



1 1993), cert. denied, 512 U.S. 1236 (1994). Reconsideration is warranted to consider newly discovered  
2 evidence or an intervening change in controlling law, as well as to correct clear error. Multnomah County, 5  
3 F.3d at 1263. Other highly unusual circumstances also may warrant reconsideration. Id.; see also 389 Orange  
4 Street Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). In addition, a judgment may be vacated upon  
5 a showing of “(1) mistake, inadvertence, surprise, or excusable neglect” or “(6) any other reason justifying  
6 relief.” Fed. R. Civ. P. 60(b). Plaintiffs must show “extraordinary circumstances” to obtain relief under Rule  
7 60(b)(6). Id. (quotation omitted); Multnomah County, 5 F.3d at 1263.

## 8 **Discussion**

### 9 **I. Is Reconsideration Warranted?**

10 In the course of addressing Plaintiffs’ arguments, the Court again examined all of the pleadings having  
11 any bearing on Defendants’ motions to dismiss, as well as the Court’s prior order. In the prior order, the  
12 Court correctly determined that residency, though insufficient to confer standing alone, contributes to the  
13 existence of standing. AzCLU, 88 F. Supp. 2d at 1077. As the Court noted: “[L]ocal practices may create  
14 a larger psychological wound than the practices of a locale through which a party is merely passing.” Id. (citing  
15 Washegesic v. Bloomingdale Public Schools, 33 F.3d 679, 683 (6<sup>th</sup> Cir. 1994), cert. denied, 514 U.S. 1095  
16 (1995)). However, the Court did not consider whether the psychological injuries of Plaintiffs, all of whom are  
17 Gilbert residents, differed from those experienced by the plaintiffs in Valley Forge Christian College v.  
18 Americans United for Separation of Church and State, (“Valley Forge”), 454 U.S. 464 (1982), who were  
19 Maryland and Virginia residents challenging a federal agency’s transfer of land to a Christian college in  
20 Pennsylvania. Rather, the Court considered the very real psychological injuries the Plaintiffs suffered as a result  
21 of the Bible Week Proclamation to be the same as those of the Valley Forge plaintiffs: the “‘psychological  
22 consequence . . . produced by observation of conduct with which [they] disagree[.]’” See AzCLU, 88 F.  
23 Supp. 2d at 1072 (quoting Valley Forge, 454 U.S. at 485). The Supreme Court found such injury insufficient  
24 for standing purposes. See id. (quoting Valley Forge, 454 U.S. at 485).

25 “A district judge can vacate a judgment under Rule 60(b) “‘after mature judgment and re-reading the  
26 records’ and ‘on its own motion.’” Kingvision Pay-Per-View Ltd. v. Lake Alice Bar, 168 F.3d 347, 351-52  
27 (9<sup>th</sup> Cir. 1999) (internal quotation omitted); see also Fiduccia v. U.S. Dept. of Justice, 185 F.3d 1035, 1046  
28 (9<sup>th</sup> Cir. 1999). Because residency or other proximity to challenged conduct affects the injury portion of

1 standing analysis, this Court must determine whether Plaintiffs' residency in Gilbert, and their resultant  
2 proximity to the Bible Week Proclamation, impacts the analysis of injury in the action at bar. Thus, "after  
3 mature judgment and re-reading the records," Kingvision Pay-Per-View Ltd., 168 F.3d at 351-52, the Court  
4 concludes that reconsideration of its analysis of standing is warranted.

5 Reconsideration is merited even though this Court engaged in a careful analysis of Plaintiffs' standing  
6 in its prior order due to both the significance and the difficulty of the issue. In analyzing standing, the Court  
7 was mindful that standing and other Article III doctrines are a limitation on judicial power. See Allen v.  
8 Wright, 468 U.S. 737, 750 (1984). These doctrines "limit the federal judicial power 'to those disputes which  
9 confine federal courts to a role consistent with a system of separated powers.'" Valley Forge, 454 U.S. at  
10 472. Nonetheless, the Court also has an obligation to consider the disputes of parties who establish the  
11 standing requirements of injury, causation, and redressability. See id. at 472.

12 The Supreme Court has acknowledged the difficulties inherent in the analysis of standing: "We need  
13 not mince words when we say that the concept of 'Art. III standing' has not been defined with complete  
14 consistency in all of the various cases decided by this Court which have discussed it." Valley Forge, 454 U.S.  
15 at 471. "[Both the constitutional and prudential components] of standing doctrine incorporate[] concepts  
16 concededly not susceptible of precise definition." Allen, 468 U.S. at 751. As noted in this Court's prior  
17 order, several circuit courts also have noted that the injury necessary to establish standing in Establishment  
18 Clause cases is a difficult and elusive concept. See Suhre v. Haywood County, 131 F.3d 1083, 1085 (4<sup>th</sup>  
19 Cir. 1997); Murray v. City of Austin, Texas, 947 F.2d 147, 151 (5<sup>th</sup> Cir. 1991), cert. denied, 505 U.S. 1219  
20 (1992); Saladin v. City of Milledgeville, 812 F.2d 687, 690 (11<sup>th</sup> Cir. 1987). The concept is even more  
21 elusive in the action at bar because it involves issues of first impression. Reconsideration enables this Court  
22 to further its ultimate aim of applying the law in this difficult area in a manner consistent with the dictates of the  
23 Supreme Court and the Ninth Circuit.

## 24 **II. Do Plaintiffs Have Standing?**

25 In Valley Forge, the Supreme Court expressly articulated the importance of direct contact with  
26 challenged government conduct, for standing purposes, by distinguishing its prior decision, School Dist. of  
27 Abington Township, Penn. v. Schempp, 374 U.S. 203 (1963). Unlike the remotely-located plaintiffs  
28 challenging the sale of government property in Valley Forge, the plaintiffs in Schempp had standing to challenge

1 the constitutionality of a daily school prayer because they were either “subjected to unwelcome religious  
2 exercises” or “forced to assume special burdens to avoid them.” Valley Forge, 454 U.S. at 486 n.22  
3 (discussing Schempp, 374 U.S. 203) (emphasis added).

4 In their Response to the Motion to Dismiss, Plaintiffs quote the Supreme Court’s explanation of the  
5 harm suffered by individuals when their government endorses a particular religion: “it sends a message to  
6 nonadherents that they are outsiders, not full members of the political community. . . .” (Pls.’ Resp. at 21  
7 (quoting County of Allegheny v. A.C.L.U., 492 U.S. 573, (1989) (quoting Lynch v. Donnelly, 465 U.S. 668,  
8 688 (1984) (O’Connor concurring))). The Supreme Court did not set forth this discussion of harm to resolve  
9 issues of standing. Nonetheless, the Supreme Court’s description is consistent with the conclusion that harm  
10 may differ based on proximity. The harm that occurs when public officials send a message to residents of the  
11 community about their outsider status is far greater than the harm that occurs when someone residing elsewhere  
12 hears of the message. The message of outsider status directly affects local residents but affects others only on  
13 an ideological basis.

14 In one of the first, and most widely-cited, circuit court decisions addressing standing in the  
15 Establishment Clause context after Valley Forge, the Eleventh Circuit confirms the significance of direct contact  
16 with the challenged activity. See ACLU v. Rabun County Chamber of Commerce, Inc., (“Rabun County”),  
17 698 F.2d 1098, 1108 (11<sup>th</sup> Cir. 1983). In Rabun County, the plaintiffs challenged the display of a large cross  
18 in a Georgia state park. In discussing what constitutes sufficient injury, the Eleventh Circuit quoted the excerpt  
19 from Valley Forge set forth above — standing exists if the claimants were ““subjected to unwelcome religious  
20 exercises or were forced to assume special burdens to avoid them.”” Rabun County, 698 F.2d at 1108  
21 (quoting Valley Forge, 454 U.S. at 487 n. 22 (discussing Schempp, 374 U.S. 203)). Thereafter, the Eleventh  
22 Circuit explained that one of the plaintiffs had standing due to his direct contact with the display:

23 [B]ecause the cross is clearly visible from the porch of his summer cabin at the religious camp  
24 which he directs as well as from the roadway he must use to reach the camp, plaintiff Karnan  
25 has little choice but to continually view the cross and suffer from the spiritual harm to which he  
26 testified. . . . [W]e are unable to find any qualitative differences between the injury suffered by  
27 the plaintiffs in this case and that which the Court found in [Schempp].

26 Id.

27 Several years later, the Ninth Circuit cited Rabun County and adopted a second standard that the  
28 Eleventh Circuit articulated therein for assessing the existence of standing, drawn from United States v.

1 SCRAP, 412 U.S. 669 (1973), and Sierra Club v. Morton, 405 U.S. 727 (1972). Under this standard, injury  
2 for purposes of standing occurs when a plaintiff is “not . . . able to freely use public areas.” Hewitt v. Joyner,  
3 940 F.2d 1561, 1564 (9<sup>th</sup> Cir. 1991) (citing Rabun County, 698 F.2d at 1107-1108) (additional citation  
4 omitted); Ellis v. City of La Mesa, 990 F.2d 1518, 1523 (9<sup>th</sup> Cir. 1993), (quoting Hewitt, 940 F.2d at 1564),  
5 cert. denied sub nom. County of San Diego v. Murphy, 512 U.S. 1220 (1994). The plaintiffs in Ellis satisfied  
6 the standard — two avoided parks containing crosses and the third avoided bringing customers to the town  
7 where he resided because police cars displayed the town insignia containing a cross. 990 F.2d 1518, 1523.

8 In subsequent actions, the Ninth Circuit has continued to apply this standard without describing the  
9 specific conduct that satisfied it. See Separation of Church and State Comm. v. City of Eugene, 93 F.3d 617,  
10 619 n.2 (9<sup>th</sup> Cir. 1996) (stating that plaintiffs had standing “because they alleged that the cross prevented them  
11 freely using the area”). However, this standard is inapplicable to the action at bar because Plaintiffs’ contact  
12 with the Proclamation does not interfere with their use of public property. The Ninth Circuit has not addressed  
13 the issue of injury resulting from unwelcome direct contact with religious displays or exercises absent  
14 interference with use of a public area, except in the context of municipal taxpayer standing. See Doe v.  
15 Madison Sch. Dist. No. 321, 177 F.3d 789, 797-98 (9<sup>th</sup> Cir. 1999) (en banc).

16 Other circuits have addressed the issue, however. Four years after its decision in Rabun County, the  
17 Eleventh Circuit addressed the issue of standing in the Establishment Clause context again. See Saladin v. City  
18 of Milledgeville, 812 F.2d 687 (11<sup>th</sup> Cir. 1987). In Saladin, the plaintiffs challenged a city’s use of a seal,  
19 printed on city stationery and embossed on official documents, containing the word “Christianity.”<sup>1</sup> 812 F.2d  
20 at 688-89. The Eleventh Circuit once again analyzed standing by determining whether the plaintiffs were  
21 “subjected to unwelcome religious statements” and “directly affected by [those statements].” Saladin, 812  
22 F.2d at 692 (quoting Schempp, 374 U.S. 224 n.9, and citing Valley Forge, 454 U.S. at 486 n.22, and Rabun  
23 County, 698 F.2d at 1107-1108). Applying this standard, the Eleventh Circuit concluded that the plaintiffs  
24 had standing because they “c[a]me into direct contact with the offensive conduct” by receiving and viewing,  
25 on a regular basis, correspondence from the city containing the seal. Saladin, 812 F.2d at 692.

---

26  
27 <sup>1</sup> The word “Christianity” was not legible on the printed and embossed copies of the seal, but the  
28 Eleventh Circuit considered the illegibility immaterial because the particular appellants knew that the illegible  
mark was the word “Christianity” regardless of whether they could read it. Id. at 691-92.

1 In reaching its decision in Saladin, the Eleventh Circuit did not rely on the portion of Rabun County,  
2 698 F.2d at 1105-1107, in which it had reasoned that direct contact, or avoidance, interfered with the  
3 plaintiffs' ability to use public property. This rationale did not fit an action challenging municipal seals on  
4 stationery. Instead, the Eleventh Circuit explained:

5 [T]he presence of the word on the seal offends the [plaintiffs] because the seal represents the  
6 City's endorsement of Christianity and thus makes the appellants feel like second class citizens."  
7 Id. at 692-93 (emphasis added). The message communicated by the seal, appellants assert,  
8 is that . . . Christianity is the "litmus test" of being a "true" citizen of Milledgeville. The plaintiffs  
9 here, unlike the plaintiffs in Valley Forge, clearly have more than an abstract interest in seeing  
10 that the City of Milledgeville observed the Constitution: they are part of the City and are directly  
11 affronted by the presence of the allegedly offensive word on the city seal.

12 Id. at 692-93 (footnote omitted; emphasis added). The feeling of being a "second class citizen," subordinate  
13 to others in the local community, was the injury suffered by area residents who found the seal  
14 offensive.

15 The other circuits that have addressed the issue uniformly agree with the Eleventh Circuit that claimants  
16 are injured, for standing purposes, if they are either offended by viewing, or forced to avoid, a religious display  
17 in the area where they live or work. Like the Eleventh Circuit, the Fourth and Seventh Circuits expressly rely  
18 on the distinction drawn by the Supreme Court between the plaintiffs in Valley Forge and those in Schempp.  
19 See Suhre v. Haywood County, 131 F.3d 1083, 1086-89 (4<sup>th</sup> Cir. 1997) (quoting Valley Forge, 454 U.S.  
20 at 487 n.22); see also Doe v. County of Montgomery, ("County of Montgomery"), 41 F.3d 1156, 1159 (7<sup>th</sup>  
21 Cir. 1994) (citing same). The Fourth Circuit explained:

22 [L]ike Schempp before it, Valley Forge recognized that direct contact with an unwelcome  
23 religious exercise or display works a personal injury distinct from and in addition to each  
24 citizen's general grievance against unconstitutional government conduct. . . . The Supreme Court  
25 identified the proximity of the plaintiffs to the conduct they challenged as a critical factual  
26 distinction between [the plaintiffs in those two cases].

27 Suhre, 131 F.3d at 1086 (emphasis added). The Sixth Circuit likewise stated that whether psychological  
28 injury creates standing "depends on the directness of the harm." Washegesic, 33 F.3d at 682. The Sixth  
29 Circuit distinguished between the injury suffered by a plaintiff who comes into continuing, direct contact with  
30 a religious display and the plaintiffs in Valley Forge, describing the injury of the latter as "remote, vicarious,  
31 [and] generalized." Id. at 682-83.

32 The Fourth and the Seventh Circuits also have drawn helpful distinctions between the plaintiffs who  
33 possessed standing, and individuals, actual or hypothetical, who did not. In the Seventh Circuit decision,

1 Montgomery County residents had standing to challenge a large sign over the main entrance to the county  
2 courthouse, stating: “THE WORLD NEEDS GOD.” See County of Montgomery, 41 F.3d at 1158. These  
3 county residents had entered the courthouse to serve on juries and register to vote, and indicated that they  
4 might enter it again for other governmental matters. Id. at 1158, 1161 n.3. Likewise, in Suhre, 131 F.3d at  
5 1086, the plaintiff, a county resident, had standing because, as an atheist, he was offended and distressed by  
6 the display. “He also fear[ed] that the presence of the Ten Commandments skews the application of the law  
7 by influencing juries to base their decision on religious rather than legal precepts.” Id. In contrast, another  
8 plaintiff in County of Montgomery, 41 F.3d at 1161, an attorney practicing in another part of Illinois, lacked  
9 standing. Id. at 1161. Although the attorney averred that he would not appear in the Montgomery County  
10 Courthouse due to the sign, he had no office in the county and offered no evidence that he had turned down  
11 cases that would require such an appearance. Id. Thus, he did not have sufficient proximity to the offensive  
12 conduct.

13 The Fifth and Tenth Circuits likewise have concluded that standing can be based on a local resident’s  
14 direct contact with a display he or she finds offensive. See Murray v. City of Austin, Texas, 947 F.2d 147,  
15 151 (5<sup>th</sup> Cir. 1991), cert. denied, 505 U.S. 1219 (1992); Foremaster v. City of St. George, 882 F.2d 1485,  
16 1486 (10<sup>th</sup> Cir. 1989), cert. denied, 495 U.S. 910 (1990). The analysis of standing in both of these decisions  
17 is more cursory, but both courts rely on the Eleventh Circuit’s decision in Saladin, 812 F.2d 687. The direct  
18 contact and injuries described in these decision are similar to those in the decisions discussed above. For  
19 example, the plaintiff in Foremaster worked in a city that displayed a logo containing a Mormon temple and  
20 was “directly confronted by the logo on a daily basis” because it appeared on city vehicles. Foremaster, 882  
21 F.2d at 1491. He alleged: “[T]he visual impact of seeing that Temple on a daily basis as part of an official  
22 emblem . . . has and continues to greatly offend, intimidate, and affect me.” Id. at 1490-91.

23 As explained above, the harm resulting from a religious display can occur through either direct contact  
24 or avoidance. However, several of the circuit courts have explained that a change in behavior, such as altering  
25 a travel route to avoid a religious display, is a sufficient, but not a necessary, injury for purposes of standing.  
26 See, e.g., Foremaster, 882 F.2d at 1486. The Fourth Circuit provides the best explanation of why behavior  
27 change is unnecessary:  
28

1 Rules of standing that require plaintiffs to avoid public places would make religious minorities  
2 into outcasts. Forcing an Establishment Clause plaintiff to avoid the display of which he  
3 complains in order to gain standing to challenge it only imposes an extra penalty on individuals  
already alleged to be suffering a violation of their constitutional rights. We do not think Article  
III requires as much.

4 Suhre, 131 F.3d at 1088. The Seventh Circuit is the only circuit that once required a showing of altered  
5 behavior to find injury in Establishment Clause cases challenging religious displays. See id. (citing Freedom  
6 from Religion Foundation, Inc. v. Zielke, 845 F.2d 1463, 1468 (7<sup>th</sup> Cir. 1988), and Gonzales v. North  
7 Township, 4 F.3d 1412, 1416 (7<sup>th</sup> Cir. 1993)). However, the Seventh Circuit subsequently distinguished its  
8 earlier decisions and concluded that a change in behavior is unnecessary.<sup>2</sup> See County of Montgomery, 41  
9 F.3d at 1160-61.

10 Like the injuries sufficient to establish standing in many of the decisions discussed above, the injuries  
11 suffered by the Plaintiffs at bar are directly impacted by Plaintiffs' residency in Gilbert, the town engaged in  
12 the challenged conduct. In its prior order, the Court stated:

13 Ellen and Ellis Sklar, two of the named Plaintiffs, are residents of Gilbert who are Jewish. The  
14 Sklars aver that the Bible Week Proclamation offended them and made them feel excluded by  
15 the Town in which they reside and by its Mayor "because [they are] not part of the Town's  
Christian majority". (Ellen Sklar Aff. at ¶ 6, Exh. D to Pls.' Response; Ellis Sklar Aff. at ¶ 4,  
Exh. E. to Pls.' Response).

16 AzCLU, 88 F. Supp. 2d at 1075 (emphasis added). The Sklars' injury is similar to the injury of the plaintiffs  
17 in the City of Milledgeville, who were made to feel like "second class citizens" by the inclusion of the word  
18 "Christianity" on the city seal. See Saladin, 812 F.2d at 692-93. Feelings of unwelcomeness and subordinate  
19 status may be even greater in the action at bar because the Proclamation was issued by the Mayor, the Town  
20 of Gilbert's highest elected official.

21 Like the plaintiffs in Saladin, the Sklars' residency in Gilbert placed them into unwelcome direct contact  
22 with the Bible Week Proclamation. Ellis Sklar avers that he learned of the Proclamation from the media in  
23 1997, and both of the Sklars aver that they learned of the proposed 1998 Proclamation, the one enjoined by  
24 this Court, from the media in 1998. The Court discerns no basis for distinguishing between unwelcome direct  
25

---

26 <sup>2</sup> This conclusion increases the persuasive value of the Seventh Circuit's discussion in an earlier  
27 decision, in which it opined that individuals may be more likely to be "intensely distressed" by an  
28 unconstitutional display in the area where they reside. See ACLU v. City of St. Charles, 794 F.2d 265, 268  
(7<sup>th</sup> Cir. 1986).

1 contact with the Proclamation through the media and unwelcome direct contact with a city seal printed on  
2 stationery and city vehicles. See Saladin, 812 F.2d at 692-93. The latter is a visual symbol, the former, a  
3 textual statement announced verbally at a Town Council meeting. That the Proclamation is announced rather  
4 than displayed does not preclude unwelcome direct contact with the Proclamation via news reports. A  
5 reported Proclamation can be more invasive than a visual display due to the pervasiveness of media coverage.<sup>3</sup>  
6 To avoid the Proclamation, Plaintiffs would be faced not with the option of merely altering a travel route.  
7 Rather, they would need to avoid the media entirely, an option close to impossible in this age. Moreover, no  
8 such avoidance is required. See Suhre, 131 F.3d at 1088.

9 The Sklars were directly and personally affected by the Bible Week Proclamation. Thus, their injury  
10 is unlike the injury suffered by the Plaintiffs in Valley Forge, i.e., “the abstract injury in nonobservance of the  
11 Constitution asserted by . . . citizens.” 454 U.S. at 482 (quoting Schlesinger v. Reservists Committee to Stop  
12 the War, 418 U.S. 208, 223 n.12 (1974)). The abstract injury in Valley Forge is the type of injury that would  
13 be suffered by a person residing hundreds of miles away who read about the Bible Week Proclamation issued  
14 in Gilbert and found it offensive to his or her beliefs about the Constitution’s mandates. Cf. Suhre, 131 F.3d  
15 at 1086 (distinguishing the plaintiff, a Haywood County, North Carolina resident, from someone living in  
16 Omaha who found the Ten Commandments display offensive). As the Supreme Court states, “[a] firm[]  
17 commit[ment] to the constitutional principle of separation of church and State” is not rendered a concrete injury  
18 “by the intensity of the litigant’s interest or the fervor of his [or her] advocacy.” Id. at 485. Although the  
19 Sklars expressed a commitment to the principle of church-state separation, they also suffered the particularized  
20 injury of feeling unwelcome and excluded by the town wherein they reside.

21 The distinction between the particularized injury asserted by the Sklars and the abstract injury  
22 insufficient for standing is further confirmed by the Supreme Court’s decision in Allen, 468 U.S. 737. The  
23 Supreme Court explained therein that the stigmatization and denigration suffered by members of a racial  
24 minority as a result of discriminatory governmental conduct supports standing, but only for those members of  
25 the group who are personally affected by the conduct. Id. at 753-55. Those members of a racial minority

---

26  
27 <sup>3</sup> See Meghan Tomasik, Note, Nothing to Stand On: Reading the Standing Doctrine to Include  
28 Religious Proclamations Through Arizona Civil Liberties Union v. Dunham, 32 Ariz. St. L.J. 345 (2000)  
(student commentator on contact via the media as sufficient direct contact).

1 personally unaffected by the government’s actions cannot obtain standing by claiming that they, too, are  
2 stigmatized, according to the Supreme Court, because such an “abstract stigmatic injury” would result in  
3 extension of standing “nationwide to all members of the particular racial groups against which the Government  
4 was alleged to be discriminating” regardless of whether the plaintiffs were personally affected by the  
5 unconstitutional conduct. Id. at 755-56. Only those individuals affected by the conduct have the “concrete,  
6 personal interest” that suffices to confer standing. See id. at 757. Applying this reasoning, the local residents  
7 of Gilbert who, upon issuance of the Bible Week Proclamation, are made to feel like outsiders unwelcome in  
8 their own hometown are directly affected by the Proclamation and have standing to challenge it.

9 Unlike the Plaintiffs in the actions discussed above, the Sklars also provide independent evidence  
10 verifying their feelings of being shunned. This evidence consists of uncontroverted harassing and defamatory  
11 mail and phone calls the Sklars received after Ellen Sklar expressed opposition to the proposed 1998 Bible  
12 Week Proclamation. (Ellen Sklar Aff. at ¶7; Ellis Sklar Aff. at ¶5; see also Ellen Sklar Dep. at 32; Ellis Sklar  
13 Dep. at 96). As explained in the Court’s prior order: “Ellis Sklar testified in his deposition that one caller  
14 stated, ‘You Goddamn Jews, we’ve had nothing but trouble with you since the beginning of time. You should  
15 have all been burned in Hell.’” AzCLU, 88 F. Supp. 2d at (citing Ellis Sklar Dep. at 56). A Gilbert Police  
16 Department report also states that the Sklars received abusive mail, specifically, “correspondence . . . which  
17 appeared to be anti-Semitic” on November 12, 1998. (Police Report, Exh. A. to Pls.’ Reply to Mot. for  
18 Reconsideration). As explained in the Court’s prior order, the harassing mail and phone calls are injuries, but  
19 they satisfy the traceability and redressability requirements of standing only if the Plaintiffs can establish that  
20 the harassment was a response to the Sklar’s complaints about the Proclamation, not the Sklar’s initiation of  
21 litigation. These requirements have not been established in the facts before the Court. See AzCLU, 88 F.  
22 Supp. 2d at 1080. Nonetheless, regardless of when it occurred, the harassing conduct confirms the legitimacy  
23 of the Sklars’ feelings of exclusion from the community.

24 The Sklars are not the only Plaintiffs directly affected by the Bible Week Proclamation. William  
25 Gregory, a Gilbert resident who is Christian, averred that the Bible Week Proclamation “deeply offends” him  
26 because “[he] believe[s] that it cheapens holy scriptures” by affording them significance on a par with that of  
27 other Proclamation subjects such as “Bowling Week” and “National Pet Week.” (Gregory Aff. at ¶7, Exh.  
28 G to Pls.’ Response). He also finds the Proclamation demeaning because it suggests that “[his] religion and

1 the Bible . . . need governmental support.” (Id. at ¶ 5). Eileen Levine, another Christian resident of Gilbert  
2 who learned of the Bible Week Proclamation through the media, finds the Proclamation demeaning for the  
3 same reason.<sup>4</sup> (Levine Aff. at ¶ 7). Levine is an AzCLU member, (see Levine Aff. at ¶ 2), whose affidavit  
4 is offered to establish the AzCLU’s standing as an organization litigating on behalf of its members. See  
5 Associated General Contractors of Am. v. Metropolitan Water Dist. of S. Cal., 159 F.3d 1178, 1181 (9th  
6 Cir. 1998).

7 Gregory’s and Levine’s feelings of offense at the Town of Gilbert’s and the Mayor’s perceived insult  
8 to their religious beliefs, like the offense experienced by the individuals in the cases discussed above, are  
9 enhanced due to their residency in Gilbert. They are “part of the City and are directly affronted [by the  
10 Proclamation].” Saladin, 812 F.2d at 693. Moreover, like the Sklars, Gregory and Levine can avoid the  
11 Proclamation only by avoiding media contact entirely. Gregory and Levine also have suffered an injury  
12 sufficient to establish standing.

13 Recognizing that the injuries of the Sklars, Gregory, and Levine are sufficient for standing purposes  
14 does not provide other potential plaintiffs “a special license to roam the country in search of governmental  
15 wrongdoing and to reveal their discoveries in federal court,” the concern expressed by the Supreme Court in  
16 Valley Forge, 454 U.S. at 487. Rather, this conclusion merely allows those local residents directly affected  
17 by the Town’s and Mayor’s action to challenge it. The genuine feeling of exclusion from the community in  
18 which one resides, and the deep offense from a perceived insult to one’s religious view committed by the  
19 government in one’s community, satisfy the injury prong of standing.

20 As the Court’s prior order explained, Plaintiffs also must satisfy “the traceability and redressability  
21 requirements for standing, i.e., the requirements ‘that the injury fairly can be traced to the challenged action  
22 and is likely to be redressed by a favorable decision.’” AzCLU, 88 F. Supp. 2d at 1078 (quoting Valley  
23 Forge, 454 U.S. at 472 (internal citations and quotations omitted)). The Sklars’ feelings of exclusion from the  
24

---

25  
26 <sup>4</sup> In the prior order, the Court denied as moot the Defendant Town of Gilbert’s Motion to Strike  
27 Levine’s affidavit. However, the Court’s reconsideration of the standing issue requires that the Motion to  
28 Strike be addressed. The Town merely argues that the affidavit should be stricken because it does not  
establish injury. This argument pertains to the weight of the affidavit, not to its admissibility. Therefore, the  
Motion to Strike will be denied.

1 Town of Gilbert and Gregory's and Levine's feeling of offense from a perceived insult to their religious views  
2 were caused by issuance of the Proclamation and will be redressed if the 1997 Proclamation is declared  
3 unconstitutional, the Plaintiffs awarded nominal damages, and future Bible Week Proclamations of a similar  
4 nature enjoined. Traceability and redressability are satisfied. Therefore, all four Plaintiffs, the AzCLU, the  
5 Sklars, and Gregory, have standing to maintain this action.

6 Plaintiffs request that the court reconsider another matter. As noted above, this Court's prior order  
7 concluded, correctly, that the harassing mail and phone calls the Plaintiffs received as a result of their  
8 opposition to Bible Week constituted an injury. See AzCLU, 88 F. Supp. 2d at 1078. However, Plaintiffs  
9 did not satisfy the traceability and redressability requirements because they did not establish that these incidents  
10 occurred prior to the filing of the lawsuit, rather than as a result of the lawsuit. Id. at 1080. Plaintiffs request  
11 reconsideration of the latter conclusion. For support, Plaintiffs attached the copy of a Report by the Gilbert  
12 Police Department referenced above, which states that the Sklars received offensive mail, specifically,  
13 "correspondence . . . which appeared to be anti-Semitic" on November 12, 1998, a date prior to the filing  
14 of this action on November 16, 1998.

15 Plaintiffs argue that the harassing mail referenced in the report establishes standing. As a general rule,  
16 the Court does not consider evidence on a motion for reconsideration if the evidence could have been  
17 provided before the decision was rendered initially. See Multnomah County, 5 F.3d at 1263. However, in  
18 the action at bar, the Court's prior order provided Plaintiffs the first notice that the Court considered the date  
19 of receipt of the harassing mail material to the issue of standing. Consideration of evidence offered to address  
20 a concern first addressed by the Court, rather than by the parties, is warranted. Such consideration is  
21 particularly warranted in the action at bar because the Court did not hold a hearing for the parties to present  
22 evidence regarding standing.

23 The harassing mail referenced in the Police Department Report does not help establish standing because  
24 Plaintiffs have not shown that the harassing mail resulted from the issuance of the 1997 Bible Week  
25 Proclamation, the only Proclamation that remains at issue. It is likely that the harassing mail was sent as a result  
26 of Ellen Sklar's opposition to the proposed 1998 Proclamation, expressed at a Town Council meeting earlier  
27  
28

1 in November.<sup>5</sup> Plaintiffs also reference a letter to the editor published in the Gilbert Tribune on November 12,  
2 1998 as another example of harassing mail that occurred before the litigation ensued. Even if a published letter  
3 to a newspaper editor, rather than a letter directly to the Plaintiffs, could establish injury for standing purposes,  
4 an issue the Court does not decide, Plaintiffs have not established that the letter resulted from the issuance of  
5 the 1997 Bible Week Proclamation. Again, this letter appears to be a result of Sklar's opposition to the  
6 proposed 1998 Proclamation.

7 In their Motion for Reconsideration, Plaintiffs also ask the Court to correct what they describe as  
8 "factual errors." Plaintiffs state that, to the extent the Court suggested that the Town incurred attorneys' fees  
9 and expenses for stationery and postage only after the litigation ensued, the suggestion is incorrect. The Court  
10 did not make that finding — it merely stated: "It is not clear whether the Town incurred this expense [of  
11 attorneys' fees], or the expense of stationery and stamps for correspondence, before or only after the instant  
12 litigation ensued." AzCLU, 88 F. Supp. 2d at 1082-83. Plaintiffs attach an excerpt of the deposition of  
13 Mayor Dunham. In the excerpt, Dunham refers to a copy of a letter she sent a constituent in December, 1997,  
14 a letter that was already in the record. (Letter from Dunham, Dec. 1997, attached as Exh. 5 to Pls.' Response  
15 to Defs.' Mot. to Dismiss). The letter to the constituent establishes that the Town incurred the expense of at  
16 least one item of correspondence before the litigation ensued.

17 Plaintiffs also point to the contents of the letter, in which Mayor Dunham states that the Town's counsel  
18 had advised her that the Bible Week Proclamation did not appear to violate the Establishment Clause.  
19 (Dunham Dep., Exh. A to Pls.' Mot. for Reconsideration; Letter from Dunham, Dec. 1997). The Court  
20 referred to this letter in the prior order, but not for this point. The Court's decision provided Plaintiffs the first  
21 notice that the period of time in which the correspondence costs and attorneys' fees were incurred might be  
22 material to the issue of standing. Therefore, the Court will amend its prior decision to reflect Dunham's  
23 statement that the Town's counsel was consulted in 1997.

24 Because Plaintiffs have established standing, the order granting Defendants' Motion to Dismiss will be  
25 vacated. The current order renders moot Plaintiffs' arguments about the appropriate award of costs. A  
26

---

27 <sup>5</sup> The constitutionality of the proposed 1998 Proclamation was rendered moot by the Court's  
28 issuance of a TRO prohibiting issuance of the Proclamation.

1 decision addressing the argument in the Motions to Dismiss, that Plaintiffs failed to state a claim, will issue  
2 separately.

3 Accordingly,

4 **IT IS ORDERED** granting Plaintiffs' Motion for Reconsideration. (Dkt. # 118).

5 **IT IS FURTHER ORDERED** vacating the Order of September 30, 1999 granting the Defendants'  
6 Motion to Dismiss in part. The Motions to Dismiss are denied with respect to the issue of standing. The issue  
7 of whether the Complaint states a claim will be addressed in a separate order. The following portions of the  
8 analysis contained in the Order are vacated:

9 1. On page 1075, in the paragraph beginning: "It is undisputed that the mental anguish and profound  
10 offense that the named Plaintiffs experienced [. . .] is genuine[,]" delete the last two sentences of the paragraph,  
11 beginning with "[n]onetheless," and their accompanying citations.

12 2. On page 1082, in the paragraph beginning: "In addition to the expense for certificates, stamps, and  
13 stationery [. . .], the Town expended \$1,989 in attorneys fees for legal research and advice [. . .]", delete the  
14 remainder of the paragraph, beginning with "It is not clear."

15 The remainder of the analysis is not vacated.

16 **IT IS FURTHER ORDERED** renewing the Town of Gilbert's Motion to Strike the Affidavit of  
17 Eileen Levine, and denying the Motion. (Dkt. # 96).

18 DATED this \_\_\_ day of August, 2000.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

Roslyn O. Silver  
United States District Judge

copies to all counsel of record