

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

MICHAEL NEWDOW, et al.,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 08-2248 (RBW)

**JOINT MOTION FOR ENTRY OF STIPULATED BRIEFING SCHEDULE
AND TO STAY DEFENDANTS' OBLIGATION TO RESPOND TO COMPLAINT**

Plaintiffs and all defendants, through undersigned counsel, hereby move the Court to enter a stipulated briefing schedule that the parties believe will streamline the briefing of outstanding issues in this case, and to stay defendants' obligation to answer or otherwise respond to the Complaint until 30 days after the Court's orders to show cause are discharged. In support of this motion, the parties state as follows:

1. Plaintiffs filed their Complaint on December 30, 2008.
2. The Court held a hearing on plaintiffs' motion for a preliminary injunction on January 15, 2009. In denying plaintiffs' motion, the Court ordered plaintiffs to show cause by February 23, 2009, why the Court should not dismiss the case based on plaintiffs' lack of standing and issue preclusion as to plaintiff Newdow. See Order, Docket No. 42 (01/16/2009). In a subsequent Order, the Court directed plaintiffs to show cause why the case should not be dismissed as moot by February 27, 2009. See Order, Docket No. 50 (02/10/2009).
3. On February 23, 2009, plaintiffs filed a response to the Court's show-cause order regarding standing and issue preclusion. See Plaintiffs' Response to Order to Show Cause # 1,

Docket No. 51 (02/23/2009). The Court then ordered the defendants to file any response to plaintiffs' response by March 11, 2009. See Minute Order (02/24/2009).

4. On February 27, 2009, plaintiffs moved for an extension of time until March 10, 2009, to respond to the Court's show-cause order regarding mootness. See Docket No. 62 (02/27/2009). The federal defendants¹ did not oppose that motion. Plaintiffs indicated that they wished to file an Amended Complaint in conjunction with their response to the Court's show-cause order regarding mootness, and that the Amended Complaint would add additional plaintiffs, including minor children. Accordingly, plaintiffs also indicated that they would seek to file the names and addresses of those additional minor plaintiffs (and their parents) under seal. While the federal defendants do not oppose the filing of the names and addresses of minor plaintiffs (or their parents) under seal, the federal defendants did want an opportunity to derive, in conjunction with plaintiffs, mutually agreeable language for a proposed protective order. Because plaintiffs intended, in their response to the Court's show-cause order regarding mootness, to reference certain allegations contained in the Amended Complaint, the parties agreed that the plaintiffs would move for an extension of time to respond to the Court's show-cause order regarding mootness. That motion remains pending.

5. In an effort to streamline the briefing in this case, and because issues of standing and mootness are often interrelated, the defendants wish to address both of these issues together (as well as issue preclusion) within their respective briefs. To that end, the parties have agreed, subject to the Court's approval, to the following schedule:

¹ Federal defendants are the Hon. John Roberts, Jr.; the Joint Congressional Committee on Inaugural Ceremonies and its Chairperson, Senator Dianne Feinstein; and the Armed Forces Inaugural Committee ("AFIC") and its Chairperson, Major General Richard J. Rowe, Jr.

- a. Plaintiffs shall move for leave to file an Amended Complaint no later than March 10, 2009.
- b. Plaintiffs shall file their response to the Court's show-cause order regarding mootness no later than March 10, 2009. That response shall include any additional arguments regarding standing or issue preclusion that plaintiffs wish to make in view of their proposed Amended Complaint.
- c. Any defendant who wishes to file a response to plaintiffs' responses to the Court's show-cause orders shall do so no later than April 17, 2009.²

6. Moreover, because resolution of the Court's show-cause orders may result in dismissal of the case, to conserve judicial resources and minimize litigation costs, and particularly to avoid the prospect of duplicative briefing, the parties further agree that there is good cause to stay the defendants' obligation to answer or otherwise respond to the Complaint (or the proposed Amended Complaint) until 30 days following the Court's discharge of its show-cause orders, should the Court not dismiss the case.

For the foregoing reasons, plaintiffs and all defendants respectfully request that the Court approve and enter the briefing schedule set forth above, and stay defendants' obligation to answer or otherwise respond to the Complaint until 30 days after the Court's orders to show cause are discharged. A proposed order is attached.

² The timing for the defendants' responses is based in part on undersigned counsel Rosenberg's plans to take paternity leave in mid-March.

Dated: March 6, 2009

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Respectfully submitted,

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