

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

MICHAEL NEWDOW, *et al.*,

Plaintiffs,

v.

HON. JOHN ROBERTS, JR., *et al.*,

Defendants.

Civil Action #1:08-cv-02248-RBW

**PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO RESPOND TO
THE COURT'S ORDER TO SHOW CAUSE #2**

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TABLE OF CONTENTS

INTRODUCTION	1
PLAINTIFFS' INTENDED RESPONSE TO THE COURT'S ORDER	2
DOCUMENTS PREPARED BY PLAINTIFFS	2
EXPLANATION OF REQUEST FOR EXTENSION TO FILE RESPONSE	3
PARTIES' MUTUAL REQUEST	4
CONCLUSION	4

I. INTRODUCTION

On December 30, 2008, Plaintiffs filed a Complaint seeking to prevent the infusion of Monotheistic religion at the inauguration of President Barack Obama, scheduled to occur on January 20, 2009. Specifically, Plaintiffs sought to prevent the expected addition, by Defendant Chief Justice John Roberts, Jr., of the phrase “so help me God” to the presidential oath of office, as well as the use of clergy-led Monotheistic prayers. After a motion for a Preliminary Injunction was denied (on January 16, 2009), the inauguration took place. Precisely as feared, the ceremony was interlarded with the challenged Monotheistic endorsements.

On February 10, 2009 – with the harms then past – the Court issued an Order (Document 50) stating:

The plaintiffs shall show cause by February 27, 2009, why this case should not be dismissed on the ground that the event about which the plaintiffs sought redress has been completed, and therefore the plaintiffs' claims have become moot. The plaintiffs' failure to show cause or seek an extension to respond to this Order by the February 27, 2009 deadline will result in the dismissal of this case.

II. PLAINTIFFS' INTENDED RESPONSE TO THE COURT'S ORDER

Plaintiffs have prepared a Response to the Court's Order. In that Response they argue that dismissal is not warranted because:

- (1) Pursuant to Fed. R. Civ. P. Rule 15 and Local Rule LCvR 15.1, they are seeking leave to submit a First Amended Complaint, in which they have broadened their challenge to include the inaugurations of 2013 and 2017; and
- (2) This case presents a classic "capable of repetition, yet evading review" exception to the mootness doctrine.

III. DOCUMENTS PREPARED BY PLAINTIFFS

In addition to the Response to the Order to Show Cause, Plaintiffs had planned to file with the Court by today's deadline:

- (1) The Motion for leave to file the Amended Complaint;
- (2) The Amended Complaint; and
- (3) A Motion seeking a Protective Order that would allow confidential filing (under seal) of the names and addresses of the approximately forty families with children who have since asked to join this lawsuit.¹

¹ In the Amended Complaint, Plaintiffs plan to add as plaintiffs the more than 200 additional individuals who have indicated that they wish to join the lawsuit, and who have provided Declarations (signed under penalty of perjury) detailing the injuries they suffered as a result of Defendants' practices. A little less than one in five of these Declarations are from parents referencing harms to their minor child(ren).

IV. EXPLANATION OF REQUEST FOR EXTENSION TO FILE RESPONSE

In accordance with LCvR 7(k) and (m), the undersigned Plaintiffs' counsel attempted consultation with Defendants' counsel, after providing them with copies of each of the documents listed above. They were unable to contact counsel for Defendants PIC and Beliveau, as well as Defendant Lowery (who is unrepresented by counsel). Counsel for Defendant Warren stated they "do not oppose" the filing of either of the Motions.

Counsel for the Federal Defendants, however, expressed two concerns. The first was in regard to the wording of the Protective Order. They felt that "mutually-agreeable language" could be derived, but that it could not be done in the limited time available before Plaintiffs' planned submission today (February 27, 2009).

More importantly, counsel for the Federal Defendants were concerned about the logistics of responses that would be necessitated by the simultaneous filings of the Amended Complaint and Plaintiffs' Response to the Court's Show-Cause Order, especially inasmuch as there is also the somewhat-related prior Order to Show Cause (to which Plaintiffs responded just four days ago (Document 51)).

V. PARTIES' MUTUAL REQUEST

Plaintiffs counsel and counsel for the Federal Defendants respectfully request that the Court grant an extension of time until Tuesday, March 10, 2009 for Plaintiffs to file their Response to the second Order to Show Cause (Document 50). At that time, Plaintiffs will also file a Motion for Leave to File an Amended Complaint, as well as a Motion for a Protective Order. In the intervening time, these counsel – hopefully in conjunction with the remaining Defendants' counsel (and with Defendant Rev. Lowery) – will attempt to mutually agree upon:

- (a) A proposed briefing schedule for the Court's review, striving to preclude confusion and duplication (especially as regards the standing and mootness issues currently being considered by the Court); and
- (b) A proposed Protective Order that satisfactorily protects the interests of all parties.

VI. CONCLUSION

Plaintiffs respectfully request an extension of time until Tuesday, March 10, 2009, to file their Response to the Court's Show-Cause Order. In the intervening time, Counsel for all parties (and the unrepresented Defendant Rev. Lowery, should he choose to participate) will attempt to provide the Court with a briefing schedule that will facilitate the resolution of the outstanding issues of standing and mootness, as well as a mutually-agreed upon Protective Order.

Respectfully submitted this 27th day of February, 2009,

/s/ - Michael Newdow

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2009, I filed the following document:

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electronically with the Clerk of the United States District Court for the District of Columbia, using the CM/ECF system. Accordingly, service will assumedly be made upon:

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