

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of June, two thousand fourteen,

Present:

Reena Raggi,
Gerard E. Lynch,
Denny Chin,
Circuit Judges.

American Atheists, Inc. Dennis Horvitz,
Kenneth Bronstein, Jane Everhart,

Plaintiffs-Appellants,

Mark Panzarino,

Plaintiff,

v.

Port Authority of New York and New Jersey,
World Trade Center Memorial Foundation/
National September 11 Memorial and Museum,

Defendants-Appellees,

State of New Jersey, Governor Chris Christie,
Silverstein Properties, Inc., Lower Manhattan
Development Corporation, Church of the Holy
Name of Jesus, Brian Jordan, World Trade Center
Properties, LLC,

Defendants.

ORDER

Docket No. 13-1668

Amicus curiae The Becket Fund having challenged plaintiffs' standing in this case, the parties are directed to file on or before July 14, 2014, supplemental briefs of no more than 15 double-spaced pages on the issue of standing.

Plaintiffs' brief should, at a minimum, clarify both the injuries alleged and legal theories relied on to support standing.

Further, to the extent plaintiffs allege that they have been "injured in consequence of having[] a religious tradition that is not their own imposed upon them through the power of the state," First Am. Compl. ¶ 5, because individual plaintiffs view use of the challenged "cross, a Christian symbol, to represent all victims of the 9/11 Attacks" as "offensive," "repugnant," and "insult[ing]" to them as atheists, see *id.* ¶¶ 6-7, plaintiffs should explain how such offense states a cognizable constitutional injury in light of *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1815, 1826 (2014) (stating that "[o]ffense . . . does not equate to coercion" merely because government body exposes persons to prayer "they would rather not hear and in which they need not participate"); see also *id.* at 1826 (citing approvingly to *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 44 (2004) (O'Connor, J., concurring) ("[T]he Constitution does not guarantee citizens a right entirely to avoid ideas with which they disagree."); cf. *Cooper v. U.S. Postal Serv.*, 577 F.3d 479, 489-91 (2d Cir. 2009) (recognizing standing where plaintiff was offended by direct contact with religious displays at postal facility nearest his home and was advised to alter his behavior); *Sullivan v. Syracuse Hous. Auth.*, 962 F.2d 1101, 1106-10 (2d Cir. 1992) (recognizing standing where plaintiff was offended by religious after-school program in community center of public housing development in which he lived).

To the extent plaintiffs allege that the challenged cross display "marginalizes them as American citizens," First Am. Compl. ¶ 6, they should explain how this states a particular and concrete injury to them rather than an abstract stigmatization of atheists generally. See *United States v. Hays*, 515 U.S. 737, 745-46 (1995); *Mehdi v. U.S. Postal Serv.*, 988 F. Supp. 721, 731 (S.D.N.Y. 1997) (Sotomayor, J.).

To the extent plaintiffs reference the Memorial and Museum's receipt of government funding and their own status as taxpayers, see First Am. Compl. ¶¶ 4-5, 32-33, to invoke standing under *Flast v. Cohen*, 392 U.S. 83 (1968), they should clarify (a) the source of the alleged funding, i.e., federal, state, or local; and (b) whether funds were transmitted pursuant to taxing and spending authority. Plaintiffs should then explain how they satisfy the "logical link" and "nexus" requirements of *Flast*, see *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1445 (2011), particularly if the funds were "unrestricted," First Am. Compl. ¶¶ 32-33.

Catherine O'Hagan Wolfe
Clerk of Court

The image shows a handwritten signature, "Catherine O'Hagan Wolfe", written in dark ink. The signature is positioned over a circular official seal. The seal features the words "UNITED STATES" at the top and "SECOND CIRCUIT" at the bottom, with a central emblem. The signature is written in a cursive style.