

No. 19-10754

In the United States Court of Appeals for the Fifth Circuit

RICHARD W. DEOTTE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED; YVETTE DEOTTE, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED; JOHN KELLEY, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED; ALISON KELLEY, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED; HOTZE HEALTH & WELLNESS CENTER, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED; BRAIDWOOD MANAGEMENT, INCORPORATED,

Plaintiffs-Appellees,

v.

STATE OF NEVADA,

Appellants.

On Appeal from the United States District Court
for the Northern District of Texas, Fort Worth Division
Case No. 4:18-cv-00825-O

APPELLEES' UNOPPOSED MOTION TO SUSPEND BRIEFING PENDING DISPOSITION OF MOTION TO DISMISS

JONATHAN F. MITCHELL
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940
jonathan@mitchell.law

Counsel for Plaintiffs-Appellees

CERTIFICATE OF INTERESTED PERSONS

Counsel of record certifies that the following persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Plaintiffs	Plaintiffs' Counsel
<ul style="list-style-type: none"> • Richard W. DeOtte • Yvette DeOtte • John Kelley • Alison Kelley • Hotze Health & Wellness Center • Braidwood Management Inc. 	<p>Jonathan F. Mitchell MITCHELL LAW PLLC</p> <p>Charles W. Fillmore H. Dustin Fillmore THE FILLMORE LAW FIRM, LLP</p>

Defendants	Defendants' Counsel
<ul style="list-style-type: none"> • Alex M. Azar II, in his official capacity as Secretary of Health and Human Services • Steven T. Mnuchin, in his official capacity as Secretary of the Treasury • Patrick Pizzella, in his official capacity as Acting Secretary of Labor • United States of America 	<p>Daniel M. Reiss James M. Burnham</p> <p>UNITED STATES DEPARTMENT OF JUSTICE</p>

Proposed Intervenor	Proposed Intervenor's Counsel
<ul style="list-style-type: none"> • State of Nevada 	<p>Heidi Stern Craig Newby</p> <p>OFFICE OF THE NEVADA ATTORNEY GENERAL</p>

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiffs-Appellees

Earlier today, the appellees moved to dismiss Nevada's appeal in part for lack of appellate jurisdiction. Because it is possible that at least part of Nevada's appeal will be dismissed on jurisdictional grounds, the appellees respectfully ask the Court to suspend briefing until it rules on the motion to dismiss. Nevada is unopposed to this motion, but reserves its right to file a response.

Nevada was not a party to the proceedings below, and the district court denied its motion to intervene. Nevada, however, has decided to appeal not only the order denying intervention (ECF No. 97, ROA.19-10754.2061-2082), but also the district's final judgment (ECF No. 98, ROA.19-10754.2083-2086), its class-certification orders (ECF Nos. 33 & 37, ROA.19-10754.1368-1389, ROA.19-10754.1406-1408), and its order granting the plaintiffs' motion for summary judgment and permanent injunction (ECF No. 76, ROA.19-10754.1845-1879). The appellees acknowledge that Nevada has standing to appeal the denial of intervention, but they have moved to dismiss its appeal of the final judgment and the remaining district-court orders because Nevada is not suffering Article III injury on account of those rulings. *See Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013).

Nevada's opening brief and record excerpts are currently due on or before September 24, 2019, and the appellees' brief is due 30 days thereafter. By appealing the district court's final judgment and merits-related orders, Nevada has signaled its intent to brief and argue the merits of the district court's rulings on class-certification and its interpretation of the Religious

Freedom Restoration Act. If the briefing proceeds as scheduled, the parties will need to spend large amounts of time preparing to brief issues that this Court may end up dismissing on jurisdictional grounds. To avoid an unnecessary expenditure of resources, the appellees respectfully ask the Court to suspend briefing until it rules on their pending motion to dismiss the appeal in part.

CONCLUSION

The Court should suspend briefing pending disposition of the appellees' motion to dismiss in part for lack of jurisdiction.

Respectfully submitted.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940
jonathan@mitchell.law

Dated: September 6, 2019

Counsel for Plaintiffs-Appellees

CERTIFICATE OF CONFERENCE

I certify that I conferred with Craig A. Newby, counsel for Nevada, and he informed me that Nevada is unopposed to the motion but reserves its right to file a written response.

Dated: September 6, 2019

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE
with type-volume limitation, typeface requirements,
and type-style requirements

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 327 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and Fed. R. App. P. 32(a)(6) because it uses Equity Text B 14-point type face throughout, and Equity Text B is a proportionally spaced typeface that includes serifs.

Dated: September 6, 2019

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiffs-Appellees

CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel also certifies that on September 6, 2019, this brief was transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, via the court's CM/ECF document filing system, <https://ecf.ca5.uscourts.gov/>.

Counsel further certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of VirusTotal and is free of viruses.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I certify that on September 6, 2019, this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fifth Circuit and served through CM/ECF upon:

HEIDI PARRY STERN
Solicitor General
CRAIG A. NEWBY
Deputy Solicitor General
Office of the Nevada Attorney General
555 East Washington Avenue
Las Vegas, Nevada 89101
(702) 486-3594
hstern@ag.nv.gov
cnewby@ag.nv.gov

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiffs-Appellees