

No. 23-35595

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN SOTO PALMER, et al.,
Plaintiff-Appellees,

v.

STEVEN HOBBS, in his official capacity as Secretary of State of
Washington, and the STATE OF WASHINGTON,
Defendants,

and

JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative
ALEX YBARRA,
Intervenor-Defendant-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Case No. 3:22-cv-05035 RSL

**INTERVENORS' MOTION FOR EXTENSIONS OF TIME UNDER
CIRCUIT RULE 31-2.2(B)**

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Dated: January 14, 2024

MOTION FOR AN EXTENSION OF TIME

Pursuant to Circuit Rule 31-2.2(b), Intervenor-Defendant-Appellants Jose Trevino, Ismael G. Campos, and Alex Ybarra (“Intervenors”) respectfully request a modest modification of the current briefing schedule in this appeal. Intervenors filed a motion on January 5 for a short abeyance of briefing pending the district court’s remedial decision (forthcoming in March) so that merits and remedies issues could be briefed together in consolidated briefing. Briefing on that motion is ongoing.

Because Intervenors’ motion for an abeyance has substantial implications for the scope of the issues that Intervenors will brief, Intervenors seek a short extension to account for this Court’s resolution of that motion. Specifically, Intervenors seek either (1) adoption of the schedule proposed in the abeyance motion if that motion is granted or (2) an extension until seven days after this Court’s denial of the motion (if it denies the motion). Such a short extension serves the interests of judicial economy and is supported by good cause. The State of Washington (the “State”) and its Secretary of State (the “Secretary”) take no position on this motion. Plaintiffs oppose this request.

Intervenors' opening brief is currently due January 22, 2024.¹ ECF No. 47. Intervenors filed a Motion to Hold Briefing in Abeyance on January 5. ECF No. 48. In the Motion, they argued that because this Voting Rights Act Section 2 merits appeal will, in all likelihood, be consolidated with appeal(s) from the district court's remedial decision adopting a new electoral map forthcoming in March, it makes sense to pause briefing so that merits and remedial issues can be briefed together in a single set of briefs. To permit expeditious resolution once that remedial decision is issued, Intervenors proposed that their consolidated brief on both merits and remedial issues be due 30 days after the district court issues its remedial decision.

If this Court denies that Motion, Intervenors respectfully request a modest amount of time—one week—from that denial to file their opening brief. Such an extension would permit Intervenors a short window of time in which they know what they are filing before they are actually required to file it.

¹ Intervenors previously availed themselves of the streamlined 30-day extension offered by Circuit Rule 31-2.2(a).

Currently, the Motion is opposed by Plaintiffs and the State.² The State has not filed an opposition brief, while Plaintiffs filed one at 6:34 am on Saturday, January 13. Because Intervenors' January 22 due date is rapidly approaching without resolution of that Motion, Intervenors are seeking a short extension so that their opening brief can account for this Court's resolution of the request for an abeyance and brief the proper scope of issues then presented. The requested extension is quite modest: seven days from resolution of the motion for an abeyance. And to facilitate quick resolution of that Motion, Intervenors commit to filing a reply in support of their Motion within two business days of when the State's response is filed. The Motion will thus be fully briefed by January 18 unless the State seeks an extension for their responses. (If the State does so, Intervenors commit to filing a reply to Plaintiffs' response by January 18 and will file a separate reply to the State's response within two business days of that response.)

Such a short extension will cause no party any prejudice. Because this Court could decide the fully briefed request as early as January 19, the extension ultimately may be as short as four days (from January 22

² The Secretary took no position on the Motion.

to January 26). But such a short delay will permit Intervenors a brief window of time to finalize their opening brief with knowledge of the scope of the issues/decisions to be briefed.

Moreover, because an extension will preserve the option of consolidated briefing with all the economies that consolidation offers, maintaining the option of consolidation fully warrants the short extension requested here.

CONCLUSION

For the foregoing reasons, the brief extension sought by Intervenors should be granted.

Respectfully submitted this 14th day of January, 2024.

/s/ Jason B. Torchinsky

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2024, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

s/ Jason B. Torchinsky _____

Jason B. Torchinsky

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No. 23-35595

D.C. No. 3:22-cv-05035-RSL
U.S. District Court for
Western Washington,
Tacoma

DECLARATION OF JASON B. TORCHINSKY

I, Jason B. Torchinsky, declare as follows:

1. I am an attorney licensed to practice law in Virginia and the District of Columbia and am admitted to the bar of this Court. I am a

partner at the law firm of Holtzman Vogel Baran Torchinsky & Josefiak PLLC, and represent the Intervenor-Appellants, Jose Trevino, Ismael G. Campos, and Representative Alex Ybarra (“Intervenors”).

2. Intervenor move for an extension of the due date for Intervenor’s opening brief to 7 days after this Court denies Intervenor’s motion to hold briefing in abeyance, filed January 5, 2024, should this Court deny the motion. ECF No. 48. (If this Court grants the motion, Intervenor’s consolidated brief addressing merits and remedial issues from the district court’s remedial decision forthcoming in March would be due 30 days after that remedial decision.)

3. Under the briefing schedule initially set by this Court and extended pursuant to Intervenor’s streamlined request to extend time to file the brief, Intervenor’s opening brief is currently due January 22, 2024. ECF No. 47.

4. An extension of time is warranted by this Court’s current consideration of Intervenor’s motion to hold briefing in abeyance. If this Court denies the motion to hold briefing in abeyance later than January 15, 2024, a seven-day window from that denial is reasonable for counsel

to account for this Court's resolution of the motion for an abeyance and to brief the appropriate scope of issues in light of that decision.

5. Counsel for Intervenors have diligently been preparing their opening brief and will file their opening brief within the time requested.

6. Counsel for the State of Washington and the Washington Secretary of State take no position on this request. Plaintiffs oppose this request.

7. The court reporter is not in default with regard to any designated transcripts.

I declare under penalty of perjury that the foregoing is true and correct.

s/ Jason B. Torchinsky

Jason B. Torchinsky

EXECUTED ON January 14, 2024.