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January 6, 2010

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 *Farrakhan v. Gregoire*, ___ F.3d ___, No. 06-35669 (9th Cir. January 5, 2010).

Farrakhan is a civil rights case similar to the case at bar, inasmuch as a disenfranchised minority (Washington state citizens of color who are convicted felons) sought equality under the law. It is cited here as supplemental authority for the issue underlying this appeal – i.e., whether or not Plaintiffs have standing.

Looking at the Supreme Court's direction in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), the *Farrakhan* panel determined that:

[*Lujan*'s] test is easily satisfied here. Plaintiffs have suffered an injury in fact that is concrete, particularized, and actual: the have been denied the right to vote. That injury is directly traceable to the challenged action: Washington's felon disenfranchisement law. And a decision invalidating Washington's felon disenfranchisement provision would redress Plaintiffs' injury: it would restore their right to vote.

Slip op. at 127-28. In the instant case, Plaintiffs have been confronted with unwelcome exposures to governmental Monotheistic religious espousals, which are directly traceable to the actions of Defendants. Injunctive and/or declaratory relief would restore their right to observe the inauguration of the President without such unwelcome exposures. AOB 15-44. Accordingly, they have standing.

Farrakhan is also directly on point in regard to the distinction between standing as opposed to merits questions. AOB 16, Reply Brief 1, 2, 20, 24-25:

The State attempts to import a merits question – that is, a question regarding whether plaintiffs can prove a violation – into the standing inquiry. This is incorrect. See *Warth v. Seldin*, 422 U.S. 490, 500 (1975) (“[S]tanding in no way depends on the merits of the plaintiff’s contention that particular conduct is illegal.”) Standing is a threshold question, the purpose of which is to ensure that there is an actual “case or controversy” and that the plaintiff is the correct party to bring suit. See *id.* at 498-99. Whether Plaintiffs can succeed on their VRA claim is irrelevant to the question whether they are entitled to bring that claim in the first place.

Slip op. at 128. The instant appeal is from a District Court ruling that only decided (erroneously) that Plaintiffs lack standing to challenge Defendants’ Monotheistic acts. Plaintiffs have not yet had a full opportunity to address the merits questions. “Both precedence and prudence ... counsel a remand to the district court so that a ‘full understanding of the issues’ may be attained.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 305 (D.C. Cir. 2006). Reply Brief at 24-25.

Respectfully submitted,

/s/ - Michael Newdow

**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 6th day of January 2010, a true and correct copy of Plaintiffs-Respondents' supplemental authority regarding *Farrakhan v. Gregoire*, ___ F.3d ___, No. 06-35669 (9th Cir. January 5, 2010) 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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