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December 1, 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 *Stratechuk v. Board of Education*, No. 08-3826 (3rd Cir. November 24, 2009).

In *Stratechuk*, individuals who challenged a decision of the public school authorities to **exclude** "celebratory religious music at school-sponsored events," *Stratechuk*, slip op. at 2, were deemed to have standing to challenge what the government **did not** espouse.[1] In other words, what the plaintiffs were **not** forced to confront provided an "'injury in fact'" that was "concrete and particularized." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted).

[1] Like numerous other cases, standing in *Stratechuk* also existed "*sub silentio*." Appellee Br. for Fed Dfnds/Apls, at 27 (n.7), citing *In re Navy Chaplaincy*, 534 F. 3d 756, 764 (D.C. Cir. 2008). Plaintiffs would suggest that this occurs with such frequency not because Supreme Court justices and Circuit Court judges are not doing their jobs, *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990), but merely because standing is obvious and uncontroversial in these situations.

If standing exists in such a case (i.e., where the plaintiffs complain that government **is not** espousing a religious ideology while they are in the audience), then it surely must exist where the government **is** espousing a religious ideology that the plaintiffs, as audience members, are forced to confront. AOB at 22; Reply Brief at 10. *See also Hinrichs v. Speaker of the House of Representatives,* 506 F.3d 584, 590 (n.5) (7th Cir. 2007) ("'[A]llegations of direct and unwelcome exposure to a religious message' are sufficient to show the injury-in-fact necessary to support standing.") (citation omitted).

In view of the foregoing, the District Court's claim that the instant plaintiffs "have identified no concrete and particularized injury," Appendix at 146 (District Court ORDER of March 12, 2009), is untenable. As in all properly-decided religious display and prayer cases, standing exists whenever "the Government … actively and directly communicat[es] a religious message through religious words or religious symbols -- in other words, it [i]s engaging in religious speech that [i]s observed, read, or heard by the plaintiffs." *In re Navy Chaplaincy*, 534 F. 3d at 764). *See* AOB at 21.

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 1st day of December 2009, a true and correct copy of Plaintiffs-Respondents' supplemental authority regarding *Stratechuk v. Board of Education*, No. 08-3826 (3rd Cir. November 24, 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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