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Year of the Bible 1983

MOBILIZATION

CONFERENCES

Year of the Bible 1983

Morton Blackwell, Pres. Asst
THE WHITE HOUSE
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

John L. Uffelman
Northeast Regional Director
404 Second Avenue
Albany, NY 12209

USA 20c

NAME _____

ADDRESS _____

(CITY) _____ (STATE) _____ (ZIP) _____

PHONE (H) ( ) _____ (W) ( ) _____

Level of involvement: State Committee _____
City Committee _____ Church Leader _____
Volunteer _____ Other _____

Specific interests: Scripture Distribution _____
Media Campaign _____ Bible Study and
Reading Emphasis _____

Free registration for group. Leader _____
(A group is 5 or more people)

PURPOSE

To encourage & train interested leaders and volunteers in all aspects of the 1983 Year Of The Bible Campaign.

PROGRAM

* Hear exciting "Year Of The Bible News" from National & State leaders.
* Learn how to refine & implement recruiting & fundraising strategies in your state,city, community, and congregation.
* Learn how to distribute portions of scripture in your community.
* See ads & dramatized portions of the Bible to be aired over nationwide T.V.
* Learn how to best use a wide variety of Bible reading/Study aids.
* Hear exciting plans for Bible promotional efforts in 1984 and 1985.

PRICE

Registration fee of $25 will cover the materials you receive, YOUR LUNCH, plus general administrative costs.

Special group rate: One (1) FREE registration for groups of five (5) or more.

There will be an additional fee of $5 for late registration.

CONFERENCE LOCATIONS AND REGISTRARS

October 8, 1983
10 a.m. - 4 p.m.
Wilbraham United Church
500 Main Street
Wilbraham, MA 01095
(413) 596-4030

Mr. Paul Dernavich
4 Laurel Lane
Wilbraham, MA 01095
(H) (413) 596-8141
(W) (413) 596-6101

October 15, 1983
11 a.m. - 3:30 p.m.
Hyatt Regency Hotel
Ohio Center
350 North High Street
Columbus, OH 43215
(614) 463-1234

Mr. Thom Lisk
Direct Resource Inst.
1562 Scottsdale Ave.
Columbus, OH 43220
(H) (614) 459-0520
(W) (614) 846-0332

October 22, 1983
10 a.m. - 4 p.m.
Tenth Presbyterian Church
1700 Spruce Street
Philadelphia, PA 19103
(215) 735-7688

Mr. Carroll Wynne
c/o 10th Pres. Church
1700 Spruce Street
Philadelphia, PA 19103
(H) (215) 284-1737
(W) (215) 438-3094

Please make your $25 check payable to:
"1983 Year Of The Bible"
Please send your check and registration form (on the reverse side of this sheet) to the registrar of the conference you desire to attend. He will send you a confirmation letter plus directions (and a list of accommodations if requested). * Note: Registration form must be received no later than 4 days prior to the conference. There will be an additional fee of $5 for late registration.

If you cannot attend, please check the following & mail to the registrar nearest you.

1. I will pray daily for the Year of the Bible National Campaign & Conferences_____
2. Please accept my donation of $_____
3. Please have someone call me so I can participate in local activities_____

Dear Mr. Blackwell, 9/24/83

Hi! I hope you're well & being blessed by God in a mighty way because of your interest in the Year Of the Bible campaign.

At present we are having 3 key conferences. As a leader, could you promote these conferences as much as possible through your organization? Your help in our recruiting efforts will be greatly appreciated & will add to the overall effectivenss of the Year of the Bible Campaign.

Thanks for your help. If I or the National team can be of help to you please call.

Sincerely yours,
John Uffelmann
John Uffelmann
Northeast U.S. Dir.

(over)

Dear Mr. Blackwell,

Since this is the Presidential Proclamation could President Reagan or Dr C. Everett Koop join us for one of these Conferences? Or send a proxy?: Perhaps at the Philly conference on the 22 nd of Oct?!

Sincerely

John

(518) 449-5223
462-2162

The National Committee for the YEAR OF THE BIBLE

3501 North MacArthur Boulevard Suite 314H Irving, Texas 75062 (214) 257-1003

September 29, 1983

Dr. William R. Bright, President
Campus Crusade for Christ International
Arrowhead Springs
San Bernardino, CA 92414

Dear Bill:

In preparing for the October 11 meeting. I find that everything we plan for the remaining three months is in financial jeopardy. At the nine month point we have expended about one-half the budget, or approximately $400,000 in preparation for the final media phase which is now unfunded.

Bill, it would be sad indeed to position ourselves as well as we have and then not be able to close. I must believe that it is God's will for us to encourage every American to read the Bible, so I continue to pursue every avenue, to knock on every door, to encourage everyone who will listen that the time is now! But without funds we have literally come to a standstill.

If the National Committee knew of our desperate position, I feel certain they would do their part to keep us solvent--so many have already given gifts ranging from $1,000 to $20,000, but now I would like each one to consider a gift--personal or organizational--to close out this year with the same enthusiasm which marked its beginning.

Bill, so much good is happening in every area that our October 11 meeting will literally be a praise report. I can't begin to tell you of all the spontaneous grass-roots activities from Florida to California focusing on schools or business, churches or media. The recent full page ads in the Wall Street Journal,

Readers Digest, Atlanta Constitution and the series in Guideposts don't begin to tell the story. People are finally realizing that this year is unique in history--and still provides a window of opportunity we may never see again, but without funds the media thrust will be severly curtailed.

For these good reasons I don't want this meeting to be marred by a dismal financial report, so with your approval I will send copies of this letter, this week to the entire National Committee, asking them to respond next week, before our meeting in Chicago on the 11th. We will need the funds just to hold the meeting.

Sincerely,

Glenn A. Jones
Executive Director

GAJ/jca
cc: National Committee

P.S. I am not asking you or Crusade to help. You have already given or loaned $120,000, during what I understand has been the worst cash-flow period of your 32 year history. Your faithfulness to this project is inspiration for us all.

THE WHITE HOUSE
WASHINGTON

file Year of the Bible

Date Sep. 6, 1983

FOR: Mort Blackwell

FROM: **DAVID B. WALLER**

ACTION

X For your information

_____ For your review and comment

_____ As we discussed

_____ For your files

_____ Please see me

_____ Return to me after your review

COMMENT

_____

_____

_____

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REV. PHILIP ZWERLING, et al., Plaintiffs, v. RONALD W. REAGAN, President of the United States of America, Defendant.	No. 83-2504 R NOTICE OF MOTION AND DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

PLEASE TAKE NOTICE that on October 3, 1983, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Manuel L. Real, Chief United States District Judge, the defendant will move for Judgment on the Pleadings pursuant to Rule 12(c) and 12(h)(3) of the Federal Rules of Civil Procedure. The basis for the motion is that (1) the Court lacks subject matter jurisdiction over this action because plaintiffs lack standing to sue, (2) the Court may not grant plaintiffs declaratory or injunctive relief based upon defendant's participation on the National Committee for the Year of the Bible because

defendant's presence on the Committee does not constitute "government action" for purposes of the First Amendment; and (3) the Court lacks personal jurisdiction over defendant Reagan.

In support of this motion, the Court and plaintiffs are respectfully referred to the attached Memorandum of Points and Authorities and the pleadings previously filed in this action.

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REV. PHILIP ZWERLING, et al., Plaintiffs, v. RONALD W. REAGAN, President of the United States of America, Defendant.	Civil Action No. 83-2504 R

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REV. PHILIP ZWERLING, et al., Plaintiffs, v. RONALD W. REAGAN, President of the United States of America, Defendant.	No. 83-2504 R MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

STATEMENT

Joint Resolution 165, Pub.L. 97-280, 96 Stat. 211, called upon the President to designate 1983 as a National Year of the Bible.*/ On February 3, 1983 President Reagan issued the

*/ The Resolution was passed by the Senate on March 31, 1982 (128 Cong. Rec. S3156-57 (daily ed. March 31, 1982)), by the House of Representatives on September 21, 1982 (128 Cong. Rec. H7350 (daily ed. Sept. 21, 1982), and was signed into law by President Reagan on October 4, 1982.

requested Proclamation designating 1983 as the Year of the Bible.*/ In pertinent part, the Proclamation states:

> The Congress of the United States, in recognition of the unique contribution of the Bible in shaping the history and character of this Nation, and so many of its citizens, has by Senate Joint Resolution 165 authorized and requested the President to designate the year 1983 as the "Year of the Bible."
>
> Now, Therefore, I, Ronald Reagan, President of the United States of America, in recognition of the contributions and influence of the Bible on our Republic and our people, do hereby proclaim 1983 the Year of the Bible in the United States. I encourage all citizens, each in his or her own way to reexamine and rediscover its priceless and timeless message.

19 WEEKLY COMP. OF PRES. DOC. 181-82 (Feb. 7, 1983).

Plaintiffs, ministers and rabbis of various religious faiths, other religious leaders, and some individuals professing no religious beliefs, brought this suit on April 21, 1983, seeking a judgment declaring unconstitutional the Resolution and the implementing Presidential Proclamation. They contend that both the Resolution, and the subsequent Proclamation violate their first amendment right to be free from laws respecting the establishment of religion. Plaintiffs later filed an amended complaint adding allegations relating to defendant Reagan's honorary chairmanship of the National Committee for the Year of the Bible, ("the Committee"), a non-profit, non-governmental group of Christian and Jewish leaders. They seek a declaration that defendant's

*/ On December 31, 1982, in Gaylor v. Reagan, et al., (No. 82-C-985-D), a suit challenging the constitutionality of the Resolution, the United States District Court for the Western District of Wisconsin refused to grant injunctive relief, which would have prevented President Reagan from issuing the Proclamation.

membership on the Committee violates the Establishment Clause, and an injunction prohibiting defendant from "using the power and prestige of the presidency in his service as honorary chairman of the [Committee] including appearing in literature or other endorsements promoting the Bible." (Complaint, pp. 15-16.)

Plaintiffs assert four types of "injuries" as a result of the Resolution and Proclamation. First, plaintiffs allege that they are harmed because "some" of them do not accept the Bible as the "Word of God" and cannot read it without violating their own non-Christian religious and atheist beliefs. (Plaintiffs' First Amended Complaint ¶ 28, hereafter "Comp."). Second, the non-Christian plaintiffs allege that the Resolution and the Proclamation single them out for "disadvantageous treatment" due to their "minority religious status." (Id.) Third, the non-Christian plaintiffs, who characterize themselves as religious leaders, allegedly suffer "the additional harm of having the prestige and power of the United States of America endorse the Christian Bible," which undermines their ability to provide religious, spiritual and atheist leadership. (Id.) Finally, the Christian plaintiffs assert injury based on having "their religious book," the Bible, used for political rather than religious purposes, thereby impeding their efforts "to promote and engage in beneficial ecumenical dialogue" with non-Christians. (Id.)

The "injuries" plaintiffs allegedly suffer as a result of defendant Reagan's honorary membership on the Bible Committee are three-fold. First, plaintiffs assert that the defendant is "using

the power and prestige of the presidency" to promote Committee activites, thereby singling out the non-Christian plaintiffs for disadvantageous treatment as persons with "minority religious status." (Comp. ¶ 36). Second, the non-Christian religious leader plaintiffs are allegedly harmed for the additional reason that the symbolic weight of defendant's presence on the Committee undermines their ability to provide religious, spiritual and atheist leadership. (Id.) Finally, the Christian plaintiffs assert injury based on having "the United States" endorse an organization that supports "their" Bible for political rather than religious purposes. (Id.).

Plaintiffs' complaint abounds with assertions of "injury" based upon how these challenged actions affect their sensibilities. They are "offended" and "appalled" at being urged to read the Bible, "affronted" by what they characterize as the "exploitation of [their] religious symbols for political purposes," and, further, "believe" that the Resolution and the Proclamation have made it "harder for them" "to call themselves good Americans with pride." (Comp. ¶¶ 13, 14, 16, 17). Their "spiritual and atheist leadership" is undermined by the President's honorary Chairmanship of the National Committee for the Year of the Bible, an organization they maintain supports "the Bible[] for political rather than religious purposes. (Comp. ¶¶ 35, 36.) Moreover, plaintiffs "believe" that the Resolution and Proclamation "do not play fair in that they hypostatize one religious text," and "make it a civic duty to read" the Bible, while "ignoring the beliefs" of plaintiffs. Plaintiffs further "believe" that "governmental

urging of Bible reading is an insensitive disservice to persons of other faiths" and is "wrong." (Comp. ¶¶ 6, 7, 9, 10).

But plaintiffs' beliefs and fears, no matter how sincerely held, are insufficient to establish an Article III "case or controversy." The challenged actions have not actually harmed plaintiffs and could never provide the injury necessary to render this a justiciable case or controversy. Neither the Resolution nor the Proclamation have any consequences other than the designation of 1983 as the Year of the Bible. The President's involvement with the wholly private committee similarly causes plaintiffs no injury. No federal funds are to be expended, no federal facilities are to be made specially available, and contrary to what plaintiffs maintain, no federal sponsorship is extended to any activities or organizations in connection with the designation of 1983 as the Year of the Bible. Thus, plaintiffs' complaint does not, and cannot, allege any concrete or actual injury, and therefore, fails to allege an "injury-in-fact," a basic and necessary element of standing. Further, plaintiffs' complaint fails to indicate how any injury they claim is traceable to the putatively illegal conduct of the defendant, and how they might benefit in some tangible way if the Court were to afford them the relief they seek.

In essence, what plaintiffs seek is not relief from or compensation for some injury inflicted by the defendant, but rather to have the Court direct the federal government and defendant Reagan to act in accordance with their personal views of the Constitution; their "injury" thus consists solely of an alleged violation of a personal constitutional right to a government that

does not establish religion. But Article III's standing requirement are not satisfied by a group of citizens' claims of injury flowing solely from nonobservance of the Constitution.

In addition, to the extent the plaintiffs seek any relief with respect to defendant Reagan's honorary membership on the Year of the Bible Committee, they have also failed to state a claim for which relief can be granted. It is axiomatic that the Religious Clauses apply only to acts or conduct of the state or federal governments. While defendant Reagan is always President of the United States, not every act of the President constitutes governmental action for first amendment purposes. The President, as any other citizen, has the right to hold and espouse his personal religious beliefs. Defendant Reagan's membership on the non-governmental Year of the Bible Committee*/ no more involves the Establishment Clause than does his attendance at the religious service or worship of his choice.

Finally, at least as to the injunctive and declaratory relief sought with respect to his membership on the Committee, the Court lacks personal jurisdiction over defendant Reagan; there are insufficient contacts with this forum to satisfy due process concerns.

ARGUMENT

I. PLAINTIFFS LACK STANDING TO MAINTAIN THIS SUIT

No principle is more fundamental to the proper functioning of the judiciary in our tripartite system of government than the

*/ As is clear from Exhibit C to plaintiffs' complaint, the Committee is "an inter-faith, non-profit, non-governmental group of outstanding Christian and Jewish leaders formed independently to help focus attention on the year-long observance."

Article III limitation confining the judicial power of federal courts to "actual cases or controversies." Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 37 (1976). This requirement is "not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process." Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 471 (1982). Federal courts are not simply forums for the "ventilation of public grievances or the refinement of jurisprudential understandings," with "unconditioned authority to determine the constitutionality of legislative or executive acts" or "to declare the rights of individuals and measure the authority of governments." Id. at 473. Rather, federal courts can of constitutional necessity only "adjudge the legal rights of litigants in actual controversies." Liverpool S.S. Co. v. Commissioners of Emigration, 113 U.S. 33, 39 (1885).

As part of this bedrock principle, the federal courts have insisted that the litigant seeking to invoke the judicial power have "standing" to challenge the action at issue. The focus of this standing element of the "case or controversy" doctrine is thus on the litigant "seeking to get his claim before a federal court, and not on the issues he wishes to have adjudicated." Flast v. Cohen, 392 U.S. 83, 99 (1968).

> In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or particular

> issue. This inquiry involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise. In both dimensions it is founded on concerns about the proper - and properly limited - role of the courts in a democratic society.

Warth v. Seldin, 422 U.S. 490, 498 (1973) (citations omitted) (emphasis added).

To have standing the litigant must first demonstrate that he personally has suffered "injury-in-fact," that is, some "actual or threatened injury as a result of the putatively illegal conduct of the defendant." Gladstone, Realtors v. Village of Bellwood, 441 U.S. 1, 99 (1979). The injury must be "distinct and palpable," rather than abstract or hypothetical. Id. at 100. The federal courts have consistently refused to take cognizance of suits predicated on the alleged harm caused by the failure of the government to conform to a citizen-plaintiff's view of constitutionally correct action.

Underlying this rule is the judicial refusal to transform the federal court system into an open forum for citizens operating as private attorneys general in search of alleged unconstitutional executive or legislative action. Ex Parte Levitt, 302 U.S. 633, 634 (1937) (per curiam); Fairchild v. Hughes, 258 U.S. 126, 129-130 (1922). Thus, "mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the [plaintiff] is in evaluating the problem," is not sufficient to confer standing to sue. Sierra Club v. Morton, 405 U.S. 727, 739 (1972). "Abstract injury," (O'Shea v. Littleton, 414 U.S. 488, 494 (1974)), "abstract concerns with a subject that could be affected by an adjudication," (Simon v. Eastern Ky. Welfare Rights Org., supra, 426 U.S. at 40)), or "[e]motional involvement in a

lawsuit" (Ashcroft v. Mattis, 431 U.S. 171, 173 (1977)), do not provide the requisite "'injury-in-fact.'"

The standing doctrine also mandates that federal court jurisdiction be invoked only when that distinct and palpable injury can be fairly traced to the challenged conduct, and the plaintiff would benefit in a tangible way from the court's intervention. Warth v. Seldin, supra, 422 U.S. at 508. This insures the framing of the issue by the precise facts to which the court's ruling would apply.*/ Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208 (1974).

As most recently formulated by the Supreme Court, the constitutionally mandated aspects of the standing doctrine thus require

> the party who invokes the court's authority to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," and that the injury "fairly can be traced to the challenged action" and is likely to be redressed by a favorable decision. (citations omitted).

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., supra, 454 U.S. at 472 ("Valley Forge").

In addition, the Supreme Court has recognized prudential limits on the class of persons who may invoke the courts'

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*/ The discrete factual context guaranteed by the limitation that federal judicial power be available only to remedy actual injury helps insure that the power to adjudicate the constitutionality of governmental action is "legitimate only in the last resort, and as a necessity in the determination of a real, earnest and vital controversy." Chicago & Grand Trunk Ry. v. Wellman, 143 U.S. 339, 345 (1892).

decisional and remedial authority. First, resistant to having the federal courts transformed into debating societies that would decide abstract questions of wide public significance when no individualized rights are implicated, the Supreme Court has held that when the asserted injury-in-fact is but a generalized grievance shared in substantially equal measure by all or most citizens, that interest will not provide standing. Id. at 475, quoting, Gladstone, Realtors v. Village of Bellwood, 441 U.S. at 100. Second, a litigant must assert his own legal right to relief, and claims based on the rights of third parties are barred, even if those third party claims state injury sufficient to satisfy Article III.*/ Valley Forge, supra, at 474.

These standing components -- personal injury-in-fact, redressability and particularized grievance -- present the federal courts with threshold questions concerning its power to even entertain a suit. Accordingly, a litigant's failure to demonstrate compliance with any one of these requirements mandates dismissal.

> The rules of standing, whether as aspects of the Art. III case-or-controversy requirement or as reflections of prudential considerations defining and limiting the role of the courts, are threshold determinations of the propriety of judicial intervention. It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers.

*/ A third prudential limitation not applicable here requires that a plaintiff's complaint fall within the zone of interest to be protected or regulated by the statute in question. Valley Forge, supra, citing Data Processing Service v. Camp, 397 U.S. 150, 153 (1978).

Warth v. Seldin, supra, 422 U.S. at 517-18 (emphasis added). See also Schlesinger v. Reservists Committee to Stop the War, supra; Linda R.S. v. Richard D., 410 U.S. 614 (1973).

These standing rules are not relaxed because the plaintiff seeks adjudication of a constitutional issue. The exercise of the judicial power is, of course, "most vivid when a federal court declares unconstitutional an act of the Legislative or Executive Branch" (Valley Forge, supra, 454 U.S. at 473), but this "formidable means of vindicating individual rights" must be employed wisely so as not to threaten "the continued effectiveness of the federal courts in performing that role." Id. Thus, no special exception to the standing doctrine can be made because the litigant claims that an act of the representative branches of the federal government has transgressed some constitutional prohibition. Id. at 488-490. A proper regard for the co-equal branches of the federal government dictates that the Judicial Branch will "refrain from passing upon the constitutionality of an act [of the representative branches] unless obliged to do so in the proper performance of [the] judicial function, when the question is raised by a party whose interests entitled him to raise it." Blair v. United States, 250 U.S. 273, 279 (1919).

Here, plaintiffs maintain that the Resolution and Proclamation, as well as the President's involvement with the wholly private Committee violate the Establishment Clause. Plaintiffs, however, have failed to allege any concrete or actual injury sustained by them as a result of the allegedly unconstitutional legislative and executive branch actions. No matter how sincere

or strongly held are plaintiffs' interests in the proper separation of church and state, such concerns do not substitute for judicially cognizable injury. Because plaintiffs merely allege injury to a principle, rather than direct and tangible injury to themselves, they are situated no differently than all other citizens concerned with governmental observance of first amendment strictures. See, e.g., Schlesinger v. Reservists Committee to Stop the War, supra. Their personal interest is no different than that of a citizen claiming that "In God We Trust" should be stricken from federal currency, or that the Marshal of the Supreme Court should abandon the traditional cry "God Save This Honorable Court." Under Article III requirements, no individual citizen would have a direct and palpable interest in the resolution of such claims no matter how emotional or sincere the concern.*/ Moreover, none of the purported injuries suffered by the plaintiffs are redressable by the relief they seek, a fact that further underscores plaintiffs' lack of standing.

That plaintiffs' complaint attempts to set out an Establishment Clause violation does not create a lower standing threshold for their suit. Claims of violation of the Establishment Clause, like other claims of constitutional impropriety, are matters for judicial cognizance only if the well-defined standing criteria are satisfied. Valley Forge, supra, 454 U.S. at 483-90.

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*/ See generally, School District of Abington Township v. Schempp, 374 U.S. 203, 213 (1963); Zorach v. Claussen, 343 U.S. 306, 312-13 (1952).

A. Plaintiffs Have Alleged No Concrete And Particularized Injury

Absent from the complaint in this action is any indication of how the disputed governmental actions have had a concrete and adverse effect upon plaintiffs. The plaintiffs characterize themselves variously as Christian and non-Christian "taxpayers," "parents" "ministers," "religious," "spritual" and "atheist" "leaders." According to some of the plaintiffs, the challenged Resolution and Proclamation "take the Bible away from people whose holy text it is and utilize it for political purposes." (Comp. ¶ 7). The non-Christian plaintiffs allege, alternatively, that the Bible is a "man-written document" without "religious authority," or that it is "superstition and mythology" and not the "Word of God." (Id. at ¶ 10, 11). This group of plaintiffs generally feels singled out for "disadvantageous treatment" on the basis of their "minority religious status." (Id.) The plaintiffs who characterize themselves as religious leaders allege generally that the Resolution and Proclamation render their task of providing spiritual, religious and atheist leadership more difficult, and the President's membership on the Committee is said to undermine that leadership. (Id. at ¶¶ 28, 36).

Although each plaintiff complains of the Resolution and Proclamation in a separate paragraph in the complaint, the collective legal position of the entire plaintiff group is clear: they are all dedicated to the principles of separation of church and state, and such dedication is itself sufficient under Article III to give rise to a particular and concrete injury.

First, plaintiffs' complaint fails to establish how their concerns for the principles of church-state separation, whether based upon atheist, agnostic, Christian or non-Christian beliefs, are any different from the interest held by all citizens desirous of governance according to constitutional principles. The notion that any person asserting a violation of the Establishment Clause has a "spirtual stake" sufficient to confer standing was expressly rejected by the Supreme Court in Valley Forge as a misconstruction of its statement in Association of Data Processing Service Org. v. Camp, 397 U.S. 150, 154 (1970), that "a person or family may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and Free Exercise Clause." "That language," the Court commented, "will not bear that weight." 454 U.S. at 486 n.22.

Second, the complaint advances conclusory and speculative assertions of "injury," unadorned by any supporting factual allegations, which purport to assign a particular cause to infinitely complex human behavior. Standing cannot be based upon such speculative claims of "injury." See Winpinsinger v. Watson, 628 F.2d 133 (D.C. Cir.), cert. denied, 446 U.S. 929 (1980).

Finally, the recited allegations are also fatally defective as they fail to identify any distinct and palpable injury to plaintiffs as a consequence of the allegedly unconstitutional actions of which they complain. The complaint simply expresses plaintiffs' fears that the Resolution and Proclamation may undermine their declared goals of safeguarding the principle of separation of church and state, and promoting the influence of other religious, ecumenical or atheist teachings. They believe

that the challenged Resolution and Proclamation as well as the President's role with the Committee violate those principles, and cause them apprehension that their mere existence will make these philosophical goals more difficult to achieve.

These abstract, speculative anxieties are no different from the concerns alleged by the plaintiffs in Valley Forge and are strikingly similar to the type of abstract injuries repeatedly rejected by the Supreme Court as sufficient to confer standing.*/ In all those cases, the respective plaintiffs predicated their right to initiate suit on an articulated interest in constitutional governance, expressed as a specific harm to the interest. Standing was denied not because the stated interest was not cognizable, but because the respective plaintiffs failed to show how they had suffered some concrete injury as a result of the challenged actions. The same is true here.

"The federal courts have abjured appeals to their authority which would convert the judicial process into 'no more than a vehicle for the vindication of the value interests of concerned bystanders.'" Valley Forge, supra at 454 U.S. at 473, quoting United States v. SCRAP, 412 U.S. 669, 687 (1973). A persuasive and unbroken line of decisions make plain that this Court lacks jurisdiction to address what amounts to nothing more than a complaint by plaintiffs that as citizens they believe that the co-equal branches are operating in a manner inimical to their view of constitutional government.

*/ E.g., Schlesinger v. Reservists Committee to Stop the War, supra; United States v. Richardson, 418 U.S. 166 (1974); Ex parte Levitt, 302 U.S. 633 (1937).

For example, in Ex parte Levitt, 302 U.S. 633 (1937), the Supreme Court held that individual citizens lack standing to challenge the constitutionality of the appointment of a Supreme Court Justice. While acknowledging the importance of such a judicial selection to all citizens, the Court concluded that:

> The motion papers disclose no interest upon the part of the petitioner other than that of a citizen and a member of the bar of this Court. That is insufficient. It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.

Id. at 634.

More recently, in two companion cases, the Court reiterated these principles in the strongest terms. In United States v. Richardson, supra, the plaintiff sought to obtain a declaration that the Central Intelligence Act of 1949*/ was unconstitutional because it permitted the Central Intelligence Agency to account for its expenditures solely on the certificate of the Director, and thus violated Article I, section 9, clause 7 of the Constitution by allowing expenditures of public monies without a regular public accounting. Although the plaintiff in Richardson contended that this constitutional violation directly interfered with a personal interest -- a right to cast a ballot as an informed citizen -- the Court concluded that the asserted claim did not specify a concrete personal injury.

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*/ Ch. 695, § 4, 63 Stat. 880, (current version at 50 U.S.C. §§ 403-403j (1976)).

> The [plaintiff's] claim is that without detailed information on CIA expenditures -- and hence its activities -- he cannot intelligently follow the actions of Congress or the Executive, nor can he properly fulfill his obligations as a member of the electorate in voting for candidates seeking national office.
>
> This is surely the kind of a generalized grievance described in both Frothingham and Flast since the impact on him is plainly undifferentiated and "common to all members of the public."

418 U.S. at 176-177.

In Schlesinger v. Reservists, supra, the plaintiffs, who opposed military involvement in Vietnam, sued both in their capacity as taxpayers and as "citizens." The suit challenged the membership of some one-hundred members of Congress in the Military Reserves, claiming that this dual membership violated the Incompatability Clause of the Constitution,*/ and exposed Congress as an institution to "the possibility of undue influence by the Executive Branch" during the Vietnam conflict. 418 U.S. at 212.

Despite the gravity of the harm alleged, the Court held that the plaintiffs lacked standing to sue in their capacity as citizens. The alleged constitutional violation, the Court declared, "would adversely affect only the generalized interest of all citizens in constitutional governance, and that is an abstract injury" (418 U.S. at 217). The Court added that "standing to sue may not be predicated upon an interest of the kind alleged here

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*/ "No person holding any office under the United States shall be a Member of either House during his Continuance in office." United States Constitution Art. I, § 6 Cl. 2.

which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution" (Id. at 220-221). According to the Court,

> [t]o permit a complainant who has no concrete injury to require a court to rule on important constitutional issues in the abstract would create the potential for abuse of the judicial process, distort the role of the Judiciary in its relationship to the Executive and the Legislature and open the Judiciary to an arguable charge of providing "government by injunction."

Id. at 222. The Court thus emphatically refused to accept the proposition that "all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions. Such a proposition, the Court declared, "has no boundaries." Id. at 227.

Most recently the Supreme Court in Valley Forge, supra, applied these standing principles, this time in the context of an Establishment Clause suit. The plaintiffs in Valley Forge were an organization and four of its members who, like plaintiffs here, were avowedly dedicated to the constitutional principle of separation of church and state. They brought suit to challenge the conveyance by the United States of federal property to the Valley Forge Christian College, alleging that this transfer of federal property to a sectarian school violated the Establishment Clause.

In again rejecting claims to "citizen" standing,*/ the Court stressed the constitutional nature of the injury-in-fact component of the standing doctrine. The Court held that the plaintiffs in Valley Forge had failed to allege any concrete injury "other than the psychological consequences presumably produced by observation of conduct with which one disagrees," an injury that did not differentiate the plaintiff from any citizen who disapproved of the transfer on philosophical grounds. Concrete adversity is guaranteed not by the intensity of plaintiffs' interest in enforcing constitutional rights, the Court added, but by the presence of actual, individualized injury-in-fact. Id. at 485-86.

Two cases underline the distinction Valley Forge draws between an injury sufficient to confer standing to raise an Establishment Clause issue, and a concern that is not. In Doremus v. Board of Education, 342 U.S. 429 (1952), plaintiffs, citizens-taxpayers, sought a declaration that a state statute requiring the reading of passages from the Bible in school classrooms infringed the Establishment Clause. The Court described the asserted grievance as a "religious difference" (id. at 434), and held that this philosophical dispute would not suffice for standing since plaintiff did not assert a tangible personal interest injured by the challenged conduct. Id. at 435. Some years later, the identical issue of the constitutional validity of required Bible

*/ The Court also rejected the plaintiffs' claims of standing as taxpayers, applying the now familiar test first articulated in Flast v. Cohen, supra. 454 U.S. at 478.

reading in public schools was raised in Abington School District v. Schempp, 374 U.S. 203 (1963). In reaching the opposite result, the Court stated that:

> It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain. . . . The parties here are school children and their parents, who are directly affected by the laws and practices against which they complain.

Id. at 224 n.9.*/ In Valley Forge, the Supreme Court explained that "[t]he plaintiffs in Schempp had standing, not because their complaint rested on the Establishment Clause -- for as Doremus demonstrated that is insufficient -- but because impressionable school children were subjected to unwelcome religious exercises or were forced to assume special burdens to avoid them." 454 U.S. 487 n.22.

The Supreme Court's decision in Valley Forge is fatal to plaintiffs' standing here. Like the plaintiffs there, plaintiffs in this case have identified no personal injury other than the psychological consequences produced by an awareness of conduct with which they disagree. Plaintiffs make no claim here that they have been subject to any regulatory, proscriptive or compulsory exercise of governmental power because of the issuance of the proclamation; nor do they point to any particular burdens they have been forced to assume in order to avoid the consequences of the challenged action.

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*/ One of the plaintiffs in Doremus had a child attending a school engaged in the Bible reading practice, but the case was rendered moot by the graduation of the child. Abington School District v. Schempp, 374 U.S. at 224 n.9.

Like the plaintiffs in Valley Forge, the plaintiffs here have identified no tangible concrete injury resulting from the complained of conduct. At most, plaintiffs have alleged a philosophical disagreement with the challenged actions, and claim injuries from an awareness of conduct with which they disagree. But as the Court said in Valley Forge, "[t]hat is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional terms." 454 U.S. at 485-86.

B. The "Injuries" Alleged Are Not Likely To Be Redressed By The Relief Sought.

Besides the injury-in-fact component, plaintiffs' ability to maintain this suit fails to satisfy the other elements of the standing test. The causation/redressability components of the standing doctrine mandate that the party seeking to invoke the court's remedial powers demonstrate that the alleged injury "fairly can be traced to the challenged action" of the defendant, and is not injury that results from the independent action of some third party not before the court. Simon v. Eastern Ky. Welfare Rights Org., supra, 424 U.S. at 38. Otherwise, the relief ordered would not redress the injury claimed, and the exercise of the power of the federal court "would be gratuitious and thus inconsistent with Article III limitations." Id. at 41-42 (1976). Accord Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979).

But the declaratory relief sought in this case would not remedy plaintiffs' alleged injuries. For instance, the

non-Christian "leader" plaintiffs claim that the Resolution and Proclamation "endorse the Christian Bible" thereby "undermining" their ability to provide religious, spiritual and atheist leadership; and the Christian plaintiffs allege damage "to their efforts to promote and engage in beneficial ecumenical dialogue with members of non-Christian faiths." (Comp. at ¶ 28).

However, only "through reliance upon the most speculative inferences is a relationship between defendant's conduct and plaintiff's claimed harm apparent." Mulqueeny v. National Commission on Observance of International Women's Year, 549 F.2d 1115 (7th Cir. 1977). It is wholly conjectural whether the exercise of the remedial powers of this Court would result in a populace more accepting of plaintiffs' philosophical beliefs. It is equally plausible that neither the Resolution, the Proclamation, the challenged actions of the Committee nor a declaratory judgment denying the constitutional validity of those actions by the representative branches will have any influence on the religious or non-religious views of the American public. Indeed, plaintiffs' inability to influence others may turn on a number of factors that are unrelated to defendant's alleged constitutional action. See Winpinsinger v. Watson, supra; Reuss v. Balles, 584 F.2d 461 (D.C. Cir.), cert. denied, 439 U.S. 997 (1978).

For example, plaintiff Hutchison, a Presbyterian minister, claims injury because "P.L. 97-280 and the Presidential Proclamation do not play fair" and "encourage the least rationale, least critical forms of understanding of the Bible, while he has always tried to promote a fair-minded, objective and critical study of

the Bible; . . ." (Complaint, ¶ 7). This, plaintiff Hutchison charges, makes "more difficult the beneficial interfaith dialogue between people of all faiths who hold divergent texts to be the Word of God." (Ibid.) But, interfaith or intersect communication and harmony is simply too complex a matter to single out any one factor as producing a particular result.

To the extent that plaintiffs' concern is that certain unspecified persons will attempt to utilize the executive and legislative actions declaring 1983 as the Year of Bible to further sectarian interests, such injury would not be occasioned by defendant's action, but would be the result of the actions of absent third parties. Thus, what plaintiffs seek is to have this Court declare the challenged executive and legislative actions unconstitutional as a means of preventing feared injurious actions by persons not part of this proceeding.

Illustrative of this point are the allegations of Plaintiff Simon G. Cohen, a cantor for various Jewish congregations for the last 26 years, who fears that his belief that "the Old Testament but not the New Testament is the Word of God," will, if publicly expressed, cause "resentment by his Christian neighbors" (Complaint, ¶ 16). Such allegations regarding possible future harm caused by presently unidentifiable persons present a case of third-party causation falling squarely within the reach of Warth v. Seldin, supra. In such cases, a plaintiff challenges a defendant's behavior only as a means of altering the conduct of third parties not before the Court, who would be the actual source of plaintiff's injury. The assumption inherent in plaintiff's

causation nexus -- that the Court's declaratory relief will prevent third parties from behaving in a certain manner -- is conjectural at best. What the Supreme Court said in Warth is equally applicable to the plaintiffs here.

> "[Plaintiff relies] on little more than the remote possibility, unsubstantiated by allegations of fact, that [his] situation might have been better had [defendant] acted otherwise, and might improve were the court to afford relief."

422 U.S. at 507. As was true in Warth, the plaintiffs' allegations here are insufficient to assure that they would realize some benefit from judicial intervention. See Mulqueeny v. National Commission on the Observance of Internat'l Women's Year, supra, 549 F.2d at 422.

C. Article III Standing Requirements Are Not Relaxed For Establishment Clause Cases

The standing rule announced in cases like Richardson and Reservists to Stop the War -- the assertion of injury from a right to government conduct that does not violate the Constitution is inadequate for standing -- is not relaxed in cases arising under the Establishment Clause. As the Supreme Court succinctly articulated in Valley Forge, there are no special exceptions to the standing doctrine in such cases:

> Implicit in the foregoing is the philosophy that the business of the federal courts is correcting constitutional errors, and that "cases and controversies" are at best merely convenient vehicles for doing so and at worst nuisances that may be dispensed with when they become obstacles to that transcendent endeavor. This philosophy has no place in our constitutional scheme. It does not become more palatable when the underlying merits concern the Establishment Clause.

454 U.S. at 489. And as the Eleventh Circuit has recently observed, after Valley Forge:

> "neither a mere spiritual stake in the outcome nor an intense commitment to separation of Church and state is a 'permissible substitute for a showing of injury itself.'"

American Civil Liberties Union v. Rabun County Chamber of Commerce, 678 F.2d 1379, 1398 (1982).

It is true that by denying plaintiffs' request for relief because they lack standing, this Court might not have the opportunity to adjudicate the constitutionality of the Resolution or Proclamation. But this is of no moment. "Standing to sue does not affix itself to a litigant because no other individual is willing or able to vindicate a claim." Mulqueeny, supra, 549 F.2d at 1122 (7th Cir. 1977); accord, Schlesinger v. Reservists, supra, 418 U.S. at 227 (1974); United States v. Richardson, supra, 418 U.S. at 179 (1974). Moreover, it should not be assumed that a party with constitutionally sufficient injury could not be found. "The law of averages is not a substitute for standing." Valley Forge, supra, 454 U.S. at 489 (1982). Because the standing inquiry focuses not on the putative societal injury or the merits of the case, but on the injury to the particular litigant who seeks to invoke the judicial power of an Article III court, to assume standing in order to find an "available plaintiff" who will "vindicate" certain perceived rights, transforms the requirements of standing into "merely convenient vehicles" for "correcting constitutional error" that "may be dispensed with when they become

obstacles to that transcendent endeavor." (Id.) This cannot be done no matter how egregious or serious the alleged constitutional violation may appear. The limitations on the role of the federal judiciary cannot be bent even if as a consequence no one has standing to sue.*/ United States v. Richardson, supra, 418 U.S. at 179.

*/ That plaintiffs seek a declaration that the actions at issue are incompatible with the Establishment Clause does not save this suit from being dismissed on standing grounds. The Declaratory Judgment Act, 28 U.S.C. § 2201, is not an independent basis of federal court jurisdiction (Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667 (1950), and could not as a constitutional matter vest the courts with jurisdiction where Article III standing requirements have otherwise not been satisfied. See Public Service Commission of Utah v. Wycoff, 344 U.S. 237 (1952).

But even if plaintiffs had standing, whether to entertain a request for declaratory judgment or grant an injunction rests in the discretion of the district court. Abbott Laboratories v. Gardner, 387 U.S. 136, 149 (1967). Thus, even when the minimum Article III requirements have been satisfied, a court may decline to provide such relief where to do so would be inconsistent with established jurisprudential policy.

The Supreme Court has indicated a marked reluctance to have important questions of public law resolved by declaratory judgments. See e.g., Golden v. Zwickler, 394 U.S. 103, 109 (1969); Public Service Commission of Utah v. Wycoff Co., supra, 344 U.S. at 243. Added to that is the difficult separation of powers question as to whether the federal courts have the power to enjoin acts of the President. Mississippi v. Johnson, 71 U.S. (4 Wall.) 475 (1866). These prudential concerns are particularly acute here.

> "[R]epeated and essentially head on confrontations between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self restraint in the utilization of our power to negative the actions of the other branches."

United States v. Richardson, 418 U.S. at 188 (Powell, J., concurring).

[Footnote continued on next page]

II. PLAINTIFFS MAY NOT SECURE DECLARATORY OR INJUNCTIVE RELIEF BASED ON DEFENDANT'S ACTIVITIES AS HONORARY CHAIRMAN OF THE NATIONAL COMMITTEE FOR THE YEAR OF THE BIBLE

A. Defendant Reagan's Participation On The National Committee For The Year Of The Bible Does Not Constitute Government Action For Purposes of The First Amendment

In seeking a declaration that defendant's membership on the National Committee for the Year of the Bible ("Committee") violates the establishment clause and an injunction prohibiting defendant from serving on the Committee or otherwise endorsing its operations, plaintiffs ignore the well-settled principle that the first amendment "applies to and restricts only the Federal government and not private persons." Public Utilities Commission v. Pollak, 343 U.S. 451 (1952). The standards used for determining the existence of state action under the Fourteenth

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*/ [Footnote continued from previous page]
The long-standing dictum that federal courts should not confront constitutional issues in advance of its necessity for decisions, e.g., Alabama State Fed. of Labor v. McAdory, 325 U.S. 450, 461 (1945), has special force in cases involving the Religious Clauses. Cf. Larson v. Valentine, 456 U.S. 228, 244 n.16 (1982). Such cases are of the most difficult and sensitive that come before the courts. The separation between church and state "far from being a 'wall, is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship.'" Lemon v. Kurtzman, 403 U.S. 602, 614 (1971).

Before the Court undertakes the difficult task of resolving the merits of an Establishment Clause challenge, it should insist that the plaintiffs will benefit in some direct and tangible way. The declaratory and injunctive relief sought would only serve here to resolve an abstract point of constitutional law, and its possible benefit to plaintiffs, even if in the most technical sense sufficient to satisfy Article III requirements, lacks the immediacy or urgency that would warrant this Court's entry into this area fraught with legal uncertainty.

Amendment are applicable for the purpose of determining the existence of federal action under the First Amendment. Edwards v. South Carolina, 372 U.S. 229 (1963); see generally Blum v. Yaretsky, ____ U.S. ____, 50 USLW 4859 (1982).

The Supreme Court has repeatedly reaffirmed that the government's "approval or acquiescence" of a private action does not convert the private action into an action by the government. Jackson v. Metropolitan Edison, 419 U.S. 345 (1974); Flagg Brothers v. Brooks, 436 U.S. 149 (1978); Blum v. Yaretsky, supra; Rendell-Baker v. Kohn, ____ U.S. ____, 50 USLW 4825 (1982). The latter case is illustrative. In Rendell-Baker, the Supreme Court found no state or federal action when an extensively regulated, publicly subsidized private school discharged employees who had criticized school officials. The school, which specialized in dealing with students who had trouble completing public high schools, received 90 to 99% of its funds from the government and was subject to extensive regulation. Further, the school was contractually obligated to educate all students referred from public high schools, and, in view of its extensive government funding, the school did not charge tuition. 50 USLW at 4826.

The question before the Supreme Court was whether the school's discharges of the teachers constituted government action under the Fifth and Fourteenth Amendments, for if the discharges had been government action they would have raised substantial questions under the First Amendment. 50 USLW at 4828. The Court held that the discharges did not constitute government action

because the government had not coerced the school to discharge the specific employees:

> Here the decisions to discharge the petitioners were not compelled or even influenced by any state regulation.

Id. at 4828. Neither the fact that the government provided virtually all of the school's funding nor the fact that a state committee had expressed satisfaction with the teachers' discharges was sufficient to convert the discharges of the teachers into government action, for the government had never required the discharges in the first place, Id. at 4828-29.

In the present case plaintiffs' own evidence clearly establishes that the Committee, is "an inter-faith, non-profit, non-governmental group of outstanding Christian and Jewish leaders formed independently to help focus attention on the year-long observance [of the Year of the Bible]" (See Exhibit C to Plaintiffs' Comp., p.2) (emphasis added). As such, plaintiffs cannot prove the existence of any "federal action" in connection with this non-governmentmental organization. The Committee is neither government-funded, nor does it act at the direction of the federal government. Indeed, in light of Rendell-Baker, it is impossible to find "federal action" in connection with this Committee.

Plaintiffs' sole claim, then, is that President Reagan's mere presence on the Committee as honorary chairman converts the Committee's purely private activities into "federal action" for purposes of the First Amendment. Such a claim is wholly untenable. Based on this novel constiutional theory, every action of the President is "federal action", and the President is powerless

to engage in private activity of any kind. While Presidents cannot rigidly separate their private and constitutional persona, they do not surrender the rights enjoyed by other citizens by virtue of their election to high office. Cf. Pickering v. Board of Education, 391 U.S. 563, 568 (1968). Although the President is always the President, not every activity of the President rises to constitutional significance. Thus, a President is free, as other citizens, to follow and espouse the religious faith of his choice, and to belong to political, social and professional organizations, all without turning those activities into "governmental action." See generally Nixon v. Administrator, General Services Administration, 433 U.S. 425, 465-68 (1977), id. at 533 (Burger, C.J., dissenting). Defendant's honorary chairmanship of the Committee no more constitutues governmental action than would his attendance at a religious service of his choice.

Though plaintiffs allege harm in having "the United States of America" support an organization that, in their view, wrongly, endorses the Bible, the weight of "the United States of America" simply does not attend to each individual action performed by defendant Reagan.*/ Compare Evans v. Newton, 382 U.S. 296

*/ If as plaintiffs maintain, the President's membership on the Committee is to be thought of as governmental action, they would still not be entitled to the injunctive relief sought. It is well-established that the President generally is not amenable to civil suit where an injunction is sought that would affect the performance of the discretionary duties of his office. Mississippi v. Johnson, supra; Mabrary v. Madison, 5 U.S. (1 Cranch) 137, 169-71 (1803); Committee to Establish the Gold Standard v. United States, 392 F. Supp. 504, 506 (S.D. N.Y. 1975); Reese v. Nixon, 347 F. Supp. 314, 316-17 (C.D. Cal. 1972). Indeed, as the court noted in San Francisco Development Agency v. Nixon, 329 F. Supp. 672 (N.D. Cal. 1971), there is little, if any,

[Footnote continued on next page]

(1966) with Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972). For example, plaintiffs could not dispute on first amendment grounds defendant Reagan's choice of religious affiliations. Whether the President chose to declare himself a Protestant or a Catholic clearly would be impervious to constitutional challenge. Just as clearly, this Court can grant plaintiffs no relief that would redress their dispute with defendant Reagan over his decision to affiliate himself with the Committee. The President must, as any other citizen, have the right to form associations freely and to hold and espouse his personal religious beliefs.

B. This Court Lacks Personal Jurisdiction Over Defendant Reagan

Before a federal Court may adjudicate a controversy, it must possess jurisdiction over both the subject matter of the action and over the persons whose rights are to be affected by its determination. Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908). Defendant has previously shown that plaintiffs have failed to present an Article III "case or controversy" and, therefore, the subject matter jurisdiction of this Court is lacking. Moreover, this Court may not, consistent with notions of due process, exercise its adjudicatory authority over defendant Reagan unless defendant is shown to have sufficient "minimum contacts"

*/ [Footnote continued from previous page]
"authority for the proposition that a United States District Court may compel the head of the Executive Branch of government to take any action whatsoever." Departures from this principle are extremely limited, involving most often instances where there is a clear and mandatory duty on the President to execute legislative instructions, see, e.g., National Treasury Employees Union v. Nixon, 492 F.2d 587 (1974), or in cases involving the administration of the criminal law, United States v. Nixon, 418 U.S. 683, 705-716 (1974). Neither circumstance applies here.

with this forum. Kulko v. Superior Court of Calif., 436 U.S. 84 (1978); FTC v. Compagnie De Saint-Gobain-Pont-A-Mousson, 636 F.2d 1300 (D.C. Cir. 1980). This is particularly true in this case, in view of the mandatory injunctive relief sought.

As plaintiffs have served the amended complaint upon defendant outside the territorial jurisdiction of this Court, they must demonstrate a basis for extra-territorial service of process. See Rule 4(f), F.R.Civ.Proc. Although satisfaction of the requirements of the state long-arm statute may ordinarily be relied upon in establishing constitutionally sufficient extra-territorial process, (Rule 4(d)(7) F.R.Civ.P.), the California Long Arm Statute*/ embodies due process "minimum contacts" requirements that prove fatal to any claim of personal jurisdiction over defendant:

> [U]nless the defendant's forum-related activity reaches such extensive or wide-ranging proportions as to make the defendant sufficiently "present" in the forum state to support jurisdiction over it concerning causes of action which are unrelated to that activity, the particular cause of action must arise out of or be connected with the defendant's forum-related activity.

Republic International Corp. v. AMCO Engineers, Inc., 516 F.2d 161, 167 (9th Cir. 1975) quoting Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 898-99 (1969).

Apart from being a California resident and a California property owner, defendant's forum-related activities are not of such "extensive proportions" as to render defendant sufficiently "present" in the state to support jurisdiction over the activity

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*/ Calif. Code Civ. Proc. § 410.

concerning unrelated causes of action. The complaint, challenging both the constitutionality of Legislative and Executive Branch action, and defendants' membership in a non-forum organization, completely fails to allege any cause of action arising out of defendant Reagan's limited forum-related (i.e. property-owning) activities. This Court thus lacks personal jurisdiction over the defendant. See Kulko v. California Superior Court, supra, 436 U.S. 84, 91 (1978), reh. denied, 438 U.S. 908 (1978).

CONCLUSION

For the foregoing reasons, judgment should be entered in favor of the defendant on the pleadings in this action.

Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REV. PHILIP ZWERLING, et al., Plaintiffs, v. RONALD W. REAGAN, President of the United States of America, Defendant.	Civil Action No. 83-2504 R ORDER

This matter having come before the Court on the Defendant's Motion for Judgment on the Pleadings and good cause appearing therefore, it is hereby

ORDERED that defendant's Motion for Judgment on the Pleadings should be, and the same hereby is granted; and it is further

ORDERED that judgment should be, and the same hereby is entered for the defendant.

Dated: _____

_____
UNITED STATES DISTRICT JUDGE

Submitted by: Christie L Jones

CHRISTINE L. JONES
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on this 25th day of August, 1983, a copy of the foregoing Memorandum of Points and Authorities in Support of Defendant's Motion for Judgment on the Pleadings was mailed, postage pre-paid to the following persons:

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