U.S. Supreme Court's Brown v. Board of Education decision of 1954," and the 2007 Jackson Prize for Poetry. She is a professor at Yale University and was a fellow at the Radcliffe Institute for Advanced Study at Harvard University this year.

Aretha Franklin is often described as "The Queen of Soul." In a career spanning more than 50 years, she has earned a reputation as one of the greatest singers of our time, with a repertoire that includes soul, jazz, rock, blues, pop, and gospel. Franklin has won 21 Grammy Awards, including the Living Legend Grammy and the Lifetime Achievement Grammy. In 1987 she became the first woman to be inducted into the Rock and Roll Hall of Fame. Other awards include the National Medal of Arts, the Presidential Medal of Freedom, and the Kennedy Center Honors.

The Reverend Dr. Joseph E. Lowery, considered the dean of the civil rights movement, co-founded along with Martin Luther King, Jr., the Southern Christian Leadership Conference (SCLC) and served as president and chief executive officer from 1977 to January 15, 1998. He served as pastor of Atlanta's oldest predominantly Black United Methodist congregation, Central Methodist Gardens for 18 years, and as pastor of Cascade United Methodist Church from 1986 to 1992.

Anthony McGill is the principal clarinetist of the New York Metropolitan Orchestra, a member of the Peabody Conservatory faculty in clarinet, and a much sought after soloist and chamber musician. A graduate of the Curtis Institute, he is a recipient of the prestigious Avery Fisher Career Grant, a program designed to provide support for up-and-coming instrumentalists. He has performed at many music festivals, and appeared as a soloist with the symphony orchestras of Baltimore, New Jersey, and Hilton Head, and performed at Lincoln Center as a member of Chamber Music Society Two. McGill has also toured Europe and Japan with a chamber ensemble including Mitsuko Uchida and members of the Brentano String Quartet.

Yo-Yo Ma is a world renowned cellist, educator, and ambassador for the arts. His recordings are among the most successful recordings in the classical field, and reflect his wide-ranging interest in many musical genres and traditions. He began studying the cello at age four. He studied at the Juilliard School, and is a graduate of Harvard University. His awards include the Avery Fisher Prize, the Glenn Gould Prize, and the National Medal of the Arts. Appointed a CultureConnect Ambassador by the United States Department of State in 2002, Yo-Yo Ma has met with, trained, and mentored thousands of students worldwide. In 2006, Secretary General Kofi Annan named him a U.N. Messenger of Peace, and in 2007 Secretary-General Ban Ki-moon extended his appointment.

Gabriela Montero is a pianist known both for her impeccable classical playing and her improvisational gift. Montero gave her first public performance at the age of five. At age eight she made her concert debut with the Venezuelan Youth Orchestra, and was granted a scholarship to study in the United States. At twelve she won the Baldwin National Competition and AMSA Young Artist International Piano Competition. She won the Bronze Medal at the 13th International Chopin Piano Competition in Warsaw in 1995, and since then has played at recital halls and festivals around the world. Her recordings include both performances of well known classical compositions, as well as improvisations on themes by Bach and other classical composers.

Itzhak Perlman is one of the greatest violinists of our time. Following his training at the Academy of Music in Tel Aviv and the Juilliard School, Perlman won the prestigious Leventritt Competition in 1964. Since then, Perlman has performed with every major orchestra throughout the world. He has also conducted orchestras including the Berlin Philharmonic, the London Philharmonic, the Concertgebouw Orchestra, the Israel Philharmonic, the Chicago Symphony, and the New York Philharmonic. He has won 15 Grammy Awards, four Emmy Awards, and numerous other awards including the Kennedy Center Honors, the National Medal of Arts, and the Medal of Liberty, presented by President Reagan in 1986 to honor the nation's most distinguished naturalized citizens during the centennial celebration of the Statue of Liberty. Perlman is also an educator, teaching at the Perlman Music Program and the Juilliard School, where he holds the Dorothy Richard Starling Foundation Chair.

Dr. Rick Warren founded Saddleback Church in Lake Forest, California, in 1980 with one family. Today, it is an evangelical congregation averaging 22,000 weekly attendees, a 120-acre campus, and has more than 300 community ministries to groups such as prisoners, CEOs, addicts, single parents, and those with HIV/AIDS. He also leads the Purpose Driven Network of churches, a global coalition of congregations in 162 countries. TIME magazine named him one of "15 World Leaders Who Mattered Most in 2004," and in

2005 one of the "100 Most Influential People in the World."

John Williams is one of the most successful and best-known composers of our time. He studied at UCLA, Los Angeles City College, and the Juilliard School. Williams has composed the music and served as a music director for more than one hundred films, has received forty-five Academy Award nominations, and won five. ♦♦ He also has been awarded seven British Academy Awards (BAFTA), twenty Grammys, four Golden Globes, four Emmys, numerous gold and platinum records, and the Kennedy Center Honors. Williams has written many concert pieces, and special compositions for events including the Special Olympics, and the Summer and Winter Olympic Games. From 1980-1993, Williams conducted the Boston Pops Orchestra, and assumed the title of Boston Pops Laureate Conductor after retiring in December 1993. Williams also holds the title of Artist-in-Residence at Tanglewood.

The San Francisco Boys Chorus (SFBC) was founded in 1948 and has become an internationally acclaimed Grammy-award winning organization. The chorus has over 240 singers from 50 Bay Area cities and more than 120 schools at three Bay Area campuses. ♦♦ SFBC has toured in four continents where they performed for dignitaries such as: Pope John Paul II, HRH Queen Elizabeth II of England, King Carl XVI Gustav of Sweden, HM Prince of Wales, the President of the former Soviet Union, and U.S presidents. SFBC celebrated their 60 year anniversary this year.

The San Francisco Girls Chorus (SFGC) is comprised of more than 300 singers, ages 7-18, from 160 schools in 44 Bay Area cities. SFGC was founded in 1978 and has become a regional center for choral music education and performance. The Chorus can also be heard on several San Francisco Symphony recordings, including three Grammy Award-winners. In 2001, SFGC became the first youth chorus to win the prestigious Margaret Hillis Award given annually by Chorus America to a chorus that demonstrates artistic excellence, a strong organizational structure, and a commitment to education.

The United States Marine Band, founded in 1798 by an Act of Congress, is America's oldest professional musical organization. Also called "The President's Own," the Marine Band is celebrated for its role at the White House and its dynamic public performances. The Marine Band performs a varied repertoire including new works for wind ensemble, traditional concert band literature, challenging orchestral transcriptions, and the patriotic marches that made it famous. The band frequently features its members in solo performances that highlight their virtuosity and artistry.

The United States Navy Band "Sea Chanters" is the official chorus of the United States Navy. In 1956, Lt. Harold Fultz, then the Band's assistant leader, organized an all male group of singers from the Navy School of Music in Anacostia for the State of the Nation dinner. The group was an instant success, so Admiral Arleigh Burke, Chief of Naval Operations, transferred them to the Navy Band, named them the "Sea Chanters," and gave them the mission of carrying on the songs of the sea. Women joined the "Sea Chanters" in 1980. The chorus appears throughout the United States and has also sung with the Boston Pops Esplanade Orchestra, the Baltimore Symphony, and the Cincinnati Pops Orchestra.

####

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL NEWDOW, et al.,

Plaintiffs,

v.

HON. JOHN G. ROBERTS, et al.,

Defendants.

Case No. 08-CV-2248-RBW

**OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Defendants Presidential Inaugural Committee and its Executive Director Emmett Beliveau (collectively "PIC"), hereby oppose Plaintiffs' motion for preliminary injunction.^{1/} In addition to the reasons stated in the opposition filed today by the United States Department of Justice on behalf of other defendants, Plaintiffs' motion for a preliminary injunction against PIC should be denied on two other independent grounds. First, Plaintiffs have no standing to bring their claims against PIC; it is President-elect Obama, and not PIC, who will make decisions related to the inaugural ceremony, and thus an injunction against PIC would not redress Plaintiffs' purported harm. Second, PIC is not a governmental entity, and thus is not subject to the strictures of the First Amendment and the statute under which Plaintiffs brought this action.

BACKGROUND

The lead Plaintiff, Michael Newdow, is a "well-known atheist litigant" who regularly files suit to block governmental actors, and others, from making any public reference to God.

^{1/} In the January 5, 2009 Scheduling Order, all defendants were ordered to file oppositions to Plaintiffs' preliminary injunction motion by 5:00 p.m. on January 7, 2009. Order at 1 [D.E. 6] (subsequently changed to 5:00 p.m. January 8, 2009). In light of the order and the "extraordinary relief sought by the plaintiffs," *id.*, PIC files this Opposition, reserving its right to raise any jurisdictional or other challenge to the Complaint when filing its initial responsive pleading.

PIC would not, and could not, have any such effect. Plaintiffs therefore lack standing to maintain suit against PIC.

II. PIC IS NOT A GOVERNMENTAL ACTOR AND THUS IS NOT CONSTRAINED BY THE FIRST AMENDMENT OR RFRA.

Plaintiffs cannot meet their burden of demonstrating a substantial likelihood of success on the merits because PIC is not a governmental entity subject to the strictures of the Establishment Clause and RFRA. It is fundamental that the Establishment Clause and Free Exercise Clause (like the rest of the First Amendment) govern only state action, not private conduct. *See Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 765-66 (1995). The same is true of RFRA, which by its terms forbids only “*Government*” from “substantially burden[ing] a person’s exercise of religion” absent a compelling interest. 42 U.S.C. § 2000bb-1(a) (emphasis added); *see also Village of Bensenville v. FAA*, 457 F.3d 52, 60 (D.C. Cir. 2006) (RFRA is only “implicated” if a Government entity is “the source of what the petitioners contend is a substantial burden placed on the free exercise of religion”).

This bedrock principle is fatal to all of Plaintiffs’ Complaint as to PIC because PIC is not a governmental entity. PIC is, instead, a private, non-profit corporation organized under the auspices of the District of Columbia Non-Profit Corporation Act. *See* Exhibit A (PIC Certificate and Articles of Incorporation). PIC’s incorporators and directors are private citizens. *Id.* at Articles IX-X. PIC, subject to the direction of the President-elect, is responsible for organizing all events in connection with the inauguration, consistent with the wishes of the President-elect. *See Newdow II*, 355 F. Supp. 2d at 280. PIC receives no government funds; it finances the inaugural celebration events with private funds raised through private donations. PIC’s sole role in connection with the swearing-in is to assist in facilitating the President-elect’s personal choices as to who will speak at the oath-of-office ceremony. *Newdow II*, 355 F. Supp. 2d at 280.

ARTICLES OF INCORPORATION

OF

Presidential Inaugural Committee 2009

To: D.C. Department of Consumer
and Regulatory Affairs
Corporations Division
Washington, D.C.

We, the undersigned natural persons of the age of eighteen years or more, acting as incorporators of a non-profit corporation, adopt the following Articles of Incorporation for such corporation pursuant to the District of Columbia Non-Profit Corporation Act.

ARTICLE I

The name of the Corporation is Presidential Inaugural Committee 2009 (hereinafter called the "Corporation").

ARTICLE II

The period of duration of the Corporation is perpetual.

ARTICLE III

The Corporation is organized for the purpose of promoting the social welfare, within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any subsequent federal tax laws); and within such limits, to carry out the functions and activities connected with the inauguration of the President of the United States in accordance with 36 U.S.C.A. §§ 501 through 511 and D.C. Code Ann., §§ 2-801 through 2-829; and, consistent with the above, to exercise all powers available to corporations organized pursuant to the District of Columbia Non-Profit Corporation Act.

FILE COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL NEWDOW, et al.,

Plaintiffs,

v.

HON. JOHN ROBERTS, JR., et al.,

Defendants.

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)
)
)
) Civil Action No. 08-2248 (RBW)
)
)
)
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)

**FEDERAL DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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challenge the content of Rev. Graham's invocation by suing Senator McConnell than by suing President Bush. See id. at 6. For example, the Magistrate Judge observed, a court could not issue an injunction directing the President, a Senator, or any other government official to "watch what [the President] and his chosen speakers say" at a presidential inauguration ceremony. Id. at 7.

The Magistrate Judge rejected Newdow's suggestion that the President or the JCCIC "could be ordered to ban clergy from the guest list." Id. at 7. That kind of an order, the Magistrate Judge observed, would be clearly invalid from a First Amendment standpoint. See id. at 8.³ Since substituting Senator McConnell "or any other Inauguration associated person or entity" would not affect his recommendation in favor of dismissal, the Magistrate Judge resubmitted his December 28, 2001, Findings and Recommendations, as supplemented, to the District Court. Newdow filed objections, but the District Court adopted the Recommendations in full; it dismissed the case in its entirety, with prejudice. See May 23, 2002 Order at 2 (attached hereto as Ex. 6).

The Ninth Circuit affirmed. Newdow v. Bush, 89 Fed. Appx. 624, 625, 2004 WL 334438, at **1 (9th Cir. Feb. 17, 2004). Noting that "we may affirm on any proper ground, even if the district court did not reach the issue or relied on different grounds or reasoning," the Court held that Newdow "lacks standing to bring this action because he does not allege a sufficiently concrete and specific injury. See Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 482-86 . . . (1982)." Id. The Court added that the district court had not abused its discretion in denying Newdow's motion to file an amended complaint "because amendment would be futile." Id.

³ See generally McDaniel v. Paty, 435 U.S. 618 (1978) (holding unconstitutional state statute disqualifying clergy from holding state office).

2. Newdow II.

Newdow's second lawsuit challenging inaugural prayer was filed in this Court and challenged prayer at the 2005 Presidential Inauguration, and is virtually identical to this one. Newdow filed a verified complaint and a motion for a preliminary injunction on December 21, 2004. See Newdow II, 355 F. Supp. 2d at 270. Newdow sued President Bush, the JCCIC, Senator Lott (as Chairman of the JCCIC), the Presidential Inaugural Committee ("PIC"), Craig Jenkins (as Executive Director of the PIC), the Joint Task Force-Armed Forces Inaugural Committee, its commander, and "one or more unnamed clergy (wo)men." Id. at 270 & n.5. Newdow alleged that witnessing inaugural prayers at the 2001 inauguration made him feel "like a second class citizen and a 'political outsider' on account of his religious beliefs," and asserted that "[i]t is presumed that Proposed Clergy's prayers [at the 2005 inauguration] will make Plaintiff feel like an 'outsider' as well." Id. at 271 (citations omitted). Newdow sought a declaratory judgment that inaugural prayers violate the Establishment and Free Exercise Clauses of the First Amendment and the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, et seq. Newdow also asked the Court to enjoin the defendants "from utilizing any clergymen to engage in any religious act," or alternatively "from utilizing clergymen to engage in Christian religious acts at the 2005 Inauguration or future Presidential inaugurations." Newdow II, 355 F. Supp. 2d 271.

On January 14, 2005, Judge Bates denied Newdow's application for a preliminary injunction. Newdow II, 355 F. Supp. 2d 265 (D.D.C. 2005). In analyzing whether the doctrine of issue preclusion made it unlikely that Newdow would succeed on the merits, the Court noted that "[a] review of Newdow's two complaints [for the 2001 and 2005 presidential inaugurals] shows direct parallels in the injury alleged by Newdow" and concluded that "issue preclusion based on Newdow I casts grave doubt on his likelihood of succeeding on the merits in this action." Id. at 273, 276.

injunction. Id. at 294.⁵

In a subsequent decision, Judge Bates dismissed Newdow's case. Newdow II, 391 F. Supp. 2d 95 (D.D.C. 2005). Echoing the Court's earlier analysis, Judge Bates held that Newdow was precluded from relitigating his standing, id. at 101, and that the complaint must nevertheless be dismissed "because no justiciable case or controversy remains." Id. at 101-02. Building on his previous opinion, Judge Bates held that "Newdow lacks any of the indicia of a personal connection found in other prayer or public-display cases" and, on that basis, found that Newdow failed to allege a concrete injury-in-fact. Id. at 104. Judge Bates reiterated that Newdow's only possible avenue of relief would be against the President — a party against whom the Court could not issue an injunction or declaratory judgment. Id. at 104-06. Finally, the Court found that Newdow's claim was moot. See id. at 107-08.

3. Plans for the 2009 Inauguration.

On January 20, 2009, President-Elect Barack Obama will be sworn in as the 44th President of the United States. See U.S. Const., Amend XX, § 1. Pursuant to a concurrent resolution of Congress, the JCCIC makes logistical arrangements for the Inauguration of President-Elect Obama and Vice President-Elect Biden. See S. Con. Res. 67 (Feb. 28, 2008). Senator Dianne Feinstein serves as Chair of that Committee.⁶ The Presidential Inaugural Committee ("PIC") is a private organization appointed by the President-Elect that coordinates numerous ceremonial events associated with the Inauguration, including the inaugural parade and inaugural balls. 36 U.S.C. §

⁵ Newdow immediately appealed the denial of his motion for a preliminary injunction and sought an injunction pending appeal. The D.C. Circuit denied Newdow's motion. See Newdow II, No. 05-5003, 2005 WL 89011 (D.C. Cir. Jan. 16, 2005).

⁶ More information on the JCCIC can be found at <http://inaugural.senate.gov>.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Civil Action No.

ORIGINAL
FILED

THE REV. DR. MICHAEL A. NEWDOW, IN PRO PER;

FEB - 1 2001

Plaintiff,

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

v.

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES;

Defendant.

CIV. S-01-0218 LKK GGH PS

ORIGINAL COMPLAINT

Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action claiming violations of the First and Fifth Amendments of the Constitution of the United States of America. As such, this Court has jurisdiction under 28 U.S.C. § 1331.
2. This action is founded upon the Constitution of the United States of America. As such, this Court has jurisdiction over Defendant under 28 U.S.C. § 1346(a)(2).

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1 29. The effect of the Rev. Graham's purely religious words was for Christian Americans to
2 perceive them as an endorsement of their Christianity, and for non-Christian Americans,
3 including Plaintiff, to perceive the Pledge as a disapproval of their non-Christianity. Thus,
4 the Establishment Clause was violated.

5
6 30. Due to this religious activity, Plaintiff – a minister of a religious faith that specifically
7 denies the existence of God and the veracity of Christianity – was made to feel as an
8 “outsider.” Thus, the Establishment Clause was violated.

9
10 31. In addition to its constitutional infirmities, the aforementioned activity is void as against
11 public policy. One of the key purposes of an inauguration is to engender national unity.
12 By placing sectarian religion into the ceremony, that unity is frayed.

13
14 32. The primary act of the inauguration is the administration of the presidential oath of office.

15
16 33. That oath is a declaration that the new President will uphold the Constitution of the United
17 States:


18 I do solemnly swear (or affirm) that I will faithfully execute the Office of the President
19 of the United States, and will to the best of my ability, preserve, protect and defend the
20 constitution of the United States.
21

22 34. It is an offense of the highest magnitude that the leader of our nation – while swearing to
23 uphold the Constitution – publicly violated that very document upon taking his oath of
24 office.

1 WHEREFORE, Plaintiff prays for relief and judgment as follows:

- 2
3 I. To declare that Defendant President George W. Bush – in utilizing any clergyman
4 (much less a Christian minister) in his inauguration – violated the Establishment
5 Clause of the United States Constitution;
- 6 II. To enjoin Defendant from repeating this or engaging in any similar religious acts.
- 7 III. To allow Plaintiff to recover costs, expert witness fees, attorney fees, etc. as may be
8 allowed by law; and
- 9 IV. To provide such other and further relief as the Court may deem proper.

10
11 Respectfully submitted,

12
13 
14
15 Michael Newdow, Plaintiff
16 First Amendmist Church of True Science
17 PO Box 233345
18 Sacramento CA 95823
19 (916) 427-6669
20

APPENDIX

TEXT OF PRAYER OFFERED BY REV. FRANKLIN GRAHAM AT PRESIDENT BUSH'S INAUGURATION, JANUARY 20, 2001

Let us pray.

Blessed are you, O Lord, our God. Yours, O God, is the greatness and the power and the glory and the majesty and the splendor, for everything in heaven and earth is yours. Yours, O Lord, is the kingdom. You're exalted as head over all. Wealth and honor come from you. You are the ruler of all things. In your hands are strength and power to exalt and to give strength to all.

As President Lincoln once said, "We have been the recipients of the choicest bounties of heaven. We have been preserved these many years in peace and prosperity. We have grown in numbers, wealth and power as no other nation has ever grown. But we have forgotten God. It behooves us then to humble ourselves before the offended powers, to confess our national sins and to pray for clemency and forgiveness."

O Lord, as we come together on this historic and solemn occasion to inaugurate once again a president and vice president, teach us afresh that power, wisdom and salvation come only from your hand.

We pray, O Lord, for President-elect George W. Bush and Vice President-elect Richard B. Cheney to whom you have entrusted leadership of this nation at this moment in history. We pray that you'll help them bring our country together so that we may rise above partisan politics and seek the larger vision of your will for our nation.

Use them to bring reconciliation between the races, healing to political wounds, that we may truly become one nation under God.

Give our new president, and all who advise him, calmness in the face of storms, encouragement in the face of frustration, and humility in the face of success. Give them the wisdom to know and to do what is right and the courage to say no to all that is contrary to your statutes of holy law.

Lord, we pray for their families, and especially their wives, Laura Bush and Lynne Cheney, that they may sense your presence and know your love.

Today, we entrust to you President and Senator Clinton, and Vice President and Mrs. Gore. Lead them as they journey through new doors of opportunity to serve others.

Now, O Lord, we dedicate this presidential inaugural ceremony to you. May this be the beginning of a new dawn for America as we humble ourselves before you and acknowledge you alone as our Lord, our Savior and our Redeemer.

We pray this in the name of the father, and of the son, the Lord Jesus Christ, and of the Holy Spirit. Amen.

FILED

MAR 26 2002

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REV. DR. MICHAEL A. NEWDOW,

Plaintiff,

No. CIV S-01-0218 LKK GGH PS

vs.

GEORGE W. BUSH, PRESIDENT OF THE
UNITED STATES,

Defendant.

ORDER: FINDINGS AND
RECOMMENDATIONS

Background

On February 1, 2001, plaintiff, Reverend Dr. Michael Newdow ("Newdow") brought his action against President George W. Bush Jr. ("President") in his official capacity challenging the statement of prayers made at the President's inauguration on January 20, 2001. Newdow complained that permitting any prayer at the Presidential inauguration offended the Establishment Clause of the First Amendment to the Constitution. He also stated that because the prayer contained specific references to Christian figures and concepts, the prayers given by the clergymen at the inauguration "further excluded theistic non-Christians," and "showed a preference for a particular religious belief." Newdow generally related that the statement of prayer at the inauguration made him feel like an "outsider." Newdow seeks declaratory relief that the President in his official capacity violated the Establishment Clause by permitting prayers,

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1 or at least sectarian prayers, at his inauguration, and also seeks to enjoin the President, in his
2 official capacity, from engaging in future "similar" acts. Newdow did not seek damages.

3 After hearing on the President's initial motion to dismiss, the undersigned found
4 that Newdow had standing to challenge the statement of prayers per se at the inauguration.
5 "Electronic" attendance was found to be the same for standing purposes as physical attendance.
6 Newdow's alleged First Amendment injury was sufficiently pled for him to proceed, and the
7 court found that an injunctive remedy directed at prayer in general would be feasible if otherwise
8 warranted. However, the undersigned further found that presidential invocations to the Dcity,
9 i.e., prayers, at inaugurations were historical and commonplace. As such, the prayers in general
10 did not offend the Establishment Clause of the First Amendment to the Constitution. See Marsh
11 v. Chambers, 463 U.S. 783, 103 S. Ct. 3330 (1983). Because the complaint, liberally read, also
12 attacked the content of the prayer, the further standing and merits problems involved in such a
13 prayer specific attack were noted, as well as problems in the defense of the attack. Since no party
14 had briefed the issues relating to a prayer specific attack, the undersigned deferred further
15 findings pending such briefing. The Honorable Lawrence K. Karlton adopted the findings and
16 recommendations in full in his order of September 28, 2001.

17 Thereafter, the President brought a motion for summary judgment, and Newdow
18 brought a cross-motion for summary judgment on the remaining issues in the case. Raising a
19 jurisdictional point, the undersigned found in Findings and Recommendations issued December
20 28, 2001, that the courts had no jurisdiction to enter an injunction against the President, at that
21 time the sole defendant. The court further found that plaintiff's claim for declaratory relief fared
22 no better in this respect, and similarly, to the extent that any assertion in mandamus was made,
23 the result would be the same. Findings and Recommendations at p. 5, 13 and n.9. Also, and in
24 any event, because it was not possible to frame an injunction on the type of prayer to be
25 permitted at the Presidential Inauguration, the court found that the one remaining issue in the
26 case was subject to summary judgement. See Cole v. Oroville Union High School Dist., 228

FILED

MAY 23 2002

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEPUTY CLERK

MAY 23 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REV. DR. MICHAEL A. NEWDOW,

Plaintiff,

Case No. CIV-S-01-0218 LKK GGH PS

vs.

GEORGE W. BUSH, PRESIDENT OF
THE UNITED STATES,

Defendant.

ORDER

On March 26, 2002, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within ten days. Plaintiff filed objections on April 3, 2002, and they were considered by the district judge.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are

1 reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir.
2 1983).

3 The court has reviewed the applicable legal standards and, good cause appearing,
4 concludes that it is appropriate to adopt the Proposed Findings and Recommendations in full.
5 Accordingly, IT IS ORDERED that:

- 6 1. The Proposed Findings and Recommendations filed March 26, 2002, are
7 ADOPTED; and
8 2. This case is dismissed with prejudice.

9 DATED: 5/21, 2002.

10
11
12 /newd0218.jo


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA


_____)	
MICHAEL NEWDOW, et al.,)	
)	
Plaintiffs,)	Civil Action No. 08-2248 (RBW)
)	
v.)	
)	
HON. JOHN G. ROBERTS, JR., et al.,)	
)	
Defendants.)	
_____)	

DECLARATION OF JEFFREY P. MINEAR

I am the Counselor to the Chief Justice. See 28 U.S.C.A. § 677. In that role I have the responsibility for coordinating the Chief Justice's participation in the inauguration of President-Elect Barack Obama on January 20, 2009. Before the commencement of this lawsuit, the Chief Justice instructed me to ascertain from President-Elect Obama's representatives the President-Elect's wishes concerning the administration of the oath of office at the inauguration, including his wishes concerning the inclusion of the phrase "So help me God" after the conclusion of the constitutional oath. The Chief Justice instructed me at that time to inform representatives of the President-Elect that he will honor the President-Elect's wishes on that issue. An authorized representative of the President-Elect has informed me that the President-Elect wishes to conclude the oath with the phrase "So help me God," and I have so informed the Chief Justice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 8, 2009



Jeffrey P. Minear

000042

The Pennsylvania State University
The Graduate School
Department of Speech Communication

'God Bless the President': The Rhetoric of Inaugural Prayer

A Thesis in
Speech Communication
by
Martin Jay Medhurst

Submitted in Partial Fulfillment
of the Requirements
for the Degree of

Doctor of Philosophy
August 1980

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CHAPTER 3

THE ROOSEVELT YEARS: A RHETORIC OF SOCIAL JUSTICE

The dignitaries inside of St. Paul's Chapel on April 30, 1789, could not have realized that the privilege of hearing prayers at the inauguration of a president would not fall to an American audience for another one hundred and forty-four years. Not until January 20, 1937, was a prayer offered as an official part of the American ceremony of inauguration. At the 1937 inaugural, however, the practice of inaugural prayer was reborn. The circumstances and personalities surrounding its revival and subsequent establishment as a mainstay of the contemporary ceremony of inauguration form the central core of this chapter.

The Senate Tradition

As demonstrated in the last chapter, the intermingling of the religious and the political spheres under the rubric of prayer is not new. Just as Bishop Provoost's role as the first inaugural clergyman grew out of his affiliation with the Continental Congress, so the rebirth of inaugural prayer grew out of the continuing tradition of congressional prayer. From the re-appointment of Jacob Duché in 1776, to the present, prayers have been an abiding component of the congressional day.

Since the Congressional Record only began to record legislative prayers in 1885, a complete record does not exist. However, a sampling

Protestant chaplain, but also a Roman Catholic priest. One also found a president who understood the rhetorical character of ceremony and who recognized the influence of religious authority. It was in this context that contemporary inaugural prayers were instituted by fiat on January 20, 1937.

Transforming Traditions

The inaugural ceremony of 1937 was a pacesetter in several respects. First, it marked the first time in the twentieth century that the Vice-President had taken the oath of office on the same platform and in the same ceremony with the President. The usual procedure until 1937 was to administer the oath of office to the Vice-President-Elect at the close of the regular legislative session. This allowed the Vice-President-Elect to act in his role as President of the Senate and thus to preside over the Senate on inauguration day. Since he was already sworn in he would simply read his address to the Senators and then preside over the swearing in of the Senators-Elect. All of these activities took place within the Senate chambers and thus out of the sight of the general public.

When the Senate had concluded its business it would usually move to the east portico of the Capitol where the inauguration of the President would take place. From 1793-1933 there were no prayers delivered at the presidential inauguration per se. The only prayer was that delivered by the Senate chaplain in accordance with normal operating procedures. In 1937, however, a new twist was added. Not only did the Vice-President-Elect join the President-Elect on the

inaugural platform, but the chaplain of the Senate also appeared on the platform to open with prayer. Hence, a practice which had originated in Congress was transplanted to the inaugural ceremony. This shift of venue is significant for it set a precedent for all future inaugurals. Whereas the chaplain's prayer was originally directed to the Senators, it now became directed to all attending the inaugural ceremonies as well as those listening or viewing via the media.

The transplanting of the chaplain was not the only significant change that occurred in 1937. In addition to placing the chaplain in the public arena, Roosevelt introduced the first non-chaplain pray-er. Not only was the second pray-er a non-chaplain, but he was a non-Protestant as well. This marked the first time in inaugural history that anyone other than a Protestant clergyman had delivered an inaugural prayer.¹¹ The pacesetter in this regard was the Right Reverend John A. Ryan of Catholic University in Washington, D. C. Ryan became the first Catholic to pray at an inaugural ceremony and at the same time acquired the distinction of being the first person to deliver an inaugural benediction. Until 1937 there was no benediction pronounced over the ceremonies. A close examination of the presidential addresses from 1793-1933 reveals that the newly elected leader often provided his own benediction in the last few lines of his address. In 1933, for example, Roosevelt ended his address:

In this dedication of a Nation we humbly ask the blessing of God. May He protect each and every one of us. May He guide me in the days to come.¹²

One might think that by introducing a clergyman to deliver a benediction the mini-benediction would gradually drop out of the

inaugural address. Such has not been the case. Clifford Owsley notes that "with only one exception, every President invoked the blessings of God on his administration and the country in the terminal of his inaugural address, or in one of them if he delivered more than one. Theodore Roosevelt, who made only one inaugural address, did not follow the tradition."¹³

If the benediction did not affect the inaugural address, one might reasonably ask why it was included at all. Indeed, why was there a benediction in 1937 when there had never been one in the entire history of presidential inaugurations? To answer this question one must return to the days prior to Roosevelt's ascent to the presidency. One must return to the sources from which Roosevelt's rhetorical use of religion grew. As we shall see, the rebirth of inaugural prayer was but one manifestation of a much larger pattern involving Roosevelt's conception of the relationship between religion and government.

Roosevelt and Religion--The Beginnings. Franklin Roosevelt was particularly qualified to be president of a country where over 95 percent of the population claimed to believe in a Supreme Being, for Roosevelt was, himself, a believer. Raised by a mother of unitarian leaning and a father dedicated to episcopalianism, the young Franklin learned love of God and Church at a tender age. A communicant at St. James Episcopal Church in his native Hyde Park, Franklin Roosevelt never lost the belief of his youth.

Roosevelt's belief was strengthened at Groton, a private prep school in Massachusetts, where the future president came under the influence of the Reverend Endicott Peabody, an influence that would

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL NEWDOW, *et al.*

Plaintiffs,

V.

Case No. 1:08-cv-2248-RBW

THE HONORABLE JOHN ROBERTS, JR.
Chief Justice,
The Supreme Court of the United States , *et al.*

Defendants.

DECLARATION OF THOMAS L. GROPP

I, Thomas L. Groppel, make the following declaration in the above-captioned case on the basis of personal knowledge and information available to me in the course of my official duties:

1. This declaration is submitted in response to the Complaint (“Compl.”) and Plaintiffs’ Motion for Preliminary Injunction (“Prelim. Inj.”). I have reviewed both items and the documents attached thereto.

2. I am the Director of Ceremonies for the Armed Forces Inaugural Committee ("AFIC") and I work for the AFIC Commander, Major General Richard Rowe, Jr. In 1986, I became a Department of the Army civil service employee after retiring from the U.S. Army with 20 years of active duty service as a commissioned officer. Beginning in 1973 and continuing throughout my military and civilian careers, I have specialized in directing ceremonial and special events for the U.S. Army and I have worked on the military ceremonial support for nine (9) Presidential Inaugurals. I have accrued more experience in military ceremonial support mission for Presidential Inaugurals than anyone else in the Federal Government.

3. Historically, the U.S. Armed Forces have participated in this important American tradition since the first inauguration ceremony and 220 years later, participation by the Armed Forces continues to honor the Commander-in-Chief, recognizes civilian control of the Armed Forces, and celebrates a peaceful change or continuation of administration. During the 10-day Inaugural period from January 15 - 24, 2009, Armed Forces personnel will again provide significant ceremonial support to the 56th Presidential Inaugural. This support traditionally comprises marching units, marching bands, color guards, salute batteries and honor cordons, which render appropriate ceremonial honors to the Commander-in-Chief.

4. Statutorily, the Secretary of Defense may provide assistance with respect to the ceremonies relating to the inauguration of a president, specifically, planning and carrying out activities relating to security and safety, planning and carrying out ceremonial activities, loans of property, and any other assistance the Secretary considers appropriate pursuant to 10 U.S.C. § 2553. This statute reflects that the Armed Forces of the United States have historically provided significant support to Presidential Inaugurals because of the ceremonial and operational capacities of the Military Departments and because each inauguration is a change or continuation of command of the President as Commander-in-Chief, whereby the President commands the Armed Forces of the United States through the Secretary of Defense. The Department of Defense ("DoD") provides ceremonial and public affairs support to the Joint Congressional Committee on Inaugural Ceremonies ("JCCIC"), which is comprised of key Congressional leaders and is authorized to make logistical arrangements for the inauguration ceremony, and to the Presidential Inaugural Committee ("PIC").

5. To implement the Secretary's responsibilities, an organization similar to AFIC is established every 4 years to serve as the DoD liaison to the JCCIC and the PIC. The AFIC is a

joint service committee which includes members from all branches of the Armed Forces of the United States and is charged with coordinating all military ceremonial support for the Presidential Inauguration. AFIC is formed several months before the presidential election in order to begin coordination of military ceremonial support during the 10-day inaugural period.

6. Organizations similar to AFIC, with differing names but operating under the same principles and guidelines, have provided support services for Presidential Inaugurations since 1953. The sole purpose of AFIC was, and continues to be, to coordinate military ceremonial support to the Presidential Inauguration. AFIC does not control the content of, nor the comments made during, ceremonial presentations. AFIC does not decide which groups or individuals are to be selected for participation in any inaugural events and does not make notifications of selection.

7. DoD has issued guidelines that specifically outline what support the military can provide. (DoD Ceremonial Support Guidelines for the 2009 Presidential Inaugural, July 15, 2008.) Military personnel provide support by performing a variety of military ceremonial duties at inauguration ceremonies, including serving as members of a military band, the military salute battery, the heraldic trumpets, the honor cordon, and as ushers during the swearing-in ceremony. The DoD guidelines and policy do not permit AFIC to provide chaplain or religious support.

8. Plaintiffs do not specifically identify nor challenge any actions by AFIC in the Preliminary Injunction and Plaintiffs request an impermissible relief that AFIC could not enforce. Plaintiffs seek “a preliminary injunction enjoining [AFIC] from having any religious prayer at the official Presidential Inaugural ceremonies.” (Prelim. Inj. 2) Plaintiffs’ proposed order then expands the requested injunctive relief and would require that AFIC “shall not permit or participate in the clergy-led offering of an invocation, a benediction, or any other religious activity during the official [P]residential [I]naugural ceremony on January 20, 2009.” (Prelim.

Inj. 4) However, AFIC does not provide any military chaplains for the inaugural, has no control over whether clergy will be used and, if so, how they are selected, provides no funding or support to the clergy, and cannot and does not endorse any clergy selected for the Presidential Inauguration. Moreover, the requested relief is impermissible because AFIC cannot issue an order to military personnel that would prohibit them from individually participating in any clergy-led offering of an invocation, a benediction, or any other religious activity during the official presidential inaugural ceremony.

9. Neither Major General Rowe nor AFIC have any authority or role in planning the content of the Presidential Inauguration, and neither has any authority or role in paying for any prayer or clergy-related expenditures. Neither Major General Rowe nor AFIC has a role in requesting or providing clergy to offer prayers at the Presidential Inauguration. Neither Major General Rowe nor AFIC provide any additional support in particular for the clergy to deliver prayers during the Presidential Inauguration. The funds expected to be spent by AFIC will be to provide military ceremonial support to the Presidential Inaugural, and will not be used for the prayers nor to compensate or reimburse the clergy members. In other words, the type and amount of support provided by AFIC does not change in any respect whether or not members of the clergy offer prayers.

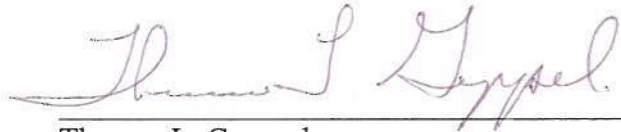
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10. Regarding the allegations concerning insertion of the words “so help me God” in the oath of office, neither Major General Rowe nor AFIC have authority over the content, wording, or the manner of administration of the oath at the Presidential Inauguration.

Under 28 U.S.C. §1746 and penalty of perjury, I declare the foregoing is true and correct.



Thomas L. Groppel
Director of Ceremonies
Armed Forces Inaugural Committee

Executed in Washington D.C., this ¹⁴8 day of January 2009.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
THE REV. DR. MICHAEL A. NEWDOW,)
)
Plaintiff,)
)
v.)
)
GEORGE W. BUSH, PRESIDENT OF THE)
UNITED STATES, <u>et al.</u> ,)
)
Defendants.)
_____)	

Civil Action No.
04-2208 (JDB)

FEDERAL DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION
AND IN SUPPORT OF FEDERAL DEFENDANTS' MOTION TO DISMISS

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Newdow v. Bush, 2004 WL 334438, at ** 1.¹¹ In support of its ruling, the Court cited to the portion of the Supreme Court's decision in Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 482-86 (1982), which found that "the psychological consequence presumably produced by observation of conduct with which one disagrees . . . is not an injury sufficient to confer standing under Article III terms, even though the disagreement is phrased in constitutional terms."

Newdow points to no intervening change in the law, and there are no material changes in the controlling facts of the present case to suggest that preclusion on the issue of Newdow's injury is not warranted. In his Complaint, Newdow extensively cites to the prayers recited at the 2001 Inauguration to explain his present alleged injury by presuming that the clergy prayers at the 2005 Inauguration will be similar to those given in 2001. See Compl. at ¶¶ 57-67. He makes no allegation and offers no evidence that the prayers at the 2005 Inauguration will differ materially in their subject matter or tone from the 2001 Inaugural prayers, which the Ninth Circuit concluded caused no concrete and particularized injury to Newdow.

The fact that Newdow may attend the 2005 Inauguration in-person, as opposed to watching it on television, as he did in 2001, is not sufficient to alter the nature of his alleged injury. While cases have held that some citizens who are personally exposed to public displays of religious symbols or statements have standing to assert an Establishment Clause claim, these

¹¹ Citing to unpublished opinions for their preclusive effect is permissible under both D.C. Circuit and Ninth Circuit Rules. See D.C. Circuit Rule 28(c)(2) (providing that "[u]npublished dispositions of other courts of appeals and district courts may be cited when the binding (i.e., the res judicata or law of the case) or preclusive effect of the disposition is relevant."); Ninth Circuit Rule 36-3(b)(i) (indicating that unpublished dispositions may be cited when relevant to the doctrines of law of the case, res judicata, or collateral estoppel).

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5003

September Term, 2004

04cv02208

Filed On: April 14, 2005 [889278]

Michael A. Newdow,
Appellant

v.

George W. Bush, President of the United States, et al.,
Appellees

BEFORE: Randolph, Rogers, and Roberts, Circuit Judges

ORDER

Upon consideration of the motions to dismiss the appeal as moot and the response thereto, which includes a request for waiver of future appellate filing fees, it is

ORDERED that the motions to dismiss be granted. See Animal Legal Defense Fund v. Shalala, 53 F.3d 363, 366 (D.C. Cir. 1995). It is

FURTHER ORDERED that appellant's motion for a waiver of future appellate filing fees be denied.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to issue forthwith to the district court a certified copy of this order in lieu of formal mandate.

Per Curiam

000058

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL NEWDOW, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
v.	§	Civil Action
	§	No. 1:08-cv-02248-RBW
HON. JOHN ROBERTS, JR., <i>et al.</i> ,	§	
	§	
Defendants.	§	

**PROPOSED BRIEF OF TEXAS, ALABAMA, ALASKA, ARIZONA, ARKANSAS,
CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA,
GEORGIA, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS,
KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA,
NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK,
NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON,
PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA,
TENNESSEE, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST
VIRGINIA, WISCONSIN, WYOMING, AND THE U.S. VIRGIN ISLANDS
AS AMICI CURIAE**

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have so carefully planned, and that millions of Americans so eagerly anticipate. Accordingly, Plaintiffs' Motion for Preliminary Injunction should be denied.

INTEREST OF AMICI CURIAE

Amici urge the Court to affirm the constitutionality of the two Presidential inaugural traditions under attack in this case: prayer and the inclusion of the words "so help me God" in the oath of office. Their interest in this case stems not only from the fact that the President is elected to serve the entire Nation, but also because gubernatorial and other inaugurations across the country likewise include both clergy-led prayer and oaths invoking God, pursuant to state laws and customs that would be threatened by an adverse ruling from this Court.

ARGUMENT

Prayers and oaths invoking God have been incorporated into public inaugural ceremonies throughout our Nation's history and at every level of government. Plaintiffs have not presented a single legal precedent holding unconstitutional such historical customs and practices. To the contrary, established Supreme Court precedents confirm the validity of inaugural prayers and oaths of office that include a reference to God.

Public acknowledgments of God and the prominent role of religion in American life have permeated our institutions of government since the Founding and have been repeatedly upheld by the Supreme Court. For example, the Supreme Court has affirmed the constitutionality of opening every legislative session with clergy-led prayer. *See Marsh v. Chambers*, 463 U.S. 783 (1983). Notably, the case involved daily prayer at the beginning

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL NEWDOW, et al.,

Plaintiff,

v.

JOHN ROBERTS, JR., CHIEF JUSTICE
OF THE U.S. SUPREME COURT, et al.,

Defendant.

Civil Action No. 08-2248 (RBW)

ORDER

This matter came before the Court on January 15, 2009, for a hearing on the plaintiffs' motion for a preliminary injunction that would enjoin defendant John Roberts, Jr., Chief Justice of the United States Supreme Court, from uttering the words "so help me God" as part of the presidential oath of office, which he is scheduled to deliver to the President-Elect during the Presidential Inaugural ceremony on January 20, 2009, as well as enjoin the remaining defendants from permitting members of the clergy from presenting an invocation and benediction as part of the ceremony. The defendants opposed the motion, and several amicus curiae submitted briefs to the Court.

Upon consideration of the plaintiffs' motion, the other written submissions presented to the Court, the applicable legal authority, the oral arguments presented by the parties and the counsel for one of the amici, and for the reasons expressed by the Court at the hearing on the motion, the Court finds that the plaintiffs have not met their burden to show that a preliminary injunction is warranted. Specifically, the Court finds that plaintiff Newdow is precluded from relitigating the issue of whether he has standing to challenge the invocation and benediction that

will be presented at the 2009 Presidential Inauguration based upon his participation in prior litigation, both before this Court and appealed to the United States Appeals Court for the District of Columbia Circuit, and before the United States District Court for the Eastern District of California and appealed to the United States Court of Appeals for the Ninth Circuit, resulting in findings that he has no standing to challenge clergy administered prayer at the Presidential Inauguration. Moreover, the Court finds that none of the plaintiffs in this case have standing to challenge the defendants' actions as pled in the complaint because they have identified no concrete and particularized injury. And, even if the plaintiffs had established such an injury, they have failed to demonstrate how the harm they allege is redressable by the relief they seek, or that the Court has any legal authority to award the relief requested. Thus, the plaintiffs have failed to show that there is a substantial likelihood that they will prevail on the merits or will suffer irreparable harm if an injunction is not issued. Furthermore, due to the filing of this action so close in time to the Inauguration, the Court finds that the balance of harms and the public interest weigh in favor of the defendants and maintaining the status quo with respect to Inaugural ceremony. Therefore, the Court finds that the plaintiffs have failed to satisfy any of the elements necessary to demonstrate their entitlement to a preliminary injunction.

Accordingly, it is hereby

ORDERED that the plaintiffs' motion seeking a preliminary injunction is **DENIED**. It is further

ORDERED that the plaintiffs shall show cause by February 23, 2009, why this Court should not dismiss this case based on the plaintiffs' lack of standing and issue preclusion as to plaintiff Newdow.

SO ORDERED this 16th day of January, 2009.

_____/s/_____
REGGIE B. WALTON
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL NEWDOW, et al.,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 08-2248 (RBW)
)	
HON. JOHN ROBERTS, JR., et al.,)	
)	
Defendants.)	
)	

**DR. RICK WARREN’S MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

Defendant Dr. Rick Warren is at a loss to understand how, after this court has definitively upheld the constitutionality of inauguration prayers, lead plaintiff and attorney Michael Newdow¹ can continue to litigate the same issue. Because of the freedom we all enjoy, Newdow is fully entitled to express his atheistic beliefs and opinions, even though they find resonance with only a small minority of Americans. He is not entitled, however, to utilize this court as a forum for his ongoing efforts on both coasts to attract publicity while ignoring prior adverse rulings. Because these issues have been so thoroughly litigated in the past, only a cursory discussion is needed in the present case.

¹ Defendants will collectively be referenced herein as “Newdow.”

is being challenged, i.e., legislative as opposed to executive. In both *Marsh* and the present case, elected officials invited clergy to invoke divine blessing and seek “spiritual inspiration.” *Lee v. Weisman*, 505 U.S. 577, 630 (1992) (Souter, J., concurring). Justice Sutter explained that *Marsh* was a case “in which government officials invoke spiritual inspiration entirely for their own benefit.” This is distinct from an invocation at a high school graduation.

Newdow fails to articulate what the substantive legal difference is between solemnizing a government function through prayer that occurs in the legislative branch versus virtually the same activity in an executive branch, i.e., a presidential inauguration. *Marsh* is thus controlling.

Although Newdow would like to overturn *Marsh*, that can only be done by the U.S. Supreme Court. Since this court is bound by the reasoning in *Marsh*, Newdow cannot prevail at the district court level. Therefore, the motion for preliminary injunction should be denied.

IV. The harm to Defendant Warren would exceed the harm to Newdow if a preliminary injunction were issued.

Reverend Warren has been chosen by President-elect Obama to be a part of the solemnization of the inauguration by providing the invocation. Dr. Warren will invoke divine blessing and will, as Justice Sutter explained, attempt to provide “spiritual inspiration” at the request of an elected official. *Lee, Id.*, at 630. If the preliminary injunction were issued, then Rev. Warren’s speech and free exercise rights would be harmed. This injury to Rev. Warren is direct, active and personal. In contrast, Newdow’s harm is indirect, passive, and impersonal. Hence, in balancing the harms, the

CASE NO. 09-5126
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRANSCRIPT OF
PRELIMINARY INJUNCTION
HEARING

Before the Hon. Reggie B. Walton
United States District Judge

JANUARY 15, 2009

PAGES [1-13]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X
MICHAEL NEWDOW, ET AL Docket No. 08-2248
Plaintiffs,

v. Washington, D.C.
January 15, 2009
2:00 p.m.

JOHN ROBERTS, JR., ET AL
Defendants.

-----X

PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE REGGIE B. WALTON
UNITED STATES DISTRICT JUDGE

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21 Proceedings recorded by mechanical stenography, transcript
22 produced by computer.
23
24
25

1 P-R-O-C-E-E-D-I-N-G-S

2 (2:00 P.M.; OPEN COURT.)

3 THE DEPUTY CLERK: Civil Action No. 08-2245.

4 Michael Newdow, et al versus John Roberts, Jr., et al.

5 Counsel, can you please come forward and identify yourself for
6 the record.

7 MR. NEWDOW: Michael Newdow, pro se and lead counsel
8 for the Plaintiffs.

9 MR. O'QUINN: Good afternoon, Your Honor. John
10 O'Quinn on behalf of the Federal Defendants, and I'm joined by
11 the Assistant Attorney General Greg Katsas and by Jim
12 Gilligan, Brad Rosenberg and Eric Beckenhauer, all of the
13 Federal Programs Branch.

14 THE COURT: Good afternoon to everyone.

15 MR. HOOVER: Good afternoon, Your Honor. Craig
16 Hoover from Hogan & Hartson representing Defendants
17 Presidential Inaugural Committee and Executive Director Emmett
18 Beliveau.

19 THE COURT: Good afternoon.

20 MR. SNIDER: Good afternoon, Your Honor. Kevin
21 Snider of Pacific Justice Institute representing Defendant
22 Rick Warren.

23 THE COURT: You're moving, I think, seeking to
24 appear pro hac vice?

25 MR. SNIDER: Yes.

1 THE COURT: We did receive a motion, but we didn't
2 receive an affidavit from you.

3 MR. SNIDER: Okay.

4 THE COURT: Which is required by the Rules, but --

5 MR. SNIDER: My --

6 THE COURT: -- I'll give you the opportunity to file
7 that subsequent to the hearing. I assume you're a member in
8 good standing of some bar?

9 MR. SNIDER: I am, Your Honor, of California. I was
10 retained yesterday afternoon and got on a flight here, so --

11 THE COURT: And you're not subject to any type of
12 sanctions for inappropriate behavior as a lawyer?

13 MR. SNIDER: I am not, Your Honor.

14 THE COURT: Very well. Then I'll grant your request
15 but file your affidavit.

16 MR. SNIDER: Thank you. Appreciate that, Your
17 Honor.

18 THE COURT: Okay. We're here today on the
19 Plaintiffs' really should be a motion for a temporary
20 restraining order, but in effect, considering the timing of
21 the filing, it really has the effect of being a preliminary
22 injunction.

23 And Mr. Newdow, I assume you're going to argue on
24 behalf of the Plaintiffs in this case, so you may proceed.

25 MR. NEWDOW: Thank you, Your Honor.

1 THE COURT: A couple of questions I have, though. I
2 read, with great care, the opinion issued by Judge Bates where
3 a similar suit was filed back in 2004, and one of the things
4 that Judge Bates noted was the timing of the filing in that
5 case and was somewhat troubled by the fact that there had been
6 a delay in the filing; and therefore, as is the case here, we
7 are addressing this issue on the heels of the actual
8 inauguration.

9 And in light of the admonition that had been
10 administered by Judge Bates, I was sort of perplexed as to why
11 you had not brought this action sooner than what you did,
12 because it seems to me that conceivably it could have been
13 filed at any time, but clearly could have been filed once it
14 was declared that President-Elect Obama was going to be
15 elected. And even if not at that point, once -- I think it
16 was on the 23rd of December when the plans -- inauguration
17 plans were made formalized that a request could have been made
18 at that point.

19 If that had been done, I would have held an
20 emergency hearing during the Christmas holiday, and depending
21 upon how I ruled, either side would have had the opportunity
22 to have taken this case to the Circuit and then conceivably to
23 the Supreme Court so we could get a definitive ruling, but the
24 lateness of the filing, obviously, makes it difficult for all
25 of that to be accomplished.

1 MR. NEWDOW: I agree, and I apologize for not
2 getting it earlier, but you know, I was actually quite hopeful
3 that Barack Obama would be somebody who wouldn't be doing what
4 he's doing, and it takes a ton of time to create these
5 filings. It took a lot of work.

6 THE COURT: I know. I mean, this filing seems to be
7 almost identical to the filing that was made back in 2004,
8 except for the issue related to the oath.

9 MR. NEWDOW: That issue was large, and you still
10 have to go over it, you have to make sure you get all the
11 Plaintiffs together. If it conceivably could have been done
12 earlier, I certainly would have tried. I also, for whatever
13 it's worth, I'm an emergency physician. That's how I make a
14 living, and I worked like crazy last month, so to do all this
15 simultaneously is rather difficult.

16 THE COURT: So, I guess my first question is in
17 reference to the challenge to the invocation and the
18 benediction, why aren't you precluded, under issue preclusion,
19 from pursuing your claims in reference to those two events in
20 light of the ruling that was made out of the Ninth Circuit
21 back in 2001 and in light of Judge Bates' ruling?

22 MR. NEWDOW: I think I probably would be as an
23 individual Plaintiff, but I don't think that applies to the
24 other Plaintiffs.

25 THE COURT: The others stand in the same footing as

1 you do, don't they?

2 MR. NEWDOW: Well, no, because especially since I
3 now brought in a minor child who's going to be at the
4 inauguration, you know, as a consequence.

5 THE COURT: How is her status any different?

6 MR. NEWDOW: Well, if you look in *Lee versus*
7 *Weisman*, then the whole issue that the Court distinguished
8 from *Marsh v. Chambers* is the fact that it was a child who was
9 in this constrained setting in a formal atmosphere.

10 THE COURT: This isn't a constrained setting.
11 That's a schoolhouse.

12 MR. NEWDOW: I think it is. Actually, I think it's
13 far more constrained. There's guards all over the place.
14 Inside she has to wait two hours to get into the setting to
15 begin with. She's not going to be able to move. She's going
16 to be with many adults. She'll be much less uncomfortable
17 than she would be with her fellow students.

18 I think this is far more constrained, and it's the
19 inauguration of the President of the United States. It's not
20 a high school graduation. I think that's a far more formal
21 and imposing atmosphere.

22 THE COURT: When -- because as I understand the
23 suggestion that was made in the affidavit is that she was
24 going to be by herself.

25 MR. NEWDOW: Probably will be by herself, yes.

1 THE COURT: I find that difficult to believe, which
2 is why I had real concerns about giving any credence to the
3 affidavits without the individuals being present and subject
4 to cross-examination because I find it very difficult to
5 believe that, being a father myself of a daughter, that I
6 would be prepared to let my daughter travel all the way across
7 country by herself and then come into what we may have two or
8 three million people present and have my 15-year-old daughter
9 by herself under those circumstances.

10 I found it somewhat questionable that that in fact
11 would occur, which is why I had real problems with giving any
12 degree of credence to those affidavits.

13 MR. NEWDOW: I can explain that. First of all, let
14 me say that the Defendants have allowed me to present them and
15 they're not challenging anything in the affidavits, at least
16 for this proceeding, so it will just be the Court.

17 And what we plan on is this child will fly across
18 country --

19 COURT REPORTER: Excuse me. If you would move just
20 a little bit further back so I can hear you.

21 MR. NEWDOW: Back. Okay. Sorry. She will fly
22 across country and she will be -- have her mother drop her
23 off. She will then fly across country. I have -- my
24 daughter, I've allowed her to do that. There will be someone
25 at the gate to pick her up. She will then be with somebody

1 the whole time.

2 I will personally escort her to the entrance for the
3 tickets. I will stay with her as long as I can, and then she
4 will go in there. We have phone contact. I understand the
5 cell phone may be problems. We have backup plans totally in
6 place, and this is in Washington, D.C. with I don't know how
7 many security and police people around, and I didn't think it
8 would be unsafe.

9 We have multiple people watching her, and I think
10 this is quite adequate security and it's an opportunity that
11 she's looking forward to immensely, so I don't think it's
12 unreasonable at all.

13 THE COURT: Well, be that as it may, I still, I
14 guess, don't understand how -- in reference to the benediction
15 and the invocation, how she would not be similarly, as would
16 all of the other Plaintiffs, be precluded from raising these
17 same issues that were raised both in 2001 and 2004.

18 MR. NEWDOW: Well, again, I think as different
19 Plaintiffs, the issue preclusion to occur, the Court is --
20 there's no binding precedent for this court. Sorry, I need to
21 stand back. No binding precedent. The -- you're not bound by
22 Judge Bates' opinion. I think that opinion was wrong. I
23 think there's clearly standing.

24 The sequence was that in 2001, the Government said,
25 "Newdow, you don't have standing because you're watching it on

1 TV. That's not the same as being in Washington."

2 THE COURT: You probably have a better chance of
3 hearing what's being said if we're watching it on TV than
4 being present.

5 MR. NEWDOW: That may well be. The Court of Appeals
6 just said, "Newdow, you didn't suffer an injury in fact,"
7 which I think is completely contrary to case law. They didn't
8 give an analysis at all.

9 Then Judge Bates, in 2004 says, "Oh, it's issue
10 preclusion because you -- we already decided in the Ninth
11 Circuit," but the Ninth Circuit, at least from the arguments
12 of the Federal Defendants was that, "Oh, look, it's not the
13 same as being in the same place."

14 And then he says, "Oh, it is the same," because he
15 looks at *Abington v. Schempp* because *Abington v. Schempp* said
16 it's the same, but in *Abington v. Schempp* they said it's the
17 same because you do have standing, not because you don't have
18 standing, and so I think that there's a lot of flaws in Judge
19 Bates' opinion and you're not bound.

20 THE COURT: Well, even on the issue of standing,
21 what's -- what's the -- what's the harm, from a standing
22 perspective, that's so significant that the harm is sufficient
23 to give you standing in this situation?

24 MR. NEWDOW: It's the exact same harm that was in
25 *Lee versus Weisman*. The Supreme Court said that's a harm and

1 ruled in the favor of that child who is in that setting who
2 had to listen to -- has no choice but to listen to somebody
3 pray to God, and this, of course, affect their -- it also
4 violates the neutrality principle. It violates the purpose
5 prong of *Lemon*. It violates the effects prong of *Lemon*. It
6 violates the endorsement. It violates every single test that
7 the Supreme Court has ever raised.

8 And so I think she has clear harm. It violates the
9 stigmatic injury that was referred to in *Allen v. Wright*,
10 which is among the most serious harms of discriminatory
11 government treatment, according to the Supreme Court. I don't
12 see how she wouldn't have a harm.

13 THE COURT: If you can show injury, how do you
14 establish redressability?

15 MR. NEWDOW: Redressability, this Court certainly
16 can tell the --

17 THE COURT: I can tell the Chief Justice what he can
18 do?

19 MR. NEWDOW: I think so. There's no separation of
20 powers issue there. The Chief Justice is not above the law,
21 and he's required to abide by it as well.

22 THE COURT: I can tell the President-Elect what he
23 can do?

24 MR. NEWDOW: I'm not asking you to tell the
25 President-Elect. I'm asking you to tell the Presidential

1 Inaugural Committee that they -- I know that I can't get on
2 that dais.

3 THE COURT: As I understand, you appreciate that
4 President-Elect Obama has a First Amendment right himself to
5 say "so help me God" at the end of the oath if he so chooses.

6 MR. NEWDOW: And that's -- we have that in our
7 complaint. He absolutely has that right.

8 THE COURT: If that's true, then doesn't that
9 undermine the suggestion that there is an injury, because if
10 you and the other Plaintiffs are prepared to be present and
11 hear him say that, how are you injured to a greater extent
12 just because the Chief Justice says it?

13 MR. NEWDOW: Because in one sense we have somebody
14 exercising his free exercise rights. The only reason Barack
15 Obama has the right to do that is because he's doing it under
16 his individual free exercise rights.

17 I think he doesn't have the right to do that as the
18 Chief Executive, but you have conflicting rights and we're
19 willing to waive that. But the Chief Justice has no free
20 exercise right. The Chief Justice is representing the highest
21 individual of law in our nation.

22 THE COURT: So is Mr. -- so is President-Elect
23 Obama.

24 MR. NEWDOW: He is, but he has free exercise rights.
25 He's taking the oath as he sees fit. The Chief Justice has --

1 THE COURT: If he asks the Chief Justice, which I
2 understand is the case, to utter those words, what's the
3 difference?

4 MR. NEWDOW: He has -- I mean, he has the right to
5 have separate but equal bathrooms at the inaugural, too. He
6 has the right to exclude people, you know, no one -- no judge
7 is going to tell him he can't exclude -- I think I have it in
8 my brief -- Mexican/Americans or any other group. He can
9 wiretap people. He can do all sorts of things that violate
10 the Constitution that the Court cannot redress, but that
11 doesn't mean --

12 THE COURT: But I guess the -- but the concern I'm
13 expressing is if you and the other Plaintiffs are willing to
14 either watch it on TV or be present and hear him utter the
15 words and therefore subjected to those words by someone who's
16 going to occupy the highest position in the land, I guess I
17 find it somewhat difficult to understand how hearing the Chief
18 Justice utter those same words in some way has a greater
19 impact on your sensitivities as compared to him saying it.

20 MR. NEWDOW: It's not a -- I wouldn't phrase it in
21 terms of sensitivity. I would phrase it in terms of having
22 the idea that the Government of the United States, represented
23 by the Chief Justice -- first of all, two wrongs don't make a
24 right. But even so, the Chief Justice is not, again, doesn't
25 have free exercise of right. He is saying to the world that

CASE NO. 09-5126
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRANSCRIPT OF
PRELIMINARY INJUNCTION
HEARING

Before the Hon. Reggie B. Walton
United States District Judge

JANUARY 15, 2009

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1 concerned about in the context of public schools.

2 Now, the dissent in *Lee v. Weisman* said, "Well, you
3 don't have to attend your graduation. Shouldn't that be good
4 enough?" But the majority rejected that on the theory that
5 that's absurd. The -- a high school graduate, to say that
6 they don't have to attend their graduation, is sophistry but
7 certainly not sophistry to say that a person doesn't have to
8 attend an inauguration, doesn't have to tune it in, and if
9 they watch it on TV, that they can choose to watch parts of it
10 and not watch other parts of it.

11 It's certainly something that one voluntarily
12 chooses to engage in, and this is somewhat analogous given
13 that it is the President-Elect's day. If you look at the
14 affidavit that's been submitted in which the child says, "This
15 is a special day and I want to be there to see President-Elect
16 Obama sworn in," it's a little strange to say, "Well, I'd like
17 to see him sworn in, but I don't want to see him do it the way
18 that he wants to do it." It's sort of like somebody invites
19 you to their house and then when you get there you start
20 moving the furniture around.

21 This is -- while it is certainly an important event
22 in the life of the nation, this is an important event for the
23 President-Elect, and that leads me to the point of
24 redressability. And certainly there is nothing different with
25 respect to the minor child or any of the Plaintiffs than there

1 was for Mr. -- for Mr. Newdow four years ago or eight years
2 ago on the point of redressability, because at the end of the
3 day, the only person who can decide who his guests are going
4 to be and what the program is that he's going to have at his
5 inaugural is the President-Elect, and this -- this Court,
6 under well settled --

7 THE COURT: Can I -- can I order that he -- although
8 he himself, as conceded by the Plaintiffs, can utter the words
9 "so help me God," but order that the Chief Justice not utter
10 those words?

11 MR. O'QUINN: Well, if you did, you still wouldn't
12 redress the injury that Plaintiffs are claiming because -- or
13 at least, as I understand it, because the President-Elect
14 could simply ask one of the other justices to administer the
15 oath. I think Justice Stevens is going to administer the oath
16 of office to the vice president.

17 THE COURT: But I guess the position is that anybody
18 who would utter those words who's in an official governmental
19 capacity should be constrained or restrained from doing so.

20 MR. O'QUINN: Well, I think that, Judge Walton, you
21 hit -- while we're talking about this from a perspective of
22 injury, and then I'll come back to the redressability point,
23 although they are somewhat related on this particular point,
24 if, as Plaintiffs concede, they suffer no injury from hearing
25 someone stand there and sincerely invoke the traditional

1 supplication "so help me God" at the conclusion of their oath,
2 it's -- it really is sophistry to say that they are seeing --
3 that they experience some kind of actual injury as cases like
4 *Valley Forge* contemplate that, by seeing those same words
5 spoken by the person who is administering the oath.

6 What they at that point are then just alleging is a
7 general interest in seeing the Government not violate the
8 constitutional interests as they interpret them, not the kind
9 of specific there's a real injury to me allegation that is
10 required certainly by cases like *Valley Forge*, and there is
11 nothing in any of the declarations that have been submitted
12 that actually show what that injury is.

13 There is snippets within the complaint and within
14 the preliminary injunction motion to the effect of feeling
15 like second-class citizens or feeling -- feeling ostracized,
16 but that is precisely the kind of claim that has been rejected
17 by the Supreme Court as a matter of standing jurisprudence and
18 as a matter of substantive law.

19 THE COURT: Well, but Mr. Newdow draws the
20 distinction between the impact those words have if spoken by
21 the Chief Justice as an officer of the United States as
22 compared to President-Elect Obama who is uttering them in his
23 personal capacity.

24 MR. O'QUINN: Well, if the claim that he's making is
25 one of particular injury because it's the Chief Justice qua

1 Chief Justice who is administering the oath, as the Chief
2 Justice has traditionally done in planned inaugural events for
3 much of our nation's history, this court should be very wary
4 of attempting to enjoin the Chief Justice for precisely the
5 same reasons that the Court doesn't have authority to enjoin
6 the President or Congress, namely, that the Chief Justice is a
7 constitutional officer.

8 And certainly if you look at cases like *Franklin*
9 *versus Massachusetts* and particularly the analysis in Justice
10 Scalia's separate opinion in that case, the Court would
11 certainly be wary of enjoining the Chief Justice as a
12 constitutional officer even separate and apart --

13 THE COURT: Let me put it in another context. If a
14 hired judge, whether it be a circuit judge or a member of the
15 Supreme Court, was engaging in clearly unconstitutional
16 behavior -- I'm not talking about this situation but some
17 other context in which it was a clear violation of the
18 Constitution -- could a district court judge issue an order
19 that would be redressable, considering the fact that they are
20 higher court judges and I assume don't have to really listen
21 to what I have to say?

22 MR. O'QUINN: Well, I don't think that it's -- I
23 don't think it's quite that point. I think that certainly if
24 they're acting in their judicial capacity and undertaking what
25 perhaps a district court judge might view to be

1 unconstitutional activity but as a judicial act, it's very
2 clear they would have absolute immunity from suit and in
3 fulfilling judicial acts. So I don't think that a court -- I
4 certainly don't think a district court can enjoin that.

5 THE COURT: That was not a judicial act -- quasi
6 judicial or something of that nature.

7 MR. O'QUINN: This is concededly not a judicial act,
8 and the point that the Court should be cautious and frankly
9 probably lacks the authority when it comes to constitutional
10 officers is a point that it would only apply to the Chief
11 Justice and the associate justices of the Supreme Court. It's
12 not a point that would be made with respect to lower court
13 judges because they are not officers identified in the
14 Constitution, just as, you know, the Secretary of Defense is
15 not an officer identified in the Constitution in the way that
16 the President is.

17 So if you were extrapolating *Mississippi versus*
18 *Johnson*, I think that extrapolation would only apply to
19 members of the Supreme Court themselves. But that -- all of
20 that only swings into action if you get past the notion that
21 at the end of the day, the President-Elect can have anybody
22 administer the oath or probably could have nobody administer
23 the oath. There's certainly no requirement in the
24 Constitution that a person administer the oath.

25 THE COURT: There is no legislation or anything that

1 says who can administer the oath to the President-Elect?

2 MR. O'QUINN: That is not addressed in the
3 Constitution.

4 THE COURT: No, it's not in the Constitution. Is it
5 anywhere else?

6 MR. O'QUINN: Not that I'm aware of. There
7 certainly is legislation that in different circumstances
8 allows different officers of the United States to administer
9 oaths, but if you sort of take it back to first principles,
10 there would have been no judicial officers of the United
11 States when George Washington was sworn in, so it would be
12 strange to say that it has to be someone of a particular
13 stripe.

14 THE COURT: Somebody on a TV show recently got it
15 wrong because they said -- I don't know where they got it from
16 but they claim that there's something out there that says that
17 the oath has to be administered or can be administered by any
18 state or federal judge. I don't know of that, but...

19 MR. O'QUINN: I'm sure -- I'm sure the oath can be
20 administered by any state or federal judge and any notary
21 public.

22 THE COURT: But there's no requirement that such an
23 officer do it?

24 MR. O'QUINN: No, there's not, and if there were to
25 be such a requirement, it would have to be found in the text

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1 That's exactly what we're -- we're asking through his
2 secretary or his executive branch agency or whatever you want
3 to call it, this group that has this governmental function to
4 put on the inauguration and you can issue an injunction to
5 them saying, "You are not allowed to let these people on."

6 Now, if they get stuck between it, that maybe have
7 to take --

8 THE COURT: You seem to be saying that I do have the
9 authority then to enjoin the President?

10 MR. NEWDOW: No. I don't think I'm saying that at
11 all.

12 THE COURT: That's the effect of what you're saying
13 because if -- if President-Elect Obama, which I believe he
14 can, can overrule what the Presidential Committee says, then
15 the only way I can stop from that occurring that you want me
16 to enjoin would be to say, "President-Elect Obama, you can't
17 have these individuals speak, or if they speak, they can't say
18 anything about religion."

19 MR. NEWDOW: And I'm lost then on how that's
20 different between EPA saying that Amoco, you can go pollute
21 the environment, and you send and admit an injunction, and
22 President Obama says I think it's okay what Amoco is doing.
23 EPA, go ahead and allow them to pollute the environment.

24 How is this in any way different? The Government
25 judiciary always tells the lower branches of the Government --

1 of the presidency of the executive branch and the
2 congressional branch what they can or cannot do, and that's
3 always a possibility that higher-ups will say we don't want to
4 do it. The judiciary says, but since *Marbury versus Madison*
5 we said we're going to accede to what the judiciary says.

6 THE COURT: Okay. Anything else?

7 MR. NEWDOW: There's a million things, but I would
8 just point out another thing that they're talking about, you
9 know, if Joe the plumber comes in and gives the inauguration,
10 there's a crucial difference between Government speech
11 endorsing religion, which the establishment clause forbids,
12 and private speech endorsing religion, which the free speech
13 and free exercise clauses protect. That's the key here.

14 I mean, we're talking about Government coming in.
15 The Chief Justice of the United States, the highest officer
16 changing the constitutional text and saying that God exists.
17 He may not do that in that role and --

18 THE COURT: See, on the issue of injury, I guess
19 that's where I'm having some difficulty. I understand what
20 you're saying, but it seems to me, if the injury is the fact
21 that there appears to be some type of support for religion by
22 the Government as an entity, I just am having a difficult time
23 making a distinction between if the President-Elect utters
24 those words and you are there and hear them as compared to the
25 Chief Justice of the United States. It seems to me that the

1 President-Elect is in effect in a co-equal status as the Chief
2 Justice. He's only going through this formality. He is, in
3 effect, President and it's only the taking of the oath
4 admittedly required by the Constitution but still a formality
5 before he actually becomes President, and I just am having a
6 difficult time understanding how, if the President-Elect,
7 who's going to be the head of this nation from the executive
8 branch perspective, speaks the words, how you are somehow hurt
9 to a greater extent if the Chief Justice says it.

10 MR. NEWDOW: Because we can recognize that the
11 President-Elect has free exercise rights and he's allowed to
12 get up and say that. The Chief Justice, as an administrator
13 here, using the oath of office as prescribed in the text of
14 the Constitution, does not have free exercise rights.

15 THE COURT: Are there any cases that support the
16 proposition that for standing purposes that there is a greater
17 harm based upon what you say?

18 MR. NEWDOW: I would repeat what I just said.
19 There's a crucial difference between --

20 THE COURT: But any cases that say that there is a
21 difference in the harm from a standing perspective because it
22 is someone in an official capacity like the Chief Justice
23 saying it as compared to the person who's actually taking the
24 oath?

25 MR. NEWDOW: Every single case says that. *Lee*

1 *versus Weisman* says that. The reason that the Rabbi couldn't
2 give his invocation was because he was representing the
3 Government. The Rabbi can give an invocation anywhere else.
4 He wants to go out to the front lawn and do it, go ahead. You
5 can't do it -- you know, he speaks for himself. If he's in
6 the audience and he's talking to people, no one can enjoin him
7 there.

8 When he gets on the stage acting as a member of the
9 Government, he certainly can't do that. When -- I mean,
10 virtually every case. Why couldn't you put a Christmas tree
11 in the staircase of Allegheny County? Because the courthouse
12 is the Government. You want to put the Christmas tree outside
13 anywhere else, that's fine. I mean, that's the whole question
14 is whether or not this is the endorsement of Government, per
15 se, or individuals. And again, the President has free
16 exercise rights as an individual and we are not challenging
17 that.

18 I don't see how this is problematic. It seems to me
19 every single case, that's the case that -- that's the question
20 that the Supreme Court always asks. Who is doing the acting?
21 A governmental actor or an individual? And for the President,
22 he's a hybrid, and we're willing to say, there's a conflict
23 there. There's no conflict for the Chief Justice. There's no
24 conflict for this Presidential Inaugural Committee. They are
25 serving as governmental actors. They have no free exercise

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1 federally chartered, and in this case the Plaintiff said it's
2 a state actor and the Court said no. You're not a state actor
3 if the Government is not -- for purposes of the First
4 Amendment, if the Government is not continuing to control. So
5 I think the *Red Cross* is your best example.

6 Here, there aren't any directors appointed by the
7 Government, and so I think that the notion that this is a
8 state actor, the whole problem with this analysis that you can
9 go out and enjoin, I mean Your Honor -- Your Honor noticed two
10 of the problems. President Obama -- President-Elect Obama is
11 the one who is going to decide who to invite, and if you go
12 out and try to -- even if you could enjoin, even if it were a
13 state actor, which it's not, it's not going to stop him from
14 having Reverend Warren or Reverend Lowery deliver the
15 invocation.

16 You're absolutely right that it doesn't control
17 security. Next thing you know, they'll be asking you to
18 enjoin the Secret Service and the U.S. Marshals who are there
19 at the podium. And so -- but the bottom line is, absent being
20 a state actor for purposes of First Amendment, there's no
21 injunction because there's no likelihood of success of a
22 violation of an establishment clause violation or a RFRA
23 violation.

24 And with regard to *Lebron*, when you look at the
25 reply brief that actually cites it and then moves on, the

1 reply brief at page 14 says in a footnote, the director
2 provision is of no event here, or words to that effect.

3 Your Honor, and that's just a declaration by the
4 Plaintiff that it's of no event. When you read the *Red Cross*
5 case, and I'm going to give you the cite to -- the *Red Cross*
6 case is *Hall versus American National Red Cross*, 86 F3d 919,
7 Ninth Circuit, 1996. The other case is *Hack versus President*
8 *and Fellows of Yale College*, 237 F3d 81, Second Circuit, 2000,
9 both of those cases make clear that the key aspect in Red
10 Cross, the Court said, because the Government has not retained
11 permanent authority to appoint the majority of the Red Cross
12 governing board, Red Cross is not a government actor. That's
13 86 F3d at 922.

14 There's no such retention of authority with respect
15 to the Presidential Inaugural Committee.

16 THE COURT: Okay. Thank you.

17 Before I would be able to reach the merits of the
18 claims that are being advanced, obviously, case authority says
19 I have to conclude that there is in fact standing to pursue
20 this matter.

21 I seem to appreciate the fact that the Government is
22 conceding that, but for Mr. Newdow, the issue preclusion would
23 not preclude the other Plaintiffs from being able to pursue
24 this matter, so I won't resolve this matter on that basis,
25 other than to conclude that in reference to the invocation and

1 the benediction, that Mr. Newdow, regarding those claims,
2 individually would be precluded from pursuing those claims,
3 but on the other hand, I would agree that the other Plaintiffs
4 cannot be so precluded.

5 On the issue of standing. Obviously, one of the
6 things that I have to be able to find in order to conclude
7 that there is standing is that there is a concrete and
8 particularized injury that's been established by the
9 Plaintiffs, and obviously one of the other two -- three things
10 that have to be shown is that the claim -- or the claims being
11 made are in fact redressable.

12 On the issue of whether there is a sufficient
13 Article III standing that's been established, it seems to me
14 that the suggestion that's being made by the Plaintiffs is
15 that if there is a claim of a First Amendment establishment
16 clause violation, that that in and of itself, just making the
17 claim is sufficient in order to establish injury sufficient to
18 establish standing, and I don't think that is the state of the
19 law.

20 In my view, the *Valley Forge* case rejects that
21 proposition and there has to be more shown than just an
22 allegation that one feels that they -- that their First
23 Amendment rights have been -- have been violated, and that
24 brings me to the issue of what is the nature of the injury
25 that's being alleged here?

1 Obviously, the individual perspective of a person
2 who is a nonbeliever and they're feeling that any invocation
3 of religion in a setting like this is going to cause them
4 injury, I don't think is sufficient in and of itself to
5 establish Article III standing; otherwise, it seems to me I
6 have to totally reject the analysis that was conducted in the
7 *Valley Forge* case.

8 Although, technically maybe assessing whether *Marsh*
9 is still good law goes to the issue of the merits as compared
10 to standing, it does seem to me that you have to look at *Marsh*
11 and assess is it good law in the face of subsequent Supreme
12 Court precedent because obviously, it seems to me, if it is
13 good law, then it does have to factor in on the issue of
14 whether, when a claim of this nature is made regarding this
15 type of activity, whether the claim is sufficient to establish
16 harm so as to afford a Plaintiff the ability to proceed with
17 the case on standing grounds.

18 And my reading of the law is that while obviously in
19 subsequent cases the Supreme Court have -- has constructed
20 other tests in assessing whether there has been a First
21 Amendment violation, that the Supreme Court has not directly
22 rejected *Marsh* and in fact has, in subsequent cases,
23 distinguished *Marsh* from other circumstances and therefore did
24 not reject *Marsh* but said that the setting or the
25 circumstances of other cases are distinguishable and therefore

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1 been submitted to me at this point, that would suggest that
2 because these statements are being made at the inauguration of
3 a religious nature that somehow that is factoring in to the
4 perception that the Government is supporting religion and it's
5 because of that that people who are believers are having a
6 dislike towards people who are nonbelievers. I think it
7 emanates from something very different from that. It emanates
8 from their core belief in a God as compared to those who
9 don't, and because of that, that is why the attitude exists.

10 So that gives me pause in concluding that we are
11 talking here about an injury that is sufficient to confer
12 Article III standing to the Plaintiffs in this case.

13 But, be that as it may, because I do have serious
14 concerns about whether the showing of Article III standing can
15 be established based upon the nature of the injury that's
16 being alleged here, I also have real concerns about the other
17 redressability component of standing which obviously has to be
18 satisfied in order for me to conclude that there is in fact
19 standing in this case, and it suggests that if I enjoin the
20 Committee that that would have the effect that the Plaintiffs
21 are seeking to accomplish.

22 Well, I do have, based upon what's been indicated, a
23 real question as to whether I would even have the authority to
24 enjoin the Committee in light of the fact that what's being
25 indicated to me by counsel for the Committee, it seems to me

1 that we are not talking about a state actor, that we are
2 talking about a private actor, and as such, I would not have
3 the authority to enjoin them just like I would not have the
4 authority to enjoin President-Elect Obama, obviously, for
5 different parameters because obviously he does have the right
6 to utter the words of a personal belief that he has.

7 And then on the issue of whether I have the
8 authority to enjoin the Chief Justice. I don't believe
9 there's any case authority that specifically addresses the
10 issue of whether a law court judge has the authority to enjoin
11 a higher judge, either on the circuit level or on the Supreme
12 Court, but I think it's highly questionable as to whether I
13 have such authority. It seems to me that probably the way
14 that one would, assuming you can enjoin the Chief Justice
15 based upon a sufficient otherwise showing of standing, that
16 the case would, I assume, have to come to this court, work its
17 way up to the Circuit, ultimately to the Supreme Court, and if
18 the majority of Supreme Court justices took a position adverse
19 to what the Chief Justice was doing or was about to do, then
20 conceivably, I guess the Court, with a majority ruling, would
21 be able to enjoin the Chief Justice, but I have real questions
22 about whether I have the authority to do that.

23 But I think on this issue of redressability, the
24 bottom analysis really comes down to a question of who has the
25 authority to have these words uttered at the inauguration, and

1 I think in order to enjoin these words from being uttered, I
2 would have to have the authority to enjoin the
3 President-Elect. And while technically, yes, he's not
4 President, I think he still stands in the shoes of the
5 President and I don't think I could enjoin him from having
6 whoever he wants to appear.

7 And again, on the issue of injury, in my view it is
8 significant that if the Plaintiffs are prepared to appear and
9 be present when the inauguration takes place and acknowledge
10 that it can't -- that they cannot stop President-Elect Obama
11 from making reference to God if he so chooses, I find it very
12 difficult to conclude that if that's the case and they're not
13 going to be harmed to the extent -- not going to be harmed to
14 the extent that they don't feel they can't go because of the
15 injury they would suffer from hearing him say it, I just find
16 it difficult to conclude that somehow the Chief Justice saying
17 it is going to have a greater impact than President-Elect
18 Obama saying it. Because while technically he's not
19 President, he clearly, it seems to me, in the eyes of the
20 American citizenry, is more influential at the time he steps
21 on that stage as compared to President Bush, although
22 technically, President Bush is still the President.

23 So, it seems to me that if one is going to be harmed
24 by the attorney -- by -- not going to be harmed to the extent
25 that they're willing to be present and hear the words if

1 President Barack Obama says it, I think it's very difficult to
2 suggest that somehow the harm is remarkably greater if the
3 Chief Justice does it. But, as I say, I think the only way I
4 can enjoin this is if I had the authority to enjoin
5 President-Elect Obama, and I just don't think I can accomplish
6 what the Plaintiffs want by doing that, because since I
7 conclude I couldn't enjoin the Committee, but even if I could
8 enjoin the Committee, I think he'd be able to say, "Come up on
9 this stage." I don't think anybody can stop that from
10 occurring, and therefore, I fail to see how I have the ability
11 to provide the redress that the Plaintiffs are seeking.

12 So, based upon my conclusion that there has not been
13 a sufficient injury shown to confer Article III standing and
14 my conclusion that I don't have the ability to redress the
15 harm that is being alleged, I would have to conclude that I
16 don't have the authority to exercise standing with this case,
17 and -- or at least at this stage would conclude that a
18 sufficient showing to exhibit substantial likelihood of
19 success on the merits has not been shown and on the issue of
20 irreparable harm that a sufficient showing of irreparable harm
21 has not been shown, and those are the two hallmarks of whether
22 injunctive relief is appropriate, although there are the other
23 two factors.

24 And I think, considering my ruling in reference to
25 the first three issues, I think the balance of harm,

1 considering the fact that we are on the eve of the
2 inauguration and if I issued an order granting the injunction,
3 I think it would have a tremendous impact on the progression
4 of the process of proceeding with the inauguration, I would
5 have to conclude that the balance of harm weighs in favor of
6 the Defendants and that the public interest also weighs in
7 favor of the Defendants, so I would have to conclude that a
8 sufficient showing to conclude that injunctive relief is
9 appropriate has not been made.

10 And as I said earlier, when I was asking my
11 questions, we really are talking about something other than a
12 temporary restraining order at this point because the
13 Plaintiffs chose to wait until the time that they did, which
14 made it impossible for us to have an earlier hearing, so the
15 practical impact might be, if I granted the relief, something
16 other than a temporary restraining order, but in fact a
17 injunction, and therefore, I am of the view that I just -- it
18 will not be appropriate at this time for me to enjoin what the
19 Plaintiffs seek.

20 I will issue an order requiring that -- I mean, I
21 guess I could resolve the case at this point, but I think I
22 should issue an order having the Plaintiff show cause why the
23 case, under the circumstances, should not be dismissed, and
24 I'll address that once those submissions are made. Thank you.

25 THE DEPUTY CLERK: All rise.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MICHAEL NEWDOW, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 08-2248 (RBW)
)	
HON. JOHN ROBERTS, JR.,)	
CHIEF JUSTICE OF THE U.S. SUPREME)	
COURT, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

SHOW CAUSE ORDER

The Presidential Inauguration oath having been administered on January 20, 2009, the event which the plaintiffs sought to enjoin and acquire judgment declaring inclusion of the words "so help me God" as part of the oath unconstitutional, and the plaintiffs having failed to timely appeal this Court's January 16, 2009 order denying the injunctive relief sought by the plaintiffs, it is hereby

ORDERED that the plaintiffs shall show cause by February 27, 2009, why this case should not be dismissed on the ground that the event about which the plaintiffs sought redress has been completed, and therefore the plaintiffs' claims have become moot. The plaintiffs' failure to show cause or seek an extension to respond to this Order by the February 27, 2009 deadline will result in the dismissal of this case.

SO ORDERED this 10th day of February, 2009.

_____/s/_____
REGGIE B. WALTON
United States District Judge

APPENDIX B

Sample Cases Heard By Hon. Reggie B. Walton Where Standing Existed Against the Executive Branch

- (1) Davis v. Filip, 2009 U.S. Dist. LEXIS 4160 (D.D.C. 2009)

African-American citizen and FBI employee sued Attorney General as head of U.S. Department of Justice for racial discrimination in violation of Title VII of the Civil Rights Act of 1964.

- (2) Robinson v. Paulson, 2008 U.S. Dist. LEXIS 104587 (D.D.C. 2008)

Plaintiff sued Secretary of the Treasury for racial discrimination in violation of Title VII of the Civil Rights Act of 1964.

- (3) Calloway v. Harvey, 2008 U.S. Dist. LEXIS 98158 (D.D.C. 2008)

Plaintiff sued the Secretary of the Army seeking to remove evaluation reports from his personnel file.

- (4) County of San Miguel v. Kempthorne, 2008 U.S. Dist. LEXIS 97065 (D.D.C. 2008)

Plaintiffs sued the Secretary of the Interior seeking to have the Gunnison sage-grouse listed as an endangered species under the Endangered Species Act.

- (5) Holloman v. Chertoff, 2008 U.S. Dist. LEXIS 80702 (D.D.C. 2008)

Plaintiffs sued the Secretary for Homeland Security for racial discrimination in violation of Title VII of the Civil Rights Act of 1964.

- (6) Hamilton v. Paulson, 2008 U.S. Dist. LEXIS 80219 (D.D.C. 2008)

Plaintiff sued Secretary of the Treasury for racial discrimination in violation of Title VII of the Civil Rights Act of 1964.

- (7) Reshard v. Peters, 579 F. Supp. 2d 57 (D.D.C. 2008)

Plaintiff sued Transportation Secretary for racial discrimination in violation of Title VII of the Civil Rights Act of 1964.

- (8) Wiesner v. FBI, 577 F. Supp. 2d 450 (D.D.C. 2008)

Plaintiff sued FBI and CIA for failure to adequately search records pursuant to FOIA request.

- (9) McKinney v. United States DOJ DEA, 580 F. Supp. 2d 1 (D.D.C. 2008)

Plaintiff sued DEA for return of seized property.

- (10) Ctr. for Medicare Advocacy, Inc. v. United States HHS, 577 F. Supp. 2d 221 (D.D.C. 2008)

Plaintiff sued HHS for records under FOIA.

APPENDIX C

JOHN K. VINCENT
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 KRISTIN S. DOOR, SBN 84307
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Attorneys for George W. Bush
 President of the United States

NOTE: This document was reconstructed from a scanned version created shortly after it was filed in the District Court for the Eastern District of California. The OCR software distorted the date/time stamp and made a few other errors.

In response to Plaintiffs' contacts on this, "[t]he federal defendants take no position on your request for leave to file a 'reconstructed' version of the brief, and reserve the right to challenge the authenticity and relevance of the proposed attachment." Defendants PIC and Beliveau "take the same position." Defendant Warren "won't raise an objection to the filing." Plaintiffs were unsuccessful in contacting Defendant Lowery in time to obtain his view on this matter.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

REV. DR. MICHAEL A. NEWDOW,)	CIV. No. S-01-0218 LKK/GGH PS
)	
Plaintiff,)	BRIEF IN SUPPORT OF MOTION
)	TO DISMISS WITH PREJUDICE
v.)	
)	
GEORGE W. BUSH, PRESIDENT OF)	
THE UNITED STATES,)	
)	DATE: June 14, 2001
Defendant.)	TIME: 10:00 am
)	COURTROOM: #24

Defendant George W. Bush, President of the United States, submits the following brief in reply to plaintiff Michael A. Newdow's "Opposing Memorandum of Law in Response to Defendant's Motion to Dismiss with Prejudice" filed on June 1, 2001.

I. ARGUMENT

A. Newdow cannot allege the type of direct injury necessary to confer standing

Newdow remains unable to establish that he has suffered an "injury in fact," a critical element of standing. *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S.Ct. 1717, 1723 (1990).

The Supreme Court has stated that a plaintiff must be able to establish that he had direct contact with the challenged government conduct. In *Valley Forge Christian College v. Americans for Separation of Church and State*, 454 U.S. 464, 102 S.Ct. 752, (1982) a group called "Americans United For Separation of Church and States" (Americans United) challenged the federal government's cost-free transfer of 77 acres of land near Philadelphia to the Valley Forge Christian College. Americans United, which described itself as a non-profit organization composed of 90,000 taxpayer members, learned of the transfer through a news release and filed suit. The district court dismissed the complaint on the ground that the plaintiffs lacked standing as taxpayers, and on the ground that plaintiffs had failed to alleged "any actual or concrete injury beyond a generalized grievance common to all taxpayers." 454 U.S. at 469, 102 S.Ct. at 757.

The Court of Appeal for the Third Circuit unanimously agreed that the plaintiffs lacked standing as taxpayers, but a majority held that plaintiffs had standing "merely as 'citizens,' claiming 'injury in fact' to their shared individuated right to a government that 'shall make no law respecting the establishment of religion.'" 454 U.S. at 470, 102 S.Ct. at 757, quoting from the Third Circuit's opinion at 619 F.2d 252, 262 (3rd Cir. 1980).

The Supreme Court rejected this "unusually broad and novel view of standing" (454 U.S. at 470, 102 S.Ct. at 757) and affirmed the requirement that essential to standing is a showing of "an actual injury redressable by the court." *Jd.*, at 472, 102 S.Ct. at 758 (citations omitted). In rejecting the Court of

Appeals broad view of "citizen standing" the Supreme Court stated:

Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them as a *consequence* of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional terms.

Id., at 485-486, 102 S.Ct. 765.

The Supreme Court held that Americans United, headquartered in Washington, D.C., with the named plaintiffs residing in Maryland and Virginia, could not allege an "*injury or any kind, economic or otherwise, sufficient to confer standing*" where the real estate transaction at issue was in Pennsylvania. 454 U.S. at 486-87, 102 S.Ct. at 766. (emphasis in original.)

Here, Newdow has not alleged any facts showing he had direct contact with the governmental conduct he challenges. Like the plaintiffs in *Valley Forge* who lived in a different state from where the real estate was located, Newdow was 3,000 miles away from the inaugural activities he watched on television. His lack of geographical proximity to the inaugural prayer dooms his claim to standing.

Furthermore, the Supreme Court rejected the idea that the Establishment Clause provides a

special license to roam the country in search of governmental wrongdoing and to reveal their discoveries in federal court. The federal courts were simply not constituted as ombudsmen of the general welfare.

APPENDIX D

Declaration of Michael Newdow

I, Michael Newdow, declare as follows:

- (1) Appendix C is an accurate reconstruction of the original filing made by the attorneys for President Bush in the District Court for the Eastern District of California in case #2:01-cv-00218-LKK-GGH on June 6, 2001 (Docket Document 10). It is not an exact copy, however, since it was reconstructed from a scan in which the OCR software created some errors (especially in regard to the time/date stamp, which has been eliminated by me.)
- (2) Appendix E is an accurate reconstruction of the email I received from Senator Dianne Feinstein's office on December 27, 2004.
- (3) Appendix F is an accurate reconstruction of the email exchange I had with a librarian at the Library of Congress in November 2003.
- (4) Appendix G is an accurate reconstruction of the email exchange I had with Charlene Bickford of the First Federal Congress Project in November 2004.
- (5) I have had an especially strong interest in Religion Clause matters since 1997. Since that time, with the exception of my own personal prior litigation (i.e., the prior challenges to the use of clergy at inaugurations and at the start of Congress), I cannot recall hearing or reading of a single case where a plaintiff who personally witnessed a government-sponsored prayer was not considered to have suffered an "injury in fact."
- (6) In the lawsuit I brought against the use of clergy at the start of the sessions of Congress, I was deemed not to have standing because:

Newdow's observation of an offensive Senate prayer on one occasion fails to demonstrate the type of extensive interaction with allegedly offensive religious displays in one's community that have supported standing for Establishment Clause claims. Therefore, the court concludes that Newdow fails to establish standing based on his claim that his right to observe the government is impaired.

Newdow v. Eagen, 309 F. Supp. 2d 29, 35 (D.D.C. 2004).

- (7) I brought a legal challenge to the infusion of (Christian) Monotheistic dogma into the 2005 presidential inauguration, which was heard by Hon. John D. Bates. Judge Bates ruled against me on numerous grounds. Although I have always believed that Judge Bates was mistaken on each of these, I felt there was a reasonable possibility that the Court of Appeals would agree with his ruling that I suffered no injury in fact because "Newdow does not come in regular contact with the inaugural prayers." Newdow v. Bush, 391 F. Supp. 2d 95, 104 (D.D.C. 2005).

- (8) Accordingly, I chose not to appeal that ruling, and planned instead to “cure” the “defect” by showing that I repeatedly attended (and will continue to attend) the nation’s presidential inaugurations.
- (9) I have had a very strong interest in the “so help me God” additions (or lack thereof) to the oaths of office put into place by those statesmen who created our federal Constitution and our initial federal statutes. That includes the lack of that phrase in the presidential oath of office, which is the only oath given in the Constitution, itself, and is the only phrase in the Constitution that is placed in quotation marks.
- (10) That interest has been particularly intense in regard to the claim that George Washington added that phrase when he took his oath as the first President on April 30, 1789. In fact, I spent countless hours at numerous libraries and online, seeking reliable pertinent information.
- (11) I even went to Wall Street in New York City and had friends listen as I shouted (in the quiet of a late night) to see if what Washington Irving claimed to have occurred would have been possible (i.e., that he would have been able to hear the words the President spoke from where he claimed to have been standing). I concluded that it would have been impossible to have heard what the President said from that vantage point.
- (12) Two other researchers, Ray Soller and Matt Goldstein, have joined in researching this matter, also investing enormous efforts and countless hours.
- (13) To inform the public (hopefully in an entertaining manner) of my research findings (i.e., that the story of George Washington adding “so help me God” to his inaugural oath of office was a complete myth, first alleged 65 years after the event by someone who would have been six years old at the time of the actual 1789 ceremony), I created a music video. See at www.restorethepledge.com.
- (14) In addition to personally writing the song (music and lyrics), performing the work, filming the performance, creating the PowerPoint presentation, and editing the video, I authored the prefatory essay that explains the matter (and the video) to those who opt to read what is written.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2009,



Michael Newdow

APPENDIX E

Subj: Presidential Inauguration
Date: 11/22/04 7:45:15 AM Pacific Standard Time
From: senator@boxer.senate.gov
To: firstamendmist@cs.com
File: Inaugural.pdf (505596 bytes) DL Time (TCP/IP): < 1 minute
Received from Internet: click here for more information

November 22, 2004

Mr. Michael Newdow
7660 El Douro Drive
Sacramento, California 95831-5429

Dear Mr. Newdow:

Thank you for contacting the office of Senator Boxer to request tickets for the January 20, 2005 Presidential Inauguration. I am pleased to inform you that 1 tickets have been reserved for your party. Due to the overwhelming demand, a maximum of 2 tickets per family were issued. Please be aware that the tickets are for specified standing room only. A map is enclosed to assist you in locating the standing area that will be indicated on your ticket.

In order to obtain your tickets, you must pick them up in person at our office located in Suite 112 of the Hart Senate Office Building. Tickets may be picked up between 9:30 a.m. - 4:00 p.m. beginning Monday, January 17, 2004. For security reasons, we are unable to send the tickets by mail. A photo ID is required when collecting your tickets from our office. Tickets not collected by 4:00 p.m. on January 19th will be considered forfeited.

On Inauguration Day, the Capitol gates will open at 9:00 a.m. Due to large crowds, you are encouraged to arrive early to assure that you are in your assigned area by the time the ceremony begins at 11:30 a.m. Please note that you will be required to pass through security screening. Also, be sure to examine the enclosed sheet titled, "Inaugural Accessibility Information" for the list of prohibited items and other important information. Due to increased security and street closings we strongly encourage you to use Metro rail. There will be no public parking near the Capitol grounds.

Again, thank you for contacting our office and I hope you enjoy your visit to our nation's capitol and the inauguration ceremony.

Sincerely,

Chad Wallace
Tour Coordinator

=====

Please do not reply to this e-mail. This is not an active e-mail address.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL NEWDOW, *et al.*,

Plaintiffs,

v.

HON. JOHN ROBERTS, JR., *et al.*,

Defendants.

Civil case No. 1:08-cv-02248-RBW

**PLAINTIFFS' MOTION FOR LEAVE TO SUBMIT FIRST AMENDED
COMPLAINT**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1:08-cv-02248-RBW

FIRST AMENDED COMPLAINT

MICHAEL NEWDOW;
ELLERY SCHEMPP;
MEL LIPMAN;
DAN BARKER;
ANNIE-LAURIE GAYLOR;
ROBERT SHERMAN;
AUGUST BERKSHIRE;
MARIE CASTLE;
STUART BECHMAN;
HERB SILVERMAN;
JASON TORPY;

HARRY GREENBERGER;
KIRK HORNBECK;
RICHARD WINGROVE;
CHRISTOPHER ARNTZEN;
JOHN STOLTENBERG;
KATHERINE LACLAIR;
LOUIS ALTMAN;
PAUL CASE;
JERRY SCHIFFELBEIN;
ANNE RICHARDSON;
JAY RICHARDSON;
DAN DUGAN;
ANNA MAE ANDREWS;
ELIZA SUTTON;
RICHARD RESSMAN;

“UNNAMED CHILDREN;”

ADDITIONAL INDIVIDUALS;¹

THE AMERICAN HUMANIST ASSOCIATION
1777 T STREET, NW
WASHINGTON, DC 20009

THE FREEDOM FROM RELIGION FOUNDATION
304 W WASHINGTON AVE
MADISON WI 53703

MILITARY ASSOCIATION OF ATHEISTS & FREETHINKERS
519 SOMERVILLE AVE, PMB 200
SOMERVILLE, MA 02143

¹ The names and addresses of these individuals are provided (along with copies of their Declarations, signed under penalty of perjury) in Appendix G. Declarations from the original Plaintiffs are in Appendix F.

MINNESOTA ATHEISTS
522 20TH AVE. S.
MINNEAPOLIS, MN 55454-1325

ATHEISTS FOR HUMAN RIGHTS
5146 NEWTON AVE. N.
MINNEAPOLIS MN 55430

ATHEIST ALLIANCE INTERNATIONAL
1777 T STREET, NW
WASHINGTON, DC 20009-7125

ATHEISTS UNITED
4773 HOLLYWOOD BLVD.
LOS ANGELES, CA 90027-5333

NEW ORLEANS SECULAR HUMANIST ASSN
52 SAINT LOUIS STREET, APT. 3
NEW ORLEANS LA 70130

UNIVERSITY OF WASHINGTON
SECULAR STUDENT UNION
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SEATTLE, WA 98195-2238

SEATTLE ATHEISTS
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KIRKLAND, WA 98033

ATHEISTS OF FLORIDA
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TAMPA, FL 33629-8430

CENTRAL MINNESOTA FRIENDS FREE OF THEISM
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ST. CLOUD, MN 56301

HUMANIST SOCIETY OF SANTA BARBARA
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SANTA BARBARA, CA 93130

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COLORADO SPRINGS, CO 80908

ATHEISTS OF BROWARD COUNTY, FL., INC.
7972 PINES BOULEVARD, #246743
PEMBROKE PINES, FL 33024

HUMANISTS OF WASHINGTON
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PENNSYLVANIA NONBELIEVERS
45 GRAVEL HILL ROAD
MOUNT WOLF, PA 17347

FREETHOUGHT SOCIETY OF GREATER PHILADELPHIA
P.O. BOX 5054
WEST CHESTER, PA 19380

BOSTON ATHEISTS
95 MELVILLE AVENUE
BOSTON, MA 02124

PLAINTIFFS,

v.

HON. JOHN ROBERTS, JR.
CHIEF JUSTICE OF THE U.S. SUPREME COURT
SUPREME COURT OF THE UNITED STATES
ONE FIRST STREET NE
WASHINGTON, DC 20543

OTHER UNNAMED OATH ADMINISTRATOR(S)

PRESIDENTIAL INAUGURAL COMMITTEE ("PIC")
WASHINGTON, DC 20599

EMMETT BELIVEAU, EXECUTIVE DIRECTOR, PIC
WASHINGTON, DC 20599

OTHER PIC DEFENDANTS

JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES ("JCCIC")
UNITED STATES SENATE
331 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510

SENATOR DIANNE FEINSTEIN, CHAIRPERSON, JCCIC
UNITED STATES SENATE
331 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510

ARMED FORCES INAUGURAL COMMITTEE (“AFIC”)
JOINT FORCE HEADQUARTERS - NATIONAL CAPITAL REGION
US ARMY MILITARY DISTRICT OF WASHINGTON
103 THIRD AVENUE - FORT LESLEY J. MCNAIR
WASHINGTON, DC 20319-5058

MAJOR GENERAL RICHARD J. ROWE JR., CHAIRPERSON, AFIC;
JOINT FORCE HEADQUARTERS - NATIONAL CAPITAL REGION
US ARMY MILITARY DISTRICT OF WASHINGTON
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MARK SULLIVAN, DIRECTOR, USSS
C/O GENERAL COUNSEL’S OFFICE
950 H STREET, NW #8300
WASHINGTON, DC 20223

UNITED STATES MARSHALS SERVICE (“USMS”)
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ARLINGTON, VA 20530

JOHN F. CLARK, DIRECTOR, USMS
1750 CRYSTAL DRIVE – BLDG CS-3
ARLINGTON, VA 20530

OTHER GOVERNMENTAL “ROE” DEFENDANTS;

REV. RICK WARREN;
REV. JOE LOWERY;

OTHER UNNAMED CLERGY;

DEFENDANTS.

PARTIES

I. Plaintiffs

8. Plaintiff Michael Newdow is a citizen of the United States, a resident of the State of California, Reverend of the First Atheist Church of True Science (“FACTS”), a member of the Freedom From Religion Foundation (“FFRF”) and the American Humanist Association (“AHA”), and an Atheist. He viewed the 2001 presidential inauguration on television, and actually had a ticket for the 2005 inauguration, which he opted not to attend solely because those orchestrating that event refused to eliminate the use of (Christian) Monotheistic clergy. He states, “On January 20, 2009, I traveled to Washington, DC, to view the inauguration of President Obama. I had obtained tickets to be admitted to the event. I accompanied a minor child, whose parents had entrusted her care to me. Unable to get into the viewing section for which we had tickets, we entered the Rayburn House Office Building, and found a room where numerous individuals were watching the ceremony on a television. We watched along with them.”⁴ In that room, Newdow, “was infuriated by the repeated endorsements of belief in God, and felt as a ‘political outsider’ among the many other viewers who were clearly Christian Monotheists, participating in Defendant Rev. Warren’s recitation of the Lord’s Prayer, bowing their heads during the invocation and benediction, and so on. In fact, the very first words [he] heard after the ceremony ended was a ‘God bless you’ from one of the viewers.” He continues, “Because I have a keen interest in our nation’s government generally, and in the inaugural ceremonies in particular, I plan to view every future inauguration for the rest of my life.” He expects that will be at least six more inaugurations. He writes, “It is my fervent hope that I won’t have to endure any further violations of my fundamental rights under the religion clauses of the Constitution at any of those.”

⁴ All Plaintiffs’ quotes are taken from their Declarations, signed under penalty of perjury. Appendix F.

87. Defendant Roberts did this with no authority whatsoever. Such blatant disregard for the explicit text specified – in quotation marks, no less! – in the Constitution of the United States is an offense of the highest magnitude to the foundation of our governmental structure.
88. To allow this practice to continue in future inaugurations “would subvert the very foundation of all written constitutions.”²³
89. Unless the declaratory and/or injunctive relief sought in this litigation is obtained, Defendants Roberts and/or “Other Unknown Oath Administrators” will (also with no authority whatsoever) alter the text of the Constitution to infuse the 2013 and 2017 inaugural ceremonies with that same purely religious dogma.
90. The remaining Defendants will bring to the presidential inaugurations – the grandest ceremonies in our national existence – chaplains to extol the glory of God. This is the case even though the Supreme Court has specifically pronounced that “the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer.”²⁴
91. Plaintiffs are American “Humanists,” “Freethinkers” and/or Atheists, who sincerely believe that there is no such thing as god, or God, or any supernatural force.²⁵ On the contrary, under their belief system(s), “supernatural” is an oxymoron.
92. Although it has been written that “acknowledgements” of God “serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public

²³ Marbury v. Madison, 5 U.S. 137, 178 (1803).

²⁴ Santa Fe Independent School District v. Doe, 530 U.S. 290, 313 (2000).

²⁵ Some Plaintiffs are agnostics, who are unsure whether or not any God exists.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL NEWDOW, *et al.*,

Plaintiffs,

v.

HON. JOHN ROBERTS, JR., *et al.*,

Defendants.

Civil case No. 1:08-cv-02248-RBW

**PLAINTIFFS' FIRST AMENDED COMPLAINT
APPENDIX F: DECLARATIONS OF REMAINING ORIGINAL
INDIVIDUAL PLAINTIFFS**

MICHAEL NEWDOW
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I, Michael Newdow, declare as follows:

- (1) I am a citizen of the United States, a resident of the State of California, Reverend of the First Atheist Church of True Science ("FACTS"), a member of the Freedom From Religion Foundation ("FFRF") and the American Humanist Association ("AHA"), and an Atheist. I have witnessed prior inaugurations, including both of those involving President George W. Bush.
- (2) On January 20, 2009, I traveled to Washington, DC, to view the inauguration of President Obama. I had obtained tickets to be admitted to the event. I accompanied a minor child, whose parents had entrusted her care to me. Unable to get into the viewing section for which we had tickets, we entered the Rayburn House Office Building, and found a room where numerous individuals were watching the ceremony on a television. We watched along with them.
- (3) I was infuriated by the repeated endorsements of belief in God, and felt as a "political outsider" among the many other viewers who were clearly Christian Monotheists, participating in Defendant Rev. Warren's recitation of the Lord's Prayer, bowing their heads during the invocation and benediction, and so on. In fact, the very first words I heard after the ceremony ended was a "God bless you" from one of the viewers.
- (4) Because I have a keen interest in our nation's government generally, and in the inaugural ceremonies in particular, I plan to view every future inauguration for the rest of my life. Being age 55 and in good health, I expect that I will view at least six more inaugurals. It is my fervent hope that I won't have to endure any further violations of my fundamental rights under the religion clauses of the Constitution at any of those.
- (5) Incidentally, while at the inaugural locale, I basically saw only two types of vehicles. The first type was comprised of those belonging to police and other law enforcement authorities. The other type consisted of upscale SUVs ... all with license plates that read "PIC 2009." I asked one of the occupants of one of these vehicles if the PIC was a private or a governmental entity. She said she believed it was governmental. A photograph I took of these vehicles (along with a photograph of one of the license plates) is attached.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2009,



Michael Newdow



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL NEWDOW, *et al.*,

Plaintiffs,

v.

HON. JOHN ROBERTS, JR., *et al.*,

Defendants.

Civil case No. 1:08-cv-02248-RBW

**PLAINTIFFS' FIRST AMENDED COMPLAINT, APPENDIX G
REDACTED DECLARATIONS OF NEW INDIVIDUAL PLAINTIFFS
#2 OF 8 (A-C)**

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I, _____, declare as follows:

I am a citizen of the United States and a resident of the State of Wisconsin.

I am a member of Freedom From Religion Foundation.

I consider myself an atheist.

I have watched the inaugurations of 1989 and 1993 on television at my home.

I watched the 2009 inauguration of Barack Obama tape recorded on television at my home.

As I watched this inauguration, I was shocked to hear the oath and prayers. It made me unhappy to see the constitution being dishonored so obviously.

Being 38 years old, I expect to witness 6 or more future inaugurations during my lifetime.

My minor children saw the inauguration and I expect they will view the next inauguration, and I believe their viewing the "so help me God" and clergy-led prayer will adversely affect them. I feel their view of future inaugurals will be confusing, since the Christian faith is being favored and the first amendment states that there will be freedom of religion. I feel my children are being harmed emotionally and mentally due to this practice. They should not be subject to watching clergy-led prayer or hear the president say "so help me God" during the oath of office. This could be damaging their self-esteem and sense of worth.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2009.

I, _____, declare as follows:

I am a citizen of the United States and a resident of the State of Washington. I am a member of the Freedom From Religion Foundation. I am a nonreligious and nontheistic American.

I watched the presidential inaugurations of 1981, 1985, 1989, 1993, 1997, 2001, and 2005 on television at my home. I watched the 2009 inauguration of Barack Obama live on the Internet. Being 44 years old, I expect to witness at least eight future inaugurations.

As I watched the 2009 inauguration, I was offended by the invocation and benediction for the same reason that I sued (unsuccessfully) to stop similar prayers at my _____ graduation in _____. It was insulting that my government asked me (and all other participants) to engage in a religious ritual. Organizing and encouraging participation in religious rituals is not the government's job. It was especially offensive that the government asked me to engage in an activity that represents the direct *opposite* of my belief system: I don't pray and don't believe in gods. By asking me to pray to a god, the government was assuming and implicitly stating that all true Americans *should* pray and *should* believe in a god (in the case of the invocation, Jesus in particular). I am outraged that my government implied that I'm not a true American.

Every instance of "we" and "us" in those prayers (such as "Let us pray" and "Jesus, who taught us to pray") was an insult. I am not part of that "us." Thus, I was excluded and treated like a second-class citizen, who should patiently wait until the real Americans (i.e., those who were members of the "us" class) finish their religious ritual. During the prayers (which together consumed about one-sixth of the ceremony), only a subset of Americans—theists—were being addressed. This would be as offensive and inappropriate as a significant section of the inauguration being addressed only to white Americans. There should no white-only part of the inauguration. Likewise, there should be no theist-only part. Every part of the inauguration should be for all Americans.

I was also offended by the phrase "so help me God." It is offensive that the current government, unlike the authors of the Constitution, who included no reference to a deity in the presidential oath of office, deems the president incapable of fulfilling his duties without supernatural aid. It is offensive that future presidents will be pressured to continue repeating this phrase; the first president who does not use those words will certainly be demonized as a nonbeliever. No one taking a government oath should have to fear a backlash for refusing to recite a ceremonial religious test.

My 4½-year-old twins watched the 2009 inauguration on television, and I expect that they will watch the 2013 inauguration. Hearing the clergy-led prayers and the "so help me God" phrase in 2013 (when they will be 8½) may lead them to wonder why the government is promoting theism when they are not theists, their parents are not theists, and their parents do not teach, encourage, or endorse theism or religious beliefs of any kind. They, too, may feel excluded and insulted. It is and will continue to be offensive to me that what I teach my children about a private matter (religion) will be contradicted by my government, which harms my parental rights and freedom of conscience.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 17, 2009.

I, Lawrence William Beat, declare as follows:

I am a citizen of the United States and a resident of the State of Florida.

I am a member and financial supporter of the following organizations: American Atheists, American Humanist Association, Americans United for the Separation of Church and State, Atheist Alliance International, Council for Secular Humanism and Freedom From Religion Foundation.

I consider myself a Secular Humanist and an Atheist. I am also a veteran who spent the best 20 years of my life defending the Constitution as a sergeant in the United States Air Force. Despite the popular and disrespectful canard, there are indeed many Atheists in our American foxholes!

I have watched every inauguration on television at my home since president Reagan: 1981, 1985, 1989, 1993, 1997, 2001 and 2005.

I also watched the 2009 inauguration of Barack Obama live on television at work, and for the next few days, watched all the video clip coverage of the inauguration on the various cable television news programs at my home.

As I watched this inauguration, I was very impressed, especially by the inclusion of classical music and the president's inclusion of non-believers in the list of America's beliefs. However, all the prayers made me feel excluded from the political process and a second-class citizen. But, when Chief Justice Roberts asked the president to say, "So help me God," I felt threatened and sick to my stomach. Polls consistently show that Atheists are the most despised people in America. With both the Chief Justice and the new president calling on a mythical being for guidance, the threat to my worldview is clearly justified.

Being 57 years old, I expect to witness 6 or more future inaugurations during my lifetime. I am very much looking forward to a completely secular inauguration, devoid of all divisive sectarian rituals and endorsements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of February 2009.



Lawrence W. Beat, USAF, Retired
177 Marcia Drive
PO Box 232
Mary Esther, Florida 32569

I, _____ declare as follows:

I am a citizen of the United States and a resident of the State of Illinois.

I consider myself a Secularist.

I watched the 2009 inauguration of Barack Obama from my computer at work, using the Facebook/CNN live feed. I have also watched the last three inaugurations: (2) Mr. Bush, (1) Mr. Clinton.

As I watched this inauguration, I was appalled at the reckless disrespect for the separation of Church and State. National prayer segregates any American who doesn't believe in such things. When the words, "so help me God," were stated in the oath, many other commenters on the Facebook feed mentioned "separation of Church and State?" I know I am not alone here. I love this country, and I have the upmost respect for the messages of our fore fathers. The "so help me God" statement is not in the constitution and should not be frivolously added. There was a well crafted three branch system of government made to keep individuals from adding and subtracting what ever they want to the Constitution, and a failure to keep this check and balance system is a failure to the American people.

I felt a temporary state of disconnection when these religious statements and prayers were made during the inauguration, and I suppose many Hindus, Buddhist, Muslims, and non-believers who call themselves citizens of this great nation felt disconnected as well.

Being 27 years old, I expect to witness 15+ future inaugurations during my lifetime.

I have three children who are under the age of 18 and will be under 18 for the next inauguration. They watched the inauguration of Barack Obama live at their school and at home with my wife respectfully. In my household, we teach respect for all types of people. We teach them morals and values without religion as my mother and father did for me. While watching the inauguration, my daughter felt the same disconnect during the religious speeches that I felt. I do not wish for my children to feel separated from "mainstream" America. I hope they too will share the love and admiration for our country, and continue community involvement as my wife and I have. But this "Christian only" segregation of religion in our politics and government will hinder their future allegiance to this country and I wish to ask the government to finally put a halt to the desecration of the ideals of our forefathers and keep the separation of church and state.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2009.

I, James H. Berry, declare as follows:

I am a citizen of the United States and a resident of the State of Texas.

I am a member of the ACLU; American Atheists, Inc.; American Humanist Association; Americans United for Separation of Church and State; Freedom From Religion Foundation; National Center For Science Education; Texas Freedom Network; and The Interfaith Alliance .

I consider myself to be an atheist.

I watched the 2009 inauguration of President Barack Obama live on television at an inauguration party held in Webster Texas.

As I watched this inauguration, I was offended to see all of the religious behaviors that occurred during that inauguration ceremony. The Christian prayers before and after the ceremony, and the insertion of the words, "so help me God," in the presidential oath in this non-religious event ruined, for me, what otherwise would have been a grand event. As a member of Americans United for Separation of Church and State, I deplore the insertion of religious rites into what should have been a secular event.

Being sixty-seven-years old, I expect to witness five future inaugurations during my lifetime, and hope not to have to witness another one imbued with religious pandering.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 17, 2009.



**James H. Berry
1611 Bernard Way
Houston, TX 77058-2266
281-286-8092
jhberry@netzero.net**

I, _____, declare as follows:

- 1. I am a citizen of the United States of America and a resident of the state of Colorado.**
- 2. I do not currently hold any beliefs in divine beings and am not currently a member of any group that holds such beliefs.**
- 3. I considered traveling to Washington DC to attend the inauguration of Barack Obama as President of the United State. I spent several hundred hours working for Obama's election. I chose not to attend because of the expected religious content of the ceremony. I have, for several years, found myself unable to attend many otherwise secular government events because of similar religious content.**
- 4. I watched the TV coverage of the Obama inauguration along with my 9 year old daughter, who is also a US citizen. I felt it was important to watch the event even though it would be religiously offensive. I long ago resigned myself to being a second-class citizen because of my reject of government sponsored and endorsed religion.**
- 5. My daughter, age 9, does not yet share my resignation. She reacted to the various prayers and the "so help me god" line in a very emotional manner. She expressed disgust and disappointment at the inappropriate content. I know that exposure to this content will reduce her inclination to feel a patriotic sense of association or "belonging" to the United States of America. I feel that it is very unfortunate that she will not experience these emotions.**

I declare under penalty of perjury that the foregoing is true and correct

Executed on February 20, 2009

I, Al Blazo, declare as follows:

I am a citizen of the United States and a resident of the State of Ohio.

I am a member of the Freedom From Religion Foundation, The Center for Inquiry and Americans United for Separation of Church and State.

I consider myself an atheist.

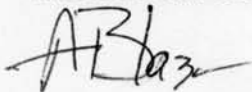
I have watched the inaugurations of 1989, 1993, 2005 and 2009 on television at my home.

As I watched this inauguration, I cringed with disgust as I witnessed this special secular event again being poisoned with sectarian religious nonsense.

Being 60 years old, I expect to witness no future inaugurations during my lifetime.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 16, 2009.

A handwritten signature in black ink, appearing to read 'Al Blazo', with a stylized flourish at the end.

Al Blazo
1830 Price Road
Youngstown, OH 44509

To Whom It May Concern:

I, _____, declare as follows:

I am a citizen of the United States and a resident of the State of Virginia.

I am a member of American Atheists, Freedom From Religion Foundation and the ACLU .

I consider myself an atheist.

I have watched the inaugurations of 1989, 1993, and 2005 on television at my home, and I participated the inauguration of 1981 in person in Washington, DC as a member of the U.S. Army, 3rd Infantry, Old Guard Fife and Drum Corps.

I watched the 2009 inauguration of Barack Obama live on television at my work.

As I watched this inauguration, I sat in silent anger at the religiousness of some of the speakers. I strongly objected to the insinuation that all Americans accept the existence of a god and wished religion would play no part in the workings of our government. I object to the new president being asked to swear to an imaginary being in order to take office.

Being 46 years old, I expect to witness seven future inaugurations during my lifetime.

I have 15 year old daughter who also witnessed the inauguration this year and I strongly object to the message to her from her own government that only those who believe in a god are true citizens.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 16, 2009.

I, _____, declare as follows:

I am a citizen of the United States and a resident of the State of Wisconsin.

I am a member of Freedom From Religion Foundation.

I consider myself an atheist.

I watched the 2009 inauguration of Barack Obama live on television at my school.

As I watched the inauguration, my shock even surprised myself as they conducted religious acts. I found it rather offensive and I am sure anyone from any other religion felt the same way.

Being 12 years old, I expect to witness 10 or more future inaugurations during my lifetime.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2009.

I, _____, declare as follows:

I am a citizen of the United States and a resident of the State of Wisconsin.

I am a member of Freedom From Religion Foundation.

I consider myself an atheist.

I watched the 2009 inauguration of Barack Obama live on television at my school.

As I watched the inauguration, my stomach did a somersault with disgust for how much our country was violating the constitution, the most important document in our country. The way the First Amendment and Constitution are being violated here is outrageous. I feel like everything I have learned about the founding fathers' beliefs about freedom of religion is being violated. Our country stands for what is in the first amendment and it made me upset and angry that we should even need to question whether or not "So help me God" should be added to the oath of office—it's not even in the constitution! It is hard for me to believe that this country, where all my life I have been told that there is no favoring of specific religions, is defying one of our most important morals! I feel that the most important leaders of our country are discriminating against me as an atheist. It is not a good feeling.

Being 15 years old, I expect to witness 10 or more future inaugurations during my lifetime.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2009.

I, _____, declare as follows:

I am a citizen of the United States and a resident of the State of Wisconsin.

I am a member of Freedom From Religion Foundation.

I consider myself an atheist.

I have watched the inaugurations of 1989 and 1993 on television at my home.

I watched the 2009 inauguration of Barack Obama live on television at my home.

As I watched this inauguration, I was sad and disappointed to hear the oath and prayers. It made me very depressed to witness the constitution being violated so evidently.

Being 40 years old, I expect to witness 6 or more future inaugurations during my lifetime.

My minor children saw the inauguration and I expect they will view the next inauguration, and I believe their viewing the "so help me God" and clergy-led prayer will adversely affect them. I fear they may not have trust in the government because the constitution is being violated and that they may feel they are not truly "Americans" because they are atheists.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2009.

I, Jean Cassels declare as follows:

I am a citizen of the United States and a resident of the State of Louisiana.

I am a member of New Orleans Secular Humanist Association.

I consider myself a humanist.

I have watched every inauguration since 1960 on television in my home, and I watched the inauguration of 2001, 2005.

I watched the 2009 inauguration of Barack Obama live on television at my home, and later on the Internet.

As I watched this inauguration, I was overjoyed with who our new president is... but felt left out of the moment when Mr. Obama was asked to finish the oath with "so help me God". With all the prayers following it seemed they weren't speaking to me. This was a ceremony that gave no reference to how I feel. This is my new president and my country but the ceremony didn't feel like it was for me.

Being 67 years old, I hope to witness 5 more inaugurations during my lifetime.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 15, 2009.



Jean Cassels
7205 Broad Place
New Orleans LA 70125

I, _____ declare as follows:

1. I am a citizen of the United States and a resident of the State of Kansas, currently residing in the _____ due to military service.

2. I am a member of the Military Association of Atheists and Freethinkers and the Military Religious Freedom Foundation.

3. I consider myself a naturalist and an atheist.

4. I watched the 2009 inauguration of Barack Obama live on television at my home.

5. As I watched this inauguration, I was deeply offended by the sectarian prayers delivered at the invocation and benediction. I was also deeply disturbed by the deliberate alterations to the constitutionally prescribed Oath of Office by Chief Justice John Roberts.

6. Being 24 years old, I expect to witness 15 future inaugurations during my lifetime.

7. I also have a young child who will be four years old at the next inauguration, and I am deeply concerned about his right to witness the democratic process without exposure to divisive religious exercises.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 2009.

1. I, _____, declare the following:
2. I am a citizen of the United States, a resident of the State of Washington, a member of the American Humanist Association, the Humanists of Washington and the Humanists of North Puget Sound. I take an active interest in U.S. presidential elections.
3. I watched the inauguration of President Obama at home by myself (I was going to keep my 17 year old son home from high school to watch with me, but he told me his class was scheduled to watch it together in class). I watched with heavily mixed emotions. I was proud that our country had elected a person of African-American descent, but I was angry that once again, I was marginalized by the proceedings because the people who organized this governmental event chose to include their own religious rituals and endorsements.
4. It was the height of irony that President Obama referred to the United States as a "nation of Christians and Muslims, Jews, Hindus, and nonbelievers," since he chose invite a Christian minister to open the proceedings with a prayer to "Jesus," thereby excluding the Muslims, Jews, Hindus and non-believers.
5. I am glad I live in a country where people can choose to believe in whatever religions they want and to be free to not believe in any if they choose that. But I long for the day when my government will live up to its cherished first amendment by staying out of the business of religion. It can only do that by refusing to endorse any one flavor of religion over another or over non-religion.
6. I have watched the presidential inaugurations of Richard Nixon (1972), Jimmy Carter, Ronald Reagan (both), George H.W. Bush, Bill Clinton (both), George W. Bush (both) and now, Barack Obama. I am 57 years old and will continue to watch presidential inaugurations as long as I am able, which is likely another 25 years, or 6 more presidents.

Feb 18, 2009

I,

1. I am a citizen of the United States and a resident of the state of California.
2. I am a member of Americans United, American Humanist Association, Freedom From Religion Foundation and Atheists and Other Freethinkers of Sacramento.
3. I consider myself to be a Humanist. I do not know if there is a supreme being, but I do not base my life or decisions on such notions, rather allowing logic, reason to guide my conscience.
4. I have watched every Presidential Inauguration ceremony since Nixon was sworn in 1972. I was 12 years old at the time.
5. I watched the 2009 Inauguration of President Obama from my home in Rio Linda. I watched the festivities most of the day both live and then later on CNN.
6. As I watched the Inauguration, and listened to the new President take the oath of office, I could not help but feel personally offended at Chief Justice's John Roberts use of the phrase "so help you god" when swearing in our new President. As a non-believer, I felt I was not being included as an American citizen at that moment and feel that in the matter of a government ceremony, this phrase is not appropriate. I was also subjected to various prayers and other Christian religious symbolism throughout the day's proceedings which I also feel is inappropriate when viewed by millions of people who may be of different faiths or no faith at all. As Americans, should be able to watch this historic event with pride and reverence without all the sanctimonious rhetoric that always accompanies it.
7. Being 48 years old, I expect that I will witness many more Presidential Inauguration ceremonies. I would like to witness those future ceremonies as secular and all inclusive. America is defined by it's diversity and in order to preserve the freedoms so carefully laid out by our forefathers and so fiercely fought by American soldiers of all backgrounds, it's important to remember that our Constitution is a secular document and that the President is sworn first and foremost, to uphold the principles within it and respect the rights of every American citizen.
8. I am the mother of 3 daughters, two are presently 13 and 8 years of age. When the next Inauguration comes around in 2013, I do not want to have to explain to them again why the incoming President swears to god when I have taught them that strong values, integrity and character come from inside themselves. I do not want them thinking that our President needs the help of a mythological being to make wise decisions that affect our nation. If the President has personal religious beliefs, then let him/her keep them personal. I do not want my children believing that they are not "true Americans" if they do not subject themselves to religious doctrine. I want them to know that the President stands for all Americans regardless of what they do or do not believe.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted on 2/18/2009

I, Gail M. Crow, declare as follows:

I am a citizen of the United States and a resident of the State of Pennsylvania.

I am a member of The Pennsylvania Nonbelievers.

I consider myself an atheist/humanist who has respect for those who choose to worship but am quite dismayed when I hear such matters intruding in the ceremonies and workings of my government.

I have watched inaugurations as often as possible since my first presidential vote for Jimmy Carter and find it so unfortunate to cringe as each mention of the bible and god mounts one on top of the other as the ceremony proceeds.

I watched the 2009 inauguration of Barack Obama live on television at the airport in Nassau, Bahama. I had rushed to get through security and immigration to make it on time to see the entire ceremony. It was a very exciting occasion. Many Bahamians were also crowded around the television in their uniforms. They would clap and cheer actually before we Americans did. I felt very proud.

As I watched this inauguration, though, I did feel the usual discomfort I always undergo when the expected references to the bible are made and during prayers which are called fancy names like invocation. Since I was in a public place instead of my private livingroom (which is where I have watched inaugurations in prior years) I decided to look around and see if there were visible reactions from others during prayers etc. but didn't see any visible signs of others shouldering the levels of discomfort I was feeling.

Being 53 years old, I hope to witness several future inaugurations during my lifetime. It would truly be more glorious to see them as ceremonies of meaning rather than involving obligations to bizarre procedures grandfathered from the past which exclude while having questionable value.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 16, 2009.



Gail M. Crow
1633 Filbert Street
York, PA. 17404

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL NEWDOW, et al.,

Plaintiffs,

v.

HON. JOHN ROBERTS, JR., et al.,

Defendants.

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) Civil Action No. 08-2248 (RBW)
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**FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS' RESPONSE TO THE
COURT'S SHOW-CAUSE ORDER REGARDING
STANDING AND ISSUE PRECLUSION**

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Counsel for the Federal Defendants

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McCreary County v. ACLU, 545 U.S. 844 (2005); Van Orden v. Perry, 545 U.S. 677 (2005); Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989); Lynch v. Donnelly, 465 U.S. 668 (1984)). None of these cases discusses standing. As for “the five Supreme Court cases involving government-endorsed prayer” that plaintiffs cite, Response at 7, Dkt. 51 at 13, three of the five similarly do not address standing. See Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000); Wallace v. Jaffree, 472 U.S. 38 (1985); Engel v. Vitale, 370 U.S. 421 (1962). The fourth, Marsh v. Chambers, stated in a footnote that the plaintiff, who was a member of the Nebraska legislature and a taxpayer, had standing to challenge prayers in the Nebraska legislature. 463 U.S. 783, 786 n.4 (1983). And in the fifth, Lee v. Weisman, the Court merely noted in passing that there was a “live and justiciable controversy” as the plaintiff student had standing to challenge prayers at her own graduation. 505 U.S. 577, 584 (1992). As the D.C. Circuit has recently reiterated in rejecting reliance on six of the nine cases plaintiffs cite (including Marsh and Lee), “[i]t is a well-established rule that cases in which jurisdiction is assumed sub silentio are not binding for the proposition that jurisdiction exists.” In re Navy Chaplaincy, 534 F.3d at 764 (quoting John Doe, Inc. v. DEA, 484 F.3d 561, 569 n.5 (D.C. Cir. 2007) (internal quotation marks omitted)).

2. Plaintiffs’ Injury is Not “Actual or Imminent”; it is “Conjectural or Hypothetical.”

An indispensable element of standing is an “actual or imminent injury.” Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Plaintiffs argue that they have suffered an “actual” injury (presumably on January 20, 2009), and thus, “imminence is not required.” See Response at 8, Dkt. 51 at 14. Even if plaintiffs had suffered a “concrete and particularized” injury — as discussed above, they have not — any such “actual” injury arising from the 2009

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL NEWDOW, et al.,

Plaintiffs,

v.

HON. JOHN ROBERTS, JR.,
CHIEF JUSTICE OF THE U.S. SUPREME
COURT, et al.,

Defendants.

Civil Action No. 08-2248 (RBW)

ORDER

On December 30, 2008, the plaintiffs filed this lawsuit seeking to enjoin defendant John Roberts, Jr., Chief Justice of the United States Supreme Court, from uttering the words "so help me God" as part of the presidential oath of office, which he delivered to the President-Elect during the Presidential Inaugural ceremony on January 20, 2009, as well as to enjoin the remaining defendants from permitting members of the clergy from presenting an invocation and benediction as part of that ceremony, and to declare that these acts violate the Establishment and Free Exercise Clauses of the First Amendment and 42 U.S.C. § 2000bb-1 (2008). The Court denied the plaintiffs' motion for a preliminary injunction on January 15, 2009, after holding a hearing at which both sides presented oral arguments. On January 16, 2009, based upon the parties' written submissions and representations at the hearing on the motion, the Court issued an order requiring the plaintiffs to show cause why this case should not be dismissed based on the plaintiffs' lack of standing and issue preclusion as to plaintiff Michael Newdow. On February 23, 2009, the plaintiffs submitted a written response to the Court's order, see Plaintiffs' Response to Order to Show Cause #1, and all defendants, the federal defendants, the Presidential Inaugural

Committee ("PIC"), former PIC Executive Director Emmett Beliveau, Reverend Richard D. Warren and Reverend Joseph E. Lowery, filed responses to the plaintiffs' submission on March 11, 2009, see Response to Plaintiffs' Response to Order to Show Cause; Opposition of Defendants, Rev. Richard D. Warren and Rev. Joseph E. Lowery, to Plaintiffs' Response to Order to Show Cause; Federal Defendants' Response to Plaintiffs' Response to the Court's Show-Cause Order Regarding Standing and Issue Preclusion.

Upon review of the parties' written submissions, the Court finds that the plaintiffs have failed to demonstrate that an injunction against any or all of the defendants could redress the harm alleged suffered by plaintiffs.¹ The Court also finds that although plaintiff Newdow was not precluded from litigating the issue of whether he has standing to challenge the inclusion of the words "so help me God" as part of the presidential oath of office, he is precluded from relitigating the issue of whether he has standing to challenge the invocation and benediction that were presented at the 2009 Presidential Inauguration based upon his participation in prior litigation, both before this Court and appealed to the United States Appeals Court for the District of Columbia Circuit, and before the United States District Court for the Eastern District of California and appealed to the United States Court of Appeals for the Ninth Circuit, resulting in findings that he has no standing to challenge clergy administered prayer at the Presidential Inauguration. Moreover, the Court finds that none of the plaintiffs in this case have standing to

¹ The Court notes that the plaintiffs filed a motion on March 10, 2009, seeking to amend their complaint to add an additional 230 plaintiffs, including forty children, and several additional named and unnamed defendants, as well as include allegations that the 2013 and 2017 Inaugural ceremonies might improperly incorporate religious references. See generally Plaintiffs' Motion for Leave to Submit First Amended Complaint; Plaintiffs' Assented-To Motion to Submit Child-Related Addresses (in the First Amended Complaint) Under Seal. Although the Court takes no position on that motion, even were it to grant the plaintiffs leave to amend their complaint, the amended complaint would not confer standing upon the plaintiffs because the additional plaintiffs are similarly situated to the current plaintiffs, and the speculative nature about what will occur at the next two Inaugural ceremonies lacks any persuasive value.

challenge the defendants' actions as pled in the complaint because they have identified no concrete and particularized injury. And, even if the plaintiffs could establish such an injury, they have failed to demonstrate how the harm they allege is redressable by the relief they seek, or that the Court has any legal authority to award the relief requested. Therefore, the Court finds that the plaintiffs lack standing to bring this action and that it must dismiss this case.

Accordingly, it is hereby

ORDERED that plaintiff Newdow is precluded from challenging the issue of whether he has standing to contest the utterance of prayer at the Presidential Inaugural ceremony based on prior judicial determinations that he lacks standing. It is further

ORDERED that this case is **DISMISSED** based on the plaintiffs' lack of standing to pursue any of the relief they are requesting.

SO ORDERED this 12th day of March, 2009.

_____/s/_____
REGGIE B. WALTON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL NEWDOW, *et al.*,
Plaintiffs,

v.

HON. JOHN ROBERTS, JR., *et al.*,
Defendants.

Civil Action #1:08-cv-02248-RBW

PLAINTIFFS' NOTICE OF APPEAL

Notice is hereby given this 9th day of April, 2009, that Plaintiffs in the above named case¹ hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from an Order:

- (1) Precluding plaintiff Newdow from challenging the issue of whether he has standing to contest the utterance of prayer at the Presidential Inaugural ceremony, and
- (2) Finding that all Plaintiffs lack standing to pursue any of the relief they are requesting,

entered in this action on the 12th day of March, 2009.

RECEIVED

See Appendix for list of the 255 individual and 19 organizational plaintiffs participating in this appeal.

APR - 9 2009

Clerk, U.S. District and
Bankruptcy Courts

000147

Respectfully submitted,

MICHAEL NEWDOW
In pro per and pro hac vice
PO BOX 233345
SACRAMENTO, CA 95823
(916) 427-6669
NewdowLaw@gmail.com



ROBERT V. RITTER
DC BAR #414030
AHA – 1777 T STREET, NW
WASHINGTON, DC 20009
(202) 238-9088
BRitter@americanhumanist.org

(Pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure, a notice of appeal in a civil action must be filed within 30 days after the date of entry of judgment or 60 days if the United States or officer or agency is a party.)