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. FINDINGS AND RECOMMENDATIONS

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Background and Summary

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, or at least sectarian prayers, at his

inauguration, and also seeks to enjoin the President, in his official capacity, from engaging in future "similar" acts. Newdow does not seek damages.

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

The President has now brought a motion for summary judgment arguing that the case should be dismissed in its entirety. Newdow has brought a cross-motion for summary judgment. Hearing was held on the motions on December 20, 2001. After full consideration of the issues, the court finds and recommends that the entire case should be dismissed for lack of jurisdiction. In the alternative, judgment should be entered on behalf of the President insofar as inaugural prayers in general are at issue; any attack on the content of the prayer should be dismissed for lack of standing.

Issues

The President again attacks Newdow's standing to bring this lawsuit. However, the court notes another threshold jurisdictional issue – that is, the inability of the courts to enjoin the President at all. The President also argues the case on the merits insofar as he claims that the prayers

at issue could not "establish" religion in violation of the First Amendment. However, because of the lack of jurisdiction to proceed, and in any event, Newdow's lack of standing to attack the content of inaugural prayer, the court will not reach the merits of the claimed First Amendment violation past what it has reached already.

Facts

The pertinent facts involved in this dispute are easily stated and are not in dispute.[1] On January 20, 2001, the Reverend Franklin Graham, in place of his father, delivered an invocation at the inauguration. The invocation is reprinted at Exhibit A to the Graham Declaration. In pertinent part the invocation sought the assistance of the "Lord" in the carrying out of Presidential and Cabinet functions. The prayer closed with the following request:

> 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.

Reverend Graham asserted that he had "total control" over the content of the invocation, although it is doubtful that he would have stated a religious premise at odds with the President's beliefs. In any event, who exercised control over the precise terminology is not ultimately pertinent to the inquiry. Newdow also makes reference to another clergymen's prayer–Reverend Caldwell– which similarly made reference to Jesus Christ. Opposition at 17; President's Exhibit B at 24-25.

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[1]The standards for summary judgment are well established and need not be set forth here especially in light of the fact that all concerned agree that only legal issues require adjudication here.

Discussion

A: The Court Lacks Jurisdiction to Enjoin the President

Newdow correctly sued President Bush in his official capacity, Complaint at 2, as a suit against President Bush, as an individual, would make no sense in the context of his allegations, i.e., that the government was "establishing" or sponsoring a religion when it permitted prayer at the inauguration. See in re Lindsey, 158 F.3d 1263, 1278-79 (D.C. Cir. 1998) (contrasting the President as an individual and as head of the Executive Branch of government.).[2] President Bush, acting as an individual, could not sponsor religion on behalf of the federal government. Moreover, suing President Bush in his official capacity solves one piece of the standing issue in that if the Office of the President is sued, the argument posed by the President that it is speculative to believe that he will be re-elected, falls by the wayside. It is not speculative to believe that the Office of President will continue indefinitely. Thus, the issue is squarely raised concerning whether the courts have the authority to enjoin the President as head of the Executive Branch.

> While injunctive relief against executive officials like the Secretary of Commerce is within the courts' power, see Youngstown Sheet & Tube Co. v. Sawyer, supra, the District Court's grant of injunctive relief against the President himself is extraordinary, and should have raised judicial eyebrows. We have left open the question whether the President might be subject to a judicial injunction requiring the performance of a purely "ministerial" duty, Mississippi v. Johnson, 4 Wall. 475, 498-499, 18 L.Ed. 437 (1867), and we have held that the President may be subject to a subpoena to provide information relevant to an ongoing criminal prosecution, United States v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974), but in general "*this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties.*" Mississippi v. Johnson, supra, 4 Wall., at 501. *At the threshold, the District Court should have evaluated whether injunctive relief against the President was available*, and, if not, whether appellees' injuries were nonetheless redressable.

Franklin v. Massachusetts, 505 U.S. 788, 802-03, 112 S.Ct. 2767, 2776-77 (1992) (emphasis

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[2]Thus, the President's counsel has not disputed venue or raised personal jurisdiction questions which would be apparent if the President, in his individual capacity, were being sued. Nor does the court face the thorny problems involved when one attempts to sue a sitting president in his individual capacity, including the possibility that the entire action might be stayed pending completion of the President's term in office. See Clinton v. Jones, 520 U.S. 681, 117 S.Ct. 1636 (1997).

added).[3] [4]

See also Clinton v. Jones, 520 U.S. 681, 718-19, 117 S.Ct. 1636, 1656 (1997) (Breyer, J. concurring) (referencing the plurality and concurring opinion in Franklin, and "the 'apparently unbroken historical tradition...implicit in the separation of powers' that a President may not be ordered by the Judiciary to perform particular Executive acts"); Swan v. Clinton, 100 F.3d 973, 977 (D.C. Cir. 1996) (reiterating that the courts have no jurisdiction to enjoin the President in his official acts, nor do they have the power to issue declaratory relief against the President); Made in the U.S.A. Foundation v. United States, 242 F.3d 1300, 1310 (n.24) (11th Cir. 2001) (recognizing the same principles).

The court's point was also instructively brought home by Justice Scalia in dissent on a political question issue unrelated to the present one, when he used as an example: "It seems to me clear that courts would not entertain, ... an action for backpay by a dismissed Secretary of State claiming that the reason he lost his Government job was that the President did not like his religious views– surely a colorable violation of the First Amendment." Webster v. Doe, 486 U.S. 592, 613-14, 108 S.Ct. 2047, 2059 (1988) (Scalia, J. dissenting). The relevant point to be drawn here is that certain grievances are off the judicial table no matter how colorable the First Amendment violation may be.

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[3] Although the President's counsel made a somewhat similar argument in her merits analysis, the Supreme Court recognizes the issue of enjoining the President as a threshold jurisdictional issue, even separate from a standing issue. Because the issue of enjoining the President goes to the authority of the court to act, the issue may be raised sua sponte by the undersigned.

[4] The Supreme Court left open the possibility that the President could be enjoined for some ministerial act; however, no one herein contends that the decision to utilize prayer at the inauguration, or the decision on how to frame the prayer, was ministerial. Moreover, no contention has been expressed that the Presidential inauguration, including its associated ceremonies, is not part of the official duties of the President.

Newdow essentially conceded as much at hearing when he agreed with the court that the President himself could say what he wished at his inauguration, or that members of Congress could employ whatever religious reference on the floors of Congress that they desired without any court being able to control that speech. Newdow's belief, however, that non-governmental clergymen who make specific Christian references acting as proxies for the President present a different situation, is erroneous. To have any applicability here, where the President has been sued as the only defendant, Newdow must assert that the President is actually controlling what is said at his inauguration– not that the participants are, as the President's counsel has posited through the Graham declaration, independent of all control in the substance of their invocations. The point here is that even if Newdow attempted to contest the President's "independent speaker" fact (which he has not), and prevailed on the control issue, the courts would not have the authority to enjoin the controlling President.[5]

In sum, the Judiciary's star shines brightly when the Judiciary recognizes its limitations in a government founded upon separation of powers and mutual respect of its different branches. In a government where the several branches respect the rights of each other to function free of interference in their inherent functions, the Judiciary will not attempt to dictate what the President may, or may not, say at his inauguration, or what selected persons may say on his behalf. There is nothing extraordinary from a Constitutional perspective about a Presidential inauguration

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[5]If indeed, the President had no express or implicit control over his own inauguration ceremonies, a doubtful proposition, the President's cited case of Adler v. Duval County School Board, 250 F.3d 1330 (11th Cir. 2001) (en banc) might be instructive. In Adler, the court found that an elected student's speech, not controlled by the school authorities, could not give rise to a First Amendment violation. However, rather than start the discovery battles over whether the President exercised any control over his inauguration, and the extent to which he did so, the court believes the more correct way to resolve the instant suit is on the point of law expressed above. Moreover, Adler conflicts with the Ninth Circuit decision in Cole v. Oroville Union High School Dist., 228 F.3d 1092, 1102-03 (9th Cir. 2000) (holding that the school officials were in control over an elected student's graduation invocation speech since the school district supplied the means by which the speech could be made.

which would preclude application of the general rule that the President cannot be enjoined by the courts.[6] On the contrary, the fact that the inauguration of the President, and what may be said by the President or his speakers, is wholly integral to the Executive Branch, and the Executive Branch alone, strongly counsel against judicial interference. On this point alone, the President is entitled to have the entire case dismissed on jurisdictional grounds.[7]

B. Newdow Lacks Standing to Argue for a Specific Tailoring of Presidential Prayer Because There is No Relief that the Court Could Fashion

The parties correctly apprehend the essential standards for standing, but the court does not agree with all aspects of the parties' application of those standards.

> "[B]efore reaching a decision on the merits, we [are required to] address the standing issue to determine if we have jurisdiction." Nat'l Wildlife Fed'n v. Adams, 629 F.2d 587, 593 n. 11 (9th Cir.1980). "[T]he standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify the exercise of the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 498- 99, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (quoting Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)). There are three requirements for standing: (1) "a plaintiff must have suffered an 'injury in fact'--an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical;' " (2) "there must be a causal connection between the injury and the conduct complained of--the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court;' " and (3) "it must be 'likely' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' "

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[6]For example, this is not a case where the President is attempting to baldly usurp the functions of the Congress or the Judiciary, e.g., declare war, or avoid proper subpoenas, and the Judiciary must step in to authoritatively interpret the Constitution on the point.

[7]The court is not, of course, finding that the actions of the Executive Branch in executing the laws of this Nation are free from judicial scrutiny. As Franklin made clear the cabinet secretaries or other administration officials with purview over a certain governmental function may be sued in their official capacities for statutory and constitutional violations. See also Clinton v. Jones, 520 U.S. at 703, 117 S.Ct. at 1649, discussing the suit against President Truman's Secretary of Commerce (Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 72 S.Ct. 863 (1952) (taking possession of private steel mills). This case, on the other hand, involves a suit against the President himself in a setting that is uniquely reserved to the Executive Branch. The courts could no more issue an injunction for alleged improprieties in a presidential inauguration than it could in commanding the Senate majority leader on how to open the Senate for business.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (citations omitted) (alterations in original).

Washington Legal Foundation v. Legal Foundation of Washington, 271 F.3d 835, 847 (9th Cir. 2001) (en banc).

The President had previously argued that Newdow's lack of physical proximity to the inauguration precluded sufficient injury, that the recurrence of any Presidential prayer was speculative, and that there was no possibility of a court issuing an injunction which could adequately redress the issue of Presidential prayer per se at inaugurations, i.e., Newdow's "psychic satisfaction" at the issuance of a court order in his favor did not substitute for an adequate redress of a real injury. Nevertheless, the court initially found that Newdow had standing to contest Presidential prayer per se at inaugurations.

The President has reiterated several of his standing arguments in the context of the present issue-- judicial tailoring of prayers which may otherwise be properly said at inaugurations: (1) Newdow has not suffered sufficient injury; (2) Newdow cannot obtain redress for his injury because he would not benefit from an injunction; (3) the speculative nature of future violations of the First Amendment preclude injunctive relief; (4) Newdow lacks taxpayer standing (an issue not reached by the court before). The court again rejects arguments (1) and (2). For the reasons stated earlier, if Newdow has not suffered an injury in fact from his alleged offense at Presidential prayers, general or specific, it is difficult to understand that anyone has standing to attack governmental sponsored prayer in any forum. That is, nothing distinguishes the plaintiff's alleged injury here in any meaningful way from that in Lee v. Weisman, 505 U.S. 577, 112 S.Ct. 2649 (1992) (father objecting to the school principals use of clergymen giving invocations at his daughter's graduation from middle school). Plaintiffs seeking to halt governmental support of religion, be it verbal or symbolic, suffer the same type of injury.

Moreover, the government's first redressability argument– that Newdow could not benefit from an injunction– again presents the overbroad specter of no person being able to benefit from an injunction of improper government sponsoring of religion, assuming for the moment that

such is the case here. The President cannot adequately distinguish cases such as Coles v. Cleveland Brd of Educ. 171 F.3d 369 (6th Cir. 1999), where the sole benefit to be received by the plaintiff was the cessation of what that plaintiff believed to be unconstitutional activity in violation of the First Amendment's Establishment Clause.

The President has added one standing argument in the context of the present issue. Explaining that Newdow is an avowed atheist, and given that the issue here now centers about alleged overuse of Christian concepts, as opposed to whether prayer can be said at all, the President argues that Newdow cannot represent the rights of theistic non-Christians. The President is correct that in the context of alleged governmental sponsorship of prayer, Newdow cannot simply represent the rights of others, Cole v. Oroville Union High School Dist., 228 F.3d 1092, 1099 (9th Cir. 2000); he must prevail, if at all, on the fact this his own rights were violated. However, the President's premise that Newdow, as an atheist, can only be offended by prayer in general, and not "more offended" by incorporation of specific denominational concepts within prayer, is not supported by authority, or practical realities. Similarly, the President's position that Newdow can only seek a total elimination of prayer at inaugurations, and not be permitted to seek lesser relief, is also flawed.

Nevertheless, the court finds that Newdow's alleged injuries in having been exposed to Christian concepts at the Presidential inauguration could not be redressed by an injunction or declaratory relief. To the extent that enjoining the President is more correctly addressed as a standing redressability issue, the discussion of Section A is incorporated herein. And, the court could not, and should not, attempt to frame an injunction setting forth the content of permissible prayer for future presidential inaugurations.

On the latter point, the court agrees with the President's discussion of the argued speculative nature of any injunctive/declaratory relief to be awarded. The court previously found that Presidential prayer of some sort at inaugurations was a likely occurrence in the future, and that an injunction ending any prayer would "benefit" Newdow. More importantly, an all inclusive prohibitory injunction against inaugural prayer would be no more difficult to frame than a no school

sponsored prayer injunction. See Lee v. Weisman, supra. However, when the issue becomes what *type of prayer* may be spoken in the future, and the limits to which specific denominational concepts may be referenced, Newdow's argument becomes highly speculative and his claimed injury impossible to redress. Perhaps the next President would eschew any religious reference to a specific denomination's concepts as a matter of principle. Perhaps the next President would not have Reverend Graham or a like minded clergymen deliver an invocation. See Cole v. Oroville Union High School District, 228 F.3d at 1100 (finding that standing of parents who might attend future graduations was too tenuous given that the identity of the future speakers and their speech content was speculative). Moreover, should the court limit the relief to references to Christianity? What if the next President were Jewish or Muslim? Could the court in the context of the present facts issue an injunction enjoining a future President from referencing specific facts unique to those religions? Even if the next president were to be a professed Christian, how far could the court go in defining what Christian philosophy might be referenced? Could the court develop a list of acceptable invocation speakers for future inaugurations? These rhetorical questions and observations highlight the speculative nature of any future "injury," and the fact that no present injunction could be realistically framed to encompass future, speculative, religious inaugural invocations.[8]

C. Newdow Lacks Taxpayer Standing

For purposes of the previous motion, the court did not rule upon the issue of taxpayer standing because Newdow was found to have ordinary standing to attack prayer per se at Presidential inaugurations. However, because the court has found Newdow lacks such standing to attack the content of the prayers recited at inaugurations, the issue of taxpayer standing must be addressed.

The President has cited a seminal taxpayer standing case, Doremus v. Board of Education, 342 U.S. 429, 72 S.Ct. 394 (1952). See also Flast v. Cohen, 392 U.S. 83, 88 S.Ct. 1942

[8]If President Bush were being sued in his individual capacity, the argument made by his counsel, that Newdow lacks standing because the re-election of this current President is speculative, would have merit.

(1968). Both of these cases stand for the proposition, among others, that taxpayers do not have standing to protest incidental expenditures related to the activity which they desire to challenge. Doremus, 342 U.S. at 433-34, 72 S.Ct. at 397 (taxpayer could not identify spending of tax dollars associated with Bible reading); Flast, 392 U.S. at 102, 88 S.Ct. at 1954 (stating rule that incidental tax expenditures will not confer standing, but ultimately finding that taxpayers had identified a direct tax expenditure. See also Doe v. Madison School District, 177 F.3d 789, 795 (9th Cir. 1999) (tax dollars associated with graduation ceremonies which included religious references, but which would have been spent regardless of such religious references, are not sufficient to confer standing to litigate a prayer-at-graduation grievance).

Newdow cannot identify any direct expenditure of taxpayer dollars targeted to the giving of the invocation at the President's inauguration. Indeed, the facts of this case are undisputed that Reverend Graham did not appear at government expense. Graham Declaration at para. 5. Newdow cannot successfully assert taxpayer standing by claiming that government funds were used to conduct the inauguration at which religious invocations constituted but a small part of the ceremonies.

D. Establishment Clause Violation

The President argues at length that the invocation(s) at the inauguration did not sponsor religion or proselytize, and thus cannot be a violation of the Establishment Clause. However, when not focusing upon the status of the President, or his proxies, and the nature of the event, the issues are problematic. Many cases have determined that general references to God do not run afoul of the Establishment Clause, but citations or references to specific denominational concepts are not appropriate. Courts have found difficulty with prayers or symbols that directly reference doctrines or figures in a particular religion or sect. See e.g., the very fractured decision in County of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 598-599, 109 S.Ct. 3086, 3103-04 (1989) (Nativity scene with inscription "Glory to God in the Highest" was sectarian); Coles v. Cleveland Board of Education, 171 F.3d 369, 384 (6th Cir. 1999) (prayer used to open Board of

Education meetings violated the Establishment Clause in part because of the specific reference to Jesus and the Bible along with the fact that the Board president was a Christian minister); Freedom From Religion Foundation, Inc. v. City of Marshfield, 203 F.3d 487, 496 (7th Cir. 2000) (violation of Establishment Clause in having statue of Christ proximate to the highway which gave the message "Christ guide us on our way"); but see American Civil Liberties Union v. Capitol Square and Review, 243 F.3d 289 (6th Cir. en banc) (Ohio motto-- "With God, All Things Are Possible," which was derived from the New Testament, does not violate the Establishment Clause).

The court need not finally determine whether references to Jesus Christ as our "Savior" and "Redeemer", or invocation to the Trinity go over the First Amendment mark. Given that the court cannot enjoin the President, and given that Newdow lacks standing to contest the content of prayer recited at presidential inaugurations, the case should not proceed to the merits.

E. No Declaratory Relief Is Appropriate

"The Declaratory Judgment Act embraces both constitutional and prudential concerns. A lawsuit seeking federal declaratory relief must first present an actual case or controversy within the meaning of Article III, section 2 of the United States Constitution.... It must also fulfill statutory jurisdictional prerequisites..... If the suit passes constitutional and statutory muster, the district court must also be satisfied that entertaining the action is appropriate. This determination is discretionary, for the Declaratory Judgment Act is 'deliberately cast in terms of permissive, rather than mandatory, authority.'..... The Act 'gave the federal courts competence to make a declaration of rights; it did not impose a duty to do so.'...." GEICO v. Dizol, 133 F.3d 1220, 1222-23 (9th Cir. 1997) (en banc). Thus, declaratory relief is properly avoided when the subject matter of the lawsuit is ill advised being "'informed by the teachings and experience concerning the function and extent of federal judicial power.'" Green v. Mansour, 474 U.S. 64, 72, 106 S.Ct. 423, 428 (1985). If the effect of declaratory relief is to simply mimic an injunction which is not properly awarded, the courts should decline to award declaratory relief. American Assoc. of Cosmetology Schools v. Riley, 170 F.3d 1250 (9th Cir. 1998).

As set forth above, no injunction is appropriate given the prudential concerns of separation of powers and standing. For those same reasons, declaratory relief is equally inappropriate.[9]

Conclusion

Accordingly, the undersigned recommends:

1. That the entire case be dismissed for lack of jurisdiction because the courts cannot enjoin the President in the circumstances of this case, nor can the courts grant declaratory relief against the President in the circumstances of this case;

2. In the alternative:

a. that prayer pre se at the Presidential inauguration does not violate the Establishment Clause of the First Amendment to the Constitution;

b. Newdow lacks standing to challenge the content of the prayer given at future inaugurations and that part of his complaint should be dismissed;

c. any request for declaratory relief for alleged violations of the First Amendment is improper in the circumstances of this case.

Under either alternative, the President's motion for summary judgment should granted on the grounds discussed above; Newdow's cross-motion for summary judgment should be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, any party may file written objections

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[9]Plaintiff makes a reference in the text of his complaint to mandamus, but prays for injunctive and declaratory relief. "Mandamus is an extraordinary remedy and is available to compel a federal official to perform a duty only if: (1) the individual's claim is clear and certain; (2) the official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no other adequate remedy is available." Patel v. Reno, 134 F.3d 929, 931 (9th Cir. 1997). In the context of prayer at presidential inaugurations, mandamus is not properly considered. See Swan v. Clinton, supra.

with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: December 28, 2001.

GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

mdk

United States District Court
for the
Eastern District of California
December 28, 2001

* * CERTIFICATE OF SERVICE * *

2:01-cv-00218

Newdow

v.

Bush

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 28, 2001, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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