

Appeal Nos. 20-35813, 20-35815

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

LINDSAY HECOX and JANE DOE, with her
next friends Jean Doe and John Doe,
Plaintiffs-Appellees,

v.

BRADLEY LITTLE, *et al.*,
Defendants-Appellants,

and

MADISON KENYON and MARY MARSHALL,
Intervenors-Appellants.

On Appeal from the United States District Court
for the District of Idaho
District Court Case No. 1:20-cv-00184-DCN
Hon. David C. Nye

**PLAINTIFFS-APPELLEES LINDSAY HECOX AND JANE DOE'S RESPONSE
TO INTERVENORS-APPELLANTS' MOTION TO EXTEND TIME TO FILE
SUPPLEMENTAL BRIEF**

On the morning of August 31, 2022, counsel for Intervenor-Appellants contacted counsel for Plaintiffs-Appellees seeking a seven-day extension of time to submit the Court-ordered supplemental briefing “addressing the question of whether the district court correctly determined the mootness issue.” Dkt. 154; *see* Exhibit A. Intervenor-Appellants’ email did not explain any substantive basis for the requested extension; nor did they share a draft of the proposed motion. *See id.* A couple of hours later, Intervenor-Appellants instructed Plaintiffs-Appellees that Intervenor-Appellants would file their motion in the next “10 to 15 minutes.” *Id.* As a professional courtesy, Plaintiffs-Appellees stated that they would not oppose a request for an extension. *Id.*

In not opposing this request for an extension, Plaintiffs-Appellees did *not* consent to the motion that Intervenor-Appellants have now filed, which improperly and prematurely attempts to argue both factual and legal issues (including factual issues not before the district court). Plaintiffs-Appellees do not oppose Intervenor-Appellants’ request for an extension of time. But Plaintiffs-Appellees did not consent to Intervenor-Appellants’ motion as drafted. *Cf.* Dkt. 155 at 4. Plaintiffs-

Appellees also respectfully submit that the motion's attempt to argue factual and legal issues is inappropriate and should be disregarded.

It has been and continues to be Plaintiffs-Appellees' intent to present any factual updates that may be relevant to the Court's consideration of mootness in accordance with the Court-ordered briefing schedule.

Dated: September 1, 2022

Respectfully submitted,

/s/ Kathleen Hartnett

James Esseks
Chase Strangio
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St.
New York, NY 10004
Telephone: (212) 549-2569
jesseks@aclu.org
cstrangio@aclu.org

Richard Eppink
AMERICAN CIVIL LIBERTIES
UNION OF IDAHO FOUNDATION
P. O. Box 1897
Boise, ID 83701
T: (208) 344-9750 ext. 1202
REppink@acluidaho.org

*Attorneys for Plaintiffs-Appellees
Lindsay Hecox and Jane Doe*

Kathleen Hartnett
COOLEY LLP
3 Embarcadero Center,
20th Floor
San Francisco, CA 94111
T: (415) 693-2000
F: (415) 693-2222
khartnett@cooley.com

Andrew Barr
COOLEY LLP
1144 15th Street, Suite 2300
Denver, CO 80202
T: (720) 566-4000
F: (720) 566-4099
abarr@cooley.com

Kim Clark
LEGAL VOICE
907 Pine Street, Unit 500
Seattle, WA 98101
T: (206) 682-9552
F: (206) 682-9556
cwest@legalvoice.org

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2022, I electronically filed the foregoing motion for supplemental briefing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

/s/ Kathleen Hartnett
Kathleen Hartnett
Counsel for Plaintiffs-Appellees

EXHIBIT A

From: Chris Schandavel <CSchandavel@adflegal.org>
Sent: Wednesday, August 31, 2022 11:47 AM
To: James Esseks; Hartnett, Kathleen; Barr, Andrew D; Catherine West; Chase Strangio; Ritchie Eppink
Cc: Roger Brooks; John Bursch; Cody Barnett; Cindy Eville
Subject: RE: Seeking Your Position on Motion for Seven-Day Extension of Time [IWOV-IWOV_FileDocs.FID1158334]

[External]

Ok perfect. Will do. Thanks for getting back to us so quickly and have a great rest of the week.

- Chris

From: James Esseks <JEsseks@aclu.org>
Sent: Wednesday, August 31, 2022 11:45 AM
To: Chris Schandavel <CSchandavel@adflegal.org>; External - Kathleen Hartnett <khartnett@cooley.com>; External - Andrew Barr <abarr@cooley.com>; Catherine West <cwest@legalvoice.org>; Chase Strangio <cstrangio@aclu.org>; Ritchie Eppink <REppink@acluidaho.org>
Cc: Roger Brooks <rbrooks@adflegal.org>; John Bursch <jbursch@adflegal.org>; Cody Barnett <cbarnett@adflegal.org>; Cindy Eville <ceville@adflegal.org>
Subject: RE: Seeking Your Position on Motion for Seven-Day Extension of Time [IWOV-IWOV_FileDocs.FID1158334]

EXTERNAL

Hi Chris – You can say that Plaintiffs consent to the motion.

My best,

James



James D. Esseks

Pronouns: he, him

Director

Jon L. Stryker and Slobodan Randjelović LGBTQ & HIV Project

American Civil Liberties Union Foundation

125 Broad St., New York, NY 10004

212.549.2623 | jesseks@aclu.org

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From: Chris Schandavel <CSchandavel@adflegal.org>
Sent: Wednesday, August 31, 2022 11:44 AM
To: External - Kathleen Hartnett <khartnett@cooley.com>; External - Andrew Barr <abarr@cooley.com>; Catherine West <cwest@legalvoice.org>; James Esseks <JEseks@aclu.org>; Chase Strangio <cstrangio@aclu.org>; Ritchie Eppink <REppink@acluidaho.org>
Cc: Roger Brooks <rbrooks@adflegal.org>; John Bursch <jbursch@adflegal.org>; Cody Barnett <cbarnett@adflegal.org>; Cindy Eville <ceville@adflegal.org>
Subject: RE: Seeking Your Position on Motion for Seven-Day Extension of Time [IWOV-IWOV_FileDocs.FID1158334]

Hello again counsel,

I'm just writing to let you know we plan to file our motion in the next 10 or 15 minutes. If we hear from you before then, we'll update it before filing to state your position. Otherwise, we'll just plan to say that we did not hear back from you before we filed the motion.

Thanks!

- Chris



Chris Schandavel
 Senior Counsel
 +1 571 707 4655 (Office)
 +1 571 707 4735 (Direct Dial)
 571 707 4656 (Fax)
CSchandavel@adflegal.org
ADFlegal.org

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From: Chris Schandavel
Sent: Wednesday, August 31, 2022 8:05 AM
To: Hartnett, Kathleen <khartnett@cooley.com>; Barr, Andrew D <abarr@cooley.com>; Catherine West <cwest@legalvoice.org>; James Esseks <jesseks@aclu.org>; Chase Strangio <cstrangio@aclu.org>; reppink@acluidaho.org
Cc: Roger Brooks <rbrooks@adflegal.org>; Caleb Dalton <CDalton@adflegal.org>; John Bursch <jbursch@adflegal.org>
Subject: Seeking Your Position on Motion for Seven-Day Extension of Time [IWOV-IWOV_FileDocs.FID1158334]
Importance: High

Good morning counsel,

Intervenors-Appellants intend to file a motion today in the Ninth Circuit for a seven-day extension of time to file our supplemental brief in *Hecox*. That would make our brief due September 9 instead of September 2.

In the motion, we'll make clear that if the Court grants it, we consent to the Court also extending the time for you to file your reply brief from September 16 to September 23.

I'm writing to inquire whether you consent to the Court granting our motion, or whether you intend to file a response in opposition. We hope to file the motion later this morning.

Thanks!

- Chris