

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SUSAN SOTO PALMER, *et al.*,

Plaintiffs-Appellees,

v.

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

Defendants-Appellees,

and

JOSE TREVINO, ISMAEL CAMPOS,
and ALEX YBARRA,

*Intervenor-Defendants –
Appellants.*

No. 23-35595

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

**APPELLEES' RESPONSE TO
APPELLANTS' MOTION FOR
EXTENSION OF TIME**

OPPOSITION TO EXTENSION OF TIME

Intervenor-Appellants (“Intervenors”) are trying *yet again* to delay resolution of this case and elide the deficiencies of their merits appeal. But this latest motion neither demonstrates substantial need nor shows that this delay is necessary, and thus should be denied.

On August 10, 2023, the district court found that Legislative District 15 violated Section 2 of the VRA, and on September 8, Intervenors appealed that decision to this Court. ECF No. 34-2 at 99. Under this Court’s briefing schedule, Intervenors’ opening merits brief was due December 22, 2023. ECF No. 1. On the day it was due, Intervenors requested and were granted a streamlined extension under Circuit Rule 31-2.2(a), and their opening brief is now due January 22, 2024. On January 5, Intervenors filed a motion to hold briefing in this case in abeyance in order to combine their liability appeal (for which they lack standing) with their forthcoming remedy appeal (for which they will still lack standing but are nevertheless trying to manufacture it). ECF Nos. 48, 49, 51. With the abeyance motion still pending and the due date for their opening brief approaching, Intervenors have requested an additional extension under Circuit Rule 31-2.2(b), in the event their abeyance motion is denied. But this latest request should be denied because it does not meet the requirements of 31-2.2(b) and because there is no reason for this Court to further delay briefing on Intervenors’ appeal—including on the

critical threshold question of whether this Court lacks jurisdiction because of Intervenors' lack of standing.

Intervenors fail to meet the standard for an extension of time. Circuit Rule 31-2.2(b) requires a showing of "diligence and substantial need," which cannot be met by a "conclusory statement as to the press of business." It also requires a declaration stating "the reason an extension is necessary." Circuit Rule 31-2.2(b)(4). Intervenors assert that the resolution of the motion for abeyance has "substantial implications for the scope of the issues" they will need to brief, ECF No. 50-1 at 2, but this is inaccurate. If the motion for abeyance is denied, the status quo will remain in effect, and Intervenors will need to brief the merits of their liability appeal, as they have known they would need to do for months. If the motion for abeyance is granted, they will not currently have to brief anything. There is no circumstance in which the scope of issues they must brief will somehow expand, and thus no "substantial need" for an extension.

Intervenors' declaration also fails to include the required information. It asserts that an additional extension of time would be "reasonable" so that Intervenors' counsel can "account for this Court's resolution of the motion for an abeyance" and "brief the appropriate scope of issues." ECF No. 50-2 at 2-3. But

“reasonable” is not “necessary,” and the declaration fails to explain the reason that an extension is necessary if the status quo is maintained.

It has been over five months since the district court issued its decision, and over four months since Intervenors appealed that decision to this Court. Any mystery as to what Intervenors must file is of their own creation, prejudicing Plaintiffs by fomenting uncertainty and needlessly delaying the definitive conclusion of this case. Moreover, Intervenors’ assurances that any delay would be short because the district court’s remedial decision is forthcoming in March, ECF No. 50-1 at 2, and that their requested delays “will not affect the maps to be used for the 2024 cycle,” ECF No. 54 at 10, is at odds with their most recent filing today in the district court in which they ask that the remedial proceedings be suspended. *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL, Dkt. # 258. This latest effort underscores Intervenors’ consistent goal of delay.

If Intervenors have “diligently been preparing their opening brief,” ECF No. 50-2 at 3, there should be no need for a further extension of time to file it. Intervenors lack standing to appeal the district court’s decision, and this Court should allow no further delays before addressing this issue.

CONCLUSION

For the foregoing reasons, Intervenors’ motion for further extension of time should be denied.

Dated: January 19, 2024

Edwardo Morfin
Morfin Law Firm, PLLC
2602 N. Proctor Street, Suite 205
Tacoma, WA 98407
Telephone: 509-380-9999

Thomas A. Saenz
Ernest Herrera
Leticia M. Saucedo
Erika Cervantes
Mexican American Legal Defense and
Educational Fund
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014
Telephone: (213) 629-2512
tsaenz@maldef.org
eherrera@maldef.org
lsaucedo@maldef.org
ecervantes@maldef.org

Annabelle E. Harless
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegal.org

Respectfully submitted,

/s/Mark P. Gaber
Mark P. Gaber
Simone Leeper
Aseem Mulji
Benajmin Phillips
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
mgaber@campaignlegal.org
sleeper@campaignlegal.org
amulji@campaignlegal.org
bphillips@campaignlegal.org

Chad W. Dunn
Sonni Waknin
UCLA Voting Rights Project
3250 Public Affairs Building
Los Angeles, CA 90095
Telephone: 310-400-6019
Chad@uclavrp.org
Sonni@uclavrp.org

Counsel for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(B) and Circuit Rule 27-1(1)(d) because this brief contains 693 words spanning 3 pages, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f).

2. This brief filing complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman size 14-point font with Microsoft Word.

Dated: January 19, 2024

/s/ Mark P. Gaber
Mark P. Gaber

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will notify all registered counsel.

/s/ Mark P. Gaber
Mark P. Gaber