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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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12 **Civil Action No. 2:05-CV-00017-LKK-DAD**

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15 THE REV. DR. MICHAEL A. NEWDOW, et al;

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17 Plaintiffs,

18 v.

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20 THE CONGRESS OF THE UNITED STATES OF AMERICA, et al;

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22 Defendants.

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26 PLAINTIFFS' REPLY TO RESPONSES TO MOTION FOR PROTECTIVE ORDER

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29
30 DATE: MARCH 7, 2005
31 TIME: 10:00 AM
32 JUDGE: HON. LAWRENCE K. KARLTON
33 COURTROOM: #4
34

35 Plaintiffs appreciate Defendants' concerns regarding the proposed Protective Order, as
36 well as the thoughtful and considerate manner in which those concerns have been expressed.
37 If not already clear, it should be noted that the Proposed Protective Order has been requested
38 solely for the protection of the individuals involved. It is not in any manner intended to
39 impede or interfere with Defendants' rights to obtain any necessary information.

1 In regard to the need to ascertain custodial status of the parents – or other facts related to
2 standing – Plaintiffs agree that the Proposed Protective Order (to the extent it might restrict
3 Defendants in determining the necessary information) should be expanded. A modification to
4 deal with this issue has been made in the Revised Proposed Protective Order.

5 Recognizing that additional issues may arise related to the pseudonymous filings, an
6 “open-ended” clause has been inserted into the Revised Proposed Protective Order as well.
7 This reflects the belief that counsel will likely be able to agree to terms for most (if not all)
8 such matters without needing to involve the Court.

9 Plaintiffs thank counsel for the Federal Defendants for pointing out that the Proposed
10 Protective Order might actually result in unnecessary disclosures. A clause attempting to deal
11 with this possibility has also been inserted into the Revised Proposed Protective Order.

12 Plaintiffs believe that the declarations and other information provided in their
13 Memorandum suffice to demonstrate that the potential for harassment (and worse) is real and
14 warrants an appropriate Protective Order. Numerous additional affidavits can be provided if
15 the Court believes that is necessary.¹

16 Plaintiffs agree that the issues of anonymity as they pertain to discovery and similar
17 matters are not yet sufficiently developed to determine whether or not the Proposed Protective
18 Order would unfairly infringe upon Defendants’ rights. For this reason, a (likely unnecessary)
19 clause specifically noting that the Order may be revised has been included.

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21 Respectfully submitted,

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23 /s/ Michael Newdow

¹ Plaintiffs’ counsel is currently working in Texas, and thus has no access to those materials (located in his Sacramento office) at this time.

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15 THE REV. DR. MICHAEL A. NEWDOW, et al;

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17 Plaintiffs,

18 v.

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20 THE CONGRESS OF THE UNITED STATES OF AMERICA, et al;

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22 Defendants.

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27 **PLAINTIFFS' REVISED PROPOSED PROTECTIVE ORDER**
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31
32 DATE: MARCH 7, 2005
33 TIME: 10:00 AM
34 JUDGE: HON. LAWRENCE K. KARLTON
35 COURTROOM: #4
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39 On motion of the Plaintiffs and for good cause shown, the Court hereby ORDERS the
40 following:

1 The Plaintiffs herein shall be allowed to proceed in this cause with the use of pseudonyms
2 in place of their true identities. The pseudonyms being used are:

- 3 (1) Jan Doe and Pat Doe (Parents)
- 4 (2) DoeChild (a minor child)
- 5 (3) Jan Poe (a parent)
- 6 (4) PoeChild (a minor child)
- 7 (5) Jan Roe (a parent)
- 8 (6) RoeChild-1 and RoeChild-2 (minor children)
- 9

10 The parties shall utilize these pseudonyms for these Plaintiffs in all filings with the clerk
11 and the Court, and if any party for any reason deems it necessary to use the actual and true
12 name of any plaintiff in any filing with the clerk or the Court, such filing shall be made under
13 seal.

14 It is further ORDERED that the true identities of these Plaintiffs shall be disclosed to the
15 counsel for the Defendants, but that said identities shall not be disclosed further except as
16 necessary to ascertain the residency status, taxpayer status, custody/guardianship status or
17 school enrollment status of the Plaintiffs, or other matters upon which the parties can agree.
18 Any such disclosure beyond counsel for the Plaintiff shall be strictly limited to those
19 absolutely necessary to make those ascertainties.

20 Each person to whom the identity of the Plaintiffs is disclosed shall be informed that,
21 under penalty of contempt of this order, they are not to make any disclosure of such names. It
22 is recognized, however, that there may be occasions where informing the given person (that
23 the information is related to this case) may actually increase the chance of unnecessary
24 disclosure. If the parties agree beforehand, in writing, that this is the case, then such
25 information is not required.

26 When making disclosure, counsel for the Defendants shall provide each person to whom
27 such disclosure is made with a copy of this order.

1 It is further ORDERED that Plaintiffs shall not be required to be present in open court
2 hearings of this cause and that any and all testimony to be presented by such Plaintiffs may be
3 presented by deposition testimony. All such depositions, and affidavits and pleadings shall
4 refer to these Plaintiffs by their respective pseudonyms.

5 It is the intent of this ORDER to preserve the anonymity of the individual Plaintiffs to the
6 greatest extent possible while affording the parties adequate information to effectively address
7 the issues in this matter. Except where agreement between all parties has been reached , all
8 parties are directed to seek a determination from this Court as to any perceived ambiguity in
9 this ORDER before disclosing the true identity of any individual Plaintiff.

10 Upon Motion of any party, this ORDER may be revised as justice requires.

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12 Entered on this _____ day of _____, 2005

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1 Prepared for Entry:

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4 By: /s/ Michael Newdow

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1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

3
4 **CERTIFICATE OF SERVICE**

5
6 **Newdow v. U.S. Congress**
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8
9 I HEREBY CERTIFY that a true and correct copies of
10

11 (1) PLAINTIFFS' REPLY TO RESPONSES TO MOTION FOR PROTECTIVE
12 ORDER

13 (2) PLAINTIFFS' REVISED PROPOSED PROTECTIVE ORDER
14

15 were/will be e-mailed on this 22nd day of February, 2005, to:
16

17
18 United States Defendants:

19 Craig.Blackwell@usdoj.gov
20

21 State of California:

22 Jill.Bowers@doj.ca.gov
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24 School District Defendants:

25 MPott@pswdlaw.com

26 TCassidy@pswdlaw.com
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31 /s/ Michael Newdow
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