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November 3, 2009

Office of the Clerk
U.S. Court of Appeals
333 Constitution Avenue, NW
Washington, DC 20001

Re: *Newdow v. Roberts*, No. 09-5126

Dear Sir or Madam:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(f), Plaintiffs-Appellants submit this supplemental authority regarding the Summary Order recently issued in *Peck v. Baldwinsville Central School District*, No. 08-5666-cv (2nd Cir. October 26, 2009).¹

The *Peck* Order states, “‘A plaintiff seeking injunctive or declaratory relief cannot rely on past injury to satisfy the injury requirement but must show likelihood that he or she will be injured in the future.’ To do so, the plaintiff ‘must demonstrate *both* a likelihood of future harm *and* the existence of an official policy or its equivalent.’” Slip op. at 3-4 (citations omitted) (emphases in original).

¹ The Summary Order is available on a “publicly accessible electronic database.” Fed. R. App. P. 32.1. Specifically, it is available at the Second Circuit’s public website at <http://www.ca2.uscourts.gov>. The exact web address for the *Peck* Order is: http://www.ca2.uscourts.gov/decisions/isysquery/773ceba8-9a8e-43d5-a805-77cbfb5b0397/51/doc/08-5666_so.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/773ceba8-9a8e-43d5-a805-77cbfb5b0397/51/hilite/.

Plaintiffs in the instant case have precisely done this. With (i) the challenged (Christian) Monotheistic religious espousals now embraced by “‘history and tradition,’” Federal Brief at 43 & 51, (ii) those espousals being used in nineteen consecutive public inaugurations over the past seventy-plus years, Reply Brief at 7 and 8, and (iii) over 200 declarations asserting that Plaintiffs will be viewing future inaugurals, *id.* at 6, the likelihood of future harm (the same as that alleged for the 2009 inaugural ceremony) is overwhelming.

That the use of these religious espousals is “official policy or its equivalent” is not only argued by Plaintiffs, AOB at 10, 24 and 38, but asserted by Defendants, too. Federal Brief at 39, 43, 50. Additionally, Defendants’ *amicus* relies strongly on this claim: “[G]ubernatorial and other inaugurations across the country likewise include both clergy-led prayer and oaths invoking God, pursuant to state laws and customs.” Document 21-3 at 2.

The criteria set forth in the Summary Order in *Peck* corroborate that Plaintiffs here meet the requirements for seeking injunctive or declaratory relief.

Respectfully submitted,

/s/ - Michael Newdow

In pro per and Plaintiff’s Counsel

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

CASE NO. 09-5126

Newdow v. Roberts

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2009, a true and correct copy of Plaintiffs-Respondents' supplemental authority regarding the Summary Order issued in *Peck v. Baldwinsville Central School District*, No. 08-5666-cv (2nd Cir. October 26, 2009) was filed with the District of Columbia Circuit's CM/ECF filing system. Accordingly, copies will assumedly be delivered by e-mail to the following individuals:

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/s/ - Michael Newdow

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