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December 28, 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 *Moore v. Hosemann*, ___ F.3d ___, No. 09-60272 (5th Cir. December 18, 2009).

Moore relates to the instant litigation in terms of the “capable of repetition, yet evading review” exception to the mootness doctrine.¹ Appellants’ Reply Brief at 4-9. According to the 5th Circuit, “election controversies are paradigmatic examples of cases that cannot be fully litigated before the particular controversy expires.” *Moore*, slip op. at 5. Although this case is not a true “election controversy,” its relevant time constraints fit perfectly within that mold.

Appellants’ Reply Brief at 4-6.

¹ In providing this supplemental authority Plaintiffs-Appellants do not in any way relinquish their claim that mootness is inapplicable, since both their Original Complaint, Document 1 at 38 (Complaint p. 34, ¶¶ III-V), and their Amended Complaint, Document 66-3 at 60 (Complaint p. 55, ¶¶ III-V), contemplated future inaugurations. *See also* Amended Complaint ¶¶ 59, 69-71, 88-89, 136.

Additionally, *Moore* speaks of the “second prong” of the “capable of repetition” exception – i.e., the “reasonable expectation that the same complaining party will be subject to the same action again.” Slip op. at 4. “Following the lead of the Supreme Court,” said the *Moore* panel, “in election cases we have applied the second prong somewhat loosely.” Slip op. at 5.

Thus, we remain “unwilling to dismiss [a] case as moot when ‘the issues, properly presented, and their effects ... will persist as the [restrictions] are applied in future elections.’”

Id. (citation omitted) (ellipsis and bracketed “restriction” in original). This approach adds a further cushion to the application of that “second prong,” where – absent judicial action – it is virtually certain that Plaintiffs in the case at bar will be subject to the challenged unwelcome Monotheistic espousals over and over again in each of the future inaugural ceremonies they attend. Appellants’ Reply Brief at 6-8. Accordingly, even if mootness were applicable, Plaintiffs’ claim here (as was the case in *Moore*) “survives mootness.” Slip op. at 6.

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 28th day of December 2009, a true and correct copy of Plaintiffs-Respondents' supplemental authority regarding *Moore v. Hosemann*, ___ F.3d ___, No. 09-60272 (5th Cir. December 18, 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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