

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

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MICHAEL NEWDOW, et al.,

Plaintiffs,

v.

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

Defendants.

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Civil Action No.: 1:08-cv-02248-RBW

**UNOPPOSED MOTION OF THE PLAINTIFFS FOR JUDICIAL NOTICE  
OF THE *AMICUS CURIAE* BRIEF SUBMITTED BY THE UNITED STATES  
IN *BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS*,  
OCTOBER TERM, 1952, NO. 8 [347 U.S. 483 (1954)]**

The Plaintiffs in the above captioned matter, by undersigned counsel, respectfully move the Court to take judicial notice of the *amicus curiae* brief submitted by the United States in *Brown v. Board of Education*, 347 U.S. 483 (1954) and attached hereto as Exhibit 1.

**POINTS AND AUTHORITIES SUPPORTING THE MOTION**

For and in support of the motion, the Movant shows the Court:

1. In support of Plaintiffs' motion for a preliminary injunction, the Plaintiffs wish to call to the Court's attention the *amicus curiae* brief of the United States in the matter of the *Brown v. Board of Education*, 347 U.S. 483 (1954). That case, as the Court well knows, dealt with racially discriminatory practices in public schools within the United States.
2. Under Federal Rules of Evidence, Article II, Rule 201(b)(2), the Court may take judicial notice of an adjudicative fact if it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

3. The Court may take judicial notice at any stage of the proceeding. FRE 201(f).
4. Taking judicial notice is mandatory if requested by a party and supplied with the necessary information. FRE 201(d).
5. The Plaintiffs complain that the practice of appending to the presidential oath of office as prescribed by Article II of the Constitution of the United States the words “so help me God” and the inclusion of sectarian prayers in the invocation and benediction of the 2009 Presidential Inaugural ceremonies constitutes both a preference of one religion (monotheism) over another (non-monotheistic religions) and a preference of religion over non-religion.
6. In essence, the Plaintiffs allege that such preferences constitute non-neutrality towards religion and discrimination on the basis of religion in violation of the Establishment and Free Exercise of Religion Clauses of the First Amendment and the Religious Freedom Restoration Act.
7. Quoting the *amicus curiae* brief of the United States in *Brown v. Board of Education*:

The President has stated: ‘We shall not \* \* \* finally achieve the ideals for which this Nation was founded so long as any American suffers discrimination as a result of his race, or religion, or color, or the land of origin of his forefathers. \* \* \* The Federal Government has a clear duty to see that constitutional guarantees of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union. (Emphasis added.)

Brief at 2, quoting Message to the Congress, February 2, 1948, H. Doc. No. 516, 80<sup>th</sup> Cong., 2d sess., p. 2.

8. In light of Paragraph 7, above, and the United States’ brief as a whole, Plaintiffs respectfully ask the Court in taking judicial notice of said brief that the Court substitute “religion” for “race” or “color”, in order that it may full appreciate the harms to the

Plaintiffs caused by the Defendants should the Court not enjoin the practices complained of by the Plaintiffs.

9. The undersigned conferred with counsel for the Federal Defendants on January 13, 2009, and the Federal Defendants do not take a position on Plaintiffs' Motion to Take Judicial Notice (and further informed the undersigned that they reserve all rights to challenge the relevance of the amicus brief and to object to the Court's relying on it in this case).
10. The undersigned conferred with counsel for the Presidential Inaugural Committee ("PIC") and Emmett Beliveau on January 13, 2009, and the PIC Defendants do not take a position on Plaintiffs' Motion to Take Judicial Notice (and further informed the undersigned that they reserve all rights to challenge the relevance of the amicus brief and to object to the Court's relying on it in this case).
11. The undersigned contacted, and a left a message for, Defendant Rev. Richard D. Warren on January 13, 2009. Undersigned received no indication whether Defendant Warren would oppose Plaintiffs' Motion to Take Judicial Notice.
12. The undersigned contacted, and a left a message for, Defendant Rev. Joseph E. Lowery on January 13, 2009. Undersigned received no indication whether Defendant Lowery would oppose Plaintiffs' Motion to Take Judicial Notice.

FOR ALL THE FOREGOING REASONS, the motion should be granted and the Court take judicial notice of the *amicus curiae* brief of the United States in *Brown v. Board of Education of Topeka, Kansas*.

DATE: January 13, 2009

Respectfully submitted,  
ROBERT V. RITTER

/s/ Robert V. Ritter  
ROBERT V. RITTER (DC Bar No. 414030)  
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Co-Counsel for Plaintiffs

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**Newdow v. Roberts**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2009, I served true and correct copies of:

1. Unopposed Motion of the Plaintiffs for Judicial Notice of the Amicus Curiae Brief Submitted By the United States in *Brown v. Board of Education of Topeka, Kansas*, October Term, 1952, No. 8 [347 U.S. 483 (1954)]
2. Proposed Order
3. Amicus brief of the United States in *Brown v. Board of Education*.

upon the following individuals and entities by placing them in the United States mail.

Rev. Richard D. Warren  
(Home address under seal)

Rev. Joseph E. Lower  
(Home address under seal)

Additionally, these documents were electronically filed with the Clerk of the United States District Court for the District of Columbia by using the CM/ECF system.

I am at least 18 years of age and not a party to the cause.

Signature:	/s/ Robert V. Ritter	January 13, 2009
Printed Name:	Robert V. Ritter	
Street Address:	1777 T Street, N.W.	
City, State & Zip:	Washington, D.C. 20009	
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