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November 11, 2019

Hon. Catherine O'Hagan Wolfe, Clerk of Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, New York 10007

Re: *New Hope Family Services, Inc. v. Poole*  
Docket No. 19-1715  
Response to Appellant's Rule 28(j) letter

Dear Ms. Wolfe:

Please accept this letter on behalf of appellee Sheila Poole in response to the letter submitted by appellant New Hope Family Services pursuant to Federal Rule of Appellate Procedure 28(j).

Appellant submitted its letter to bring to the Court's attention two decisions from this Court that appellant argues stand for the proposition that "*Employment Division v. Smith* does not govern on the facts alleged." ECF 183, at 1. Appellant cites to *Skoros v. City of New York*, 437 F.3d 1, 39, 41 (2d Cir. 2006), and the unreported decision in *World Trade Ctr. Families for Proper Burial, Inc. v. City of New York*, 359 Fed. Appx. 177, \*181 (2d Cir. 2009) (summary order citing *Skoros*), for the proposition that "strict scrutiny may apply despite absence of purposeful targeting of religion where state action substantially burdens 'observation of a central religious belief.'" ECF 183, at 1.

Neither decision turned on the application of any such test, however. Indeed, in *World Trade Center Families for Proper Burial*, the Court specifically so stated, 359 Fed. Appx. at \*181, and in both cases the Court rejected the free-exercise claims at issue. Moreover, the *Skoros* decision relied on *Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378 (1990), for its formulation of the free-exercise test. But *Jimmy Swaggart Ministries* was decided before the Supreme Court decided *Employment Division. v Smith*, 494 U.S. 872 (1990). And the Supreme Court has since clarified that *Smith* “repudiated” that test *See Holt v. Hobbs*, 574 U.S. 352, 357 (2015).

The Court should therefore disregard appellants’ additional citations.

Respectfully submitted,

/s/ Laura Etlinger

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cc: Roger Brooks, Esq.  
(via ECF)