

**CASE NO. 09-5126**

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

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**MICHAEL NEWDOW, et al.**

*Plaintiffs-Appellants,*

**v.**

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

*Defendants-Appellees,*

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

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

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**PLAINTIFFS' SUBMISSION OF THE UNDERLYING DECISION FROM  
WHICH THE APPEAL ARISES**

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The underlying decision from which this Appeal arises is the ORDER of Hon. Reggie B. Walton, issued on March 12, 2009 (Document #74). It is attached hereto.

Respectfully submitted this 14<sup>th</sup> day of May, 2009,

/s/ - Michael Newdow

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

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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.	)	

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**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 Believeau, 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.<sup>1</sup> 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

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<sup>1</sup> 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