

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,

Appellant-Proposed Intervenor.

On Appeal from the United States District Court
for the Northern District of Texas
Case No. 4:18-CV-825

**STATE OF NEVADA’S MOTION
FOR EXTENSION OF TIME
(UNOPPOSED)**

HEIDI PARRY STERN
Office of the Nevada Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
702-486-3594
hstern@ag.nv.gov

Counsel for the State of Nevada

ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 26(b), Federal Rule of Appellate Procedure 27(a)(3), Fifth Circuit Rule 26.2, and Fifth Circuit Rule 27.1.1, Appellant-Proposed Intervenor State of Nevada seeks an unopposed fourteen-day extension of its deadline to oppose Plaintiffs-Appellees' September 6, 2019, Motion to Dismiss. The original deadline is Monday, September 16, 2019, and Nevada seeks an extension through Monday, September 30, 2019.

Good cause exists for this Court to grant the proposed extension. First, Appellees' Motion challenges Nevada's standing to pursue the merits of its overall appeal. Although the Motion asserts that it does not challenge Nevada's standing to appeal the District Court's order denying intervention (*see* Motion (Mot.) at 1), Appellees omit mention of the District Court's unsolicited rejection of Nevada's Article III standing as one basis for denying intervention. (*See* ECF No. 97 at 9). Appellees would likely use any order granting the Motion to dismiss the remaining issue of intervention on a similar standing analysis. In opposition to Appellees' Motion, Nevada intends to file a detailed response on standing to preserve its voice on the substantive Affordable Care Act issue that this Court previously addressed in *East Texas Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. 2015), *vacated by Zubik v. Burwell*, 136 S. Ct. 1557 (2016). Nevada intervened where the Federal

Government Defendants chose not to address this legal issue before the District Court. Such a response requires significant work beyond the existing deadline.

Second, multiple circumstances outside of Nevada's control limit its ability to provide such a response by Monday, September 16th. Specifically, Nevada's lead attorneys on this appeal are also Nevada's lead attorneys defending recent Nevada constitutional challenges to the validity of approximately \$100 million in continued taxes and fees approved by the 2019 Legislature for the upcoming Nevada state budget. *See Settemeyer v. State of Nevada ex rel. Cannizzaro*, Case No. 190C001271B (Nev. 1st Dist. Ct., July 19, 2019). Nevada's first responsive pleading to these state constitutional challenges is due Monday, September 16, 2019—the same date as the current deadline for opposing this Motion. In addition, the Offices of the Nevada Attorney General have been and continue to undergo intermittent, weekend-long electrical upgrades, including the past and upcoming weekend, resulting in no access to electronic documents or programs to draft an appropriate response.

Third, no prejudice would result from the short extension in briefing. This Court granted Appellees' unopposed motion to stay briefing in the overall appeal. Jonathan Mitchell, lead counsel for Appellees, had no objection to this Motion when discussed with him earlier today.

Due to these circumstances, good cause exists for this Court to grant the requested fourteen-day extension, from Monday, September 16, 2019, until Monday, September 30, 2019.

CONCLUSION

The State of Nevada requests that the Court grant this unopposed motion for extension.

SUBMITTED BY:

s/ Heidi Parry Stern
Office of the Nevada Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101
702-486-3594
hstern@ag.nv.gov

Counsel for the State of Nevada

CERTIFICATE OF SERVICE

I certify that on **INSERT DATE**, the foregoing document was served, via the Court's CM/ECF Document Filing System, upon the following registered CM/ECF users:

INSERT NAMES OF COUNSEL

If applicable include:

I further certify that a paper copy of the foregoing document was forwarded via U.S. Mail on today's date to the following parties/counsel:

INSERT NAMES AND ADDRESSES

S/Heidi Parry Stern

A certificate of service in the form required by FED. R. APP. P. 25

CERTIFICATE OF COMPLIANCE

1. This document complies with the [type-volume limit] of FED. R. APP. P. 32(a)(7)(B) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f) : this document contains [*state the number of*] words.
2. This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because: this document has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*].

S/Heidi Parry Stern