

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' REPLY IN SUPPORT OF THEIR MOTION FOR
EXTENSIONS OF TIME UNDER CIRCUIT RULE 31-2.2(B)**

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Dated: January 22, 2024

REPLY

Intervenor-Defendant-Appellants Jose Trevino, Ismael G. Campos, and Alex Ybarra (“Intervenors”) submit this reply in support of their requested extension. Plaintiffs’ opposition to that request lacks merit for three reasons.

First, denying an extension could effectively eliminate this Court’s ability to consolidate related appeals by denying its ability to consider Intervenors’ motion for an abeyance. The purpose of the short extension that Intervenors seek is to preserve this Court’s ability to consider that request for an abeyance, which would permit consolidation of merits- and remedies-based appeals.

As Intervenors have previously explained, there are substantial judicial economies to such consolidation. But absent an extension, the existing briefing schedule will effectively moot Intervenors’ request for an abeyance/consolidation by compelling the filing of an unconsolidated opening brief. Plaintiffs fail to supply any reason why this Court should deny itself the ability to decide how best to approach related appeals solely so that it could obtain an unconsolidated opening brief a week or

two earlier. Nor do Plaintiffs even acknowledge the mooted effect that their opposition would cause—let alone attempt to justify it.

Indeed, since Plaintiffs' opposition was filed, the Supreme Court has signaled that it may take action in this case. As explained by Intervenor's Rule 28(j) letter filed concurrently, the Supreme Court's order list today indicates that the Court is seriously entertaining action in either the related *Garcia* case or in this case. An abeyance is thus further warranted so that the briefing schedule and structure in this case can take account of any action by the Supreme Court.

Second, Plaintiffs' own conduct belies any suggestion that the short extension Intervenor seeks would prejudice them. Plaintiffs notably: (1) did not file a motion to expedite this appeal, (2) did not file a motion to dismiss this appeal despite repeatedly contending that there are jurisdictional bars that this Court should consider "now," and (3) have not acted with any particular haste in filing their oppositions to the abeyance/extension sought. Plaintiffs' conduct thus demonstrates that this appeal can easily tolerate the short extension sought by Intervenor.

Third, Plaintiffs' opposition is pushing the bounds of the collegiality that should prevail in this Court. Notably, neither the State nor its

Secretary of State oppose Intervenors' extension request. Plaintiffs thus stand alone in their opposition, whose intransigence is underscored by those non-oppositions. This Court should not reward Plaintiffs' sharp tactics, particularly where the stakes presented—a short extension—are completely disproportionate to the vehemence of Plaintiffs' opposition.

CONCLUSION

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

Respectfully submitted this 22nd day of January, 2024.

/s/ Jason B. Torchinsky

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd 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