

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-CV-01924 (MSK-KMT)

KENNETH L. SMITH,

Plaintiff,

v.

HONS. MICHAEL L. BENDER,  
NATHAN B. COATS,  
GREGORY J. HOBBS, JR,  
REBECCA LOVE KOURLIS,  
ALEX J. MARTINEZ, and  
NANCY E. RICE, in their individual capacities only,  
MARY J. MULLARKEY, in her individual and  
official capacities,  
HON. JOHN W. SUTHERS, and  
FRIEDRICK C. HAINES, in their personal capa-  
cities only,  
JOHN DOES 1-99, and  
THE UNITED STATES OF AMERICA,

Defendants.

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**REPLY TO STATE DEFENDANTS IN SUPPORT OF PLAINTIFF'S MOTION  
FOR THE TAKING OF JUDICIAL NOTICE**

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Comes now plaintiff Kenneth L. Smith ("Smith"), *in propria persona*, who states as follows:

**ARGUMENT**

It is incumbent upon us as litigants to not waste the Court's time; the purpose of a request to take judicial notice of an undisputable fact is to save the Court time. Contrary to what the State Defendants assert, when a party properly petitions for the taking of judicial notice of a judicially noticeable fact, this Court must do so as a matter of statutory law. Fed. R. Evid. 201(d).

The State Defendants have had a full and fair opportunity to be heard in this matter, and have chosen not to challenge any of the facts being noticed. As such, any objections they might have raised must be deemed to have been waived. See, Fed. R. Evid. 201(e).

The taking of judicial notice is both mechanical and mandatory. It is also relatively unusual in a civil case, as undisputed facts are generally agreed to in pretrial conference. There is nothing in the Rules of Civil Procedure precluding any litigant from explaining to the Court why the facts to be noticed are both relevant to the case and to be noticed in a timely manner, thereby justifying a deviation from customary motion practice. Smith is further entitled to assume that the Court has the wherewithal and wisdom to take judicial notice of noticeable facts, and the separate ability to draw inexorable conclusions from those facts in an appropriate time and manner.

If the State Defendants don't like the conclusions this Court is likely to draw from judicially noticeable facts, the appropriate place to raise such an objection is in a response in opposition to the motion for injunctive or declaratory relief. Certainly, they should not waste the Court's time opposing a motion they have otherwise confessed, needlessly multiplying the proceedings in the process.

The State Defendants are right on one score: the facts this Court must take judicial notice of as a matter of law lead inexorably to conclusions they aren't inclined to like. All that says is that the State Defendants should settle the matter quickly, and not waste any more of the Court's time with their obstinate obfuscation.

As the State Defendants have failed to raised any substantive objections during their full and fair opportunity to object to the taking of judicial notice of facts raised herein, they have in effect confessed the Motion; it must therefore be GRANTED in its entirety.

