

No. 23-2681

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**In the United States Court of Appeals  
for the Eighth Circuit**

DYLAN BRANDT, et al.,  
*Appellees,*

v.

TIM GRIFFIN, et al.,  
*Appellants.*

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On Appeal from the United States District Court for the  
Eastern District of Arkansas, Central Division  
(No. 4:21-CV-00450-JM) (The Hon. James S. Moody)

**MOTION FOR EXTENSION OF TIME**

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## MOTION FOR EXTENSION

Appellees move the Court to extend the time for filing their response brief by 45 days, from December 6, 2023, to and including January 22, 2024. Good cause exists for the requested extension in light of the voluminous trial record and complexity of the legal issues; counsel's professional obligations over the next two months—a time period that includes both the Thanksgiving and Christmas holidays; and the fact that Appellants have already benefitted from an additional 56 days to prepare their brief by filing a motion to hold the briefing schedule in abeyance pending their motion for initial hearing en banc (which was granted). A 45-day extension would not prejudice Appellants, who, since July of 2021 when Act 626 was initially enjoined, have frequently sought and obtained extensions of deadlines and have taken no steps demonstrating any urgency to lift the preliminary and permanent injunctions.

*Voluminous trial record and complexity of legal issues.* Appellees' requested extension is necessary because this appeal involves an extensive factual record and multiple, complex legal claims. After eight days of trial involving the testimony of eight expert witnesses and additional fact witnesses, the District Court issued an 80-page opinion permanently enjoining Act 626, which included nearly 60 pages of factual findings. The opinion also

included extensive legal analysis regarding Appellees' claims under the Equal Protection Clause, Due Process Clause, and First Amendment, all of which were addressed in Appellants' opening brief.

*Counsel's professional obligations.* Appellees' requested extension is also necessary because of the other professional obligations of Appellees' counsel over the scheduled briefing period. Multiple attorneys responsible for preparing Appellees' response brief are conducting a week-long arbitration. Other counsel for Appellees have been in the midst of briefing and preparation for oral argument in an expedited appeal in a case before another federal court of appeals in which their opening brief was just filed on November 9, their reply brief is due December 29, and oral argument is scheduled for January 17, 2024. And another of Appellees' counsel is currently preparing for an oral argument in another federal court of appeals on December 7, 2023.

*Appellants have benefitted from additional time to prepare their brief.* Appellants' brief was due on September 11, 2023. On September 7, 2023, Appellants filed a petition for initial hearing en banc. Rather than file their appeal brief while awaiting ruling on the en banc petition, as petitioners have done in the past, *see, e.g., Cellular Sales of Missouri, LLC v. NLRB*, No. 15-1620 (8th Cir.), Appellants filed a motion to hold the briefing schedule in

abeyance pending resolution of the petition. Appellees consented to the motion. As a result of seeking and obtaining an order holding the briefing schedule in abeyance, Appellants gained an additional 56 days to prepare their brief. Appellees request a comparable extension to prepare their brief for the reasons discussed above.

*Granting the requested extension will not prejudice Appellants.*

Appellees initially sought consent from Appellants for an extension on November 1, 2023. The day before, Appellants requested a one-week extension to file their opening brief. Appellees consented to that extension and requested a 60-day extension to file their response brief. Appellants did not respond to Appellees' November 1 correspondence until November 6, when they stated that they had decided to file their opening brief on time. Then, on November 7, Appellants stated that they would not consent to Appellees' request for an extension while Act 626 remains enjoined. Appellees' requested 60-day extension would have matched the period of time that Appellants had to file their opening brief with the anticipated extension of one additional week. Endeavoring to reach a compromise, on that same day, November 7, Appellees asked whether Appellants would consent to a 45-day extension in light of counsel's other obligations and the intervening holidays,

in addition to the volume of the trial record. Appellants waited until November 13 to respond and stated that they opposed the request.

Though Appellants' position is that they will not consent to any extensions while Act 626 remains enjoined, Appellants themselves have repeatedly sought and obtained extensions of various filing deadlines while the preliminary injunction has been in place. *See, e.g.*, Def.'s Mot. for Extension of Time to Respond to Prelim.-Inj. Mot, No. 4:21-cv-450, R. Doc. 21 (E.D. Ark. June 22, 2021) (seeking 10 days); Def.'s Mot. For Revised Disc. Deadline, No. 4:21-cv-450, R. Doc. 79 (E.D. Ark. Nov. 16, 2021) (seeking 70 days); Def.'s Mot. for Extension of Time, No. 4:21-cv-450, R. Doc. 299 (E.D. Ark. Jan. 31, 2022) (seeking 45 days). And Appellants have taken no steps to seek a stay of the preliminary or permanent injunctions or to expedite the appeals in the more than two years since a preliminary injunction was first entered. Granting Appellees a 45-day extension to accommodate their counsel given the complexity of the case and their other professional obligations would not prejudice Appellants.

## CONCLUSION

For these reasons, Appellees respectfully request that this Court grant this motion for a 45-day extension of time, to and including January 22, 2024, to file their response brief.

Dated: November 13, 2023

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limits of Fed. R. App. P. 27(d)(2)(A) because it contains 845 words, excluding the parts exempted by Fed. R. App. P. 32(f).

Pursuant to Fed. R. App. P. 27(d)(1)(E), I also certify that this motion complies with the requirements of Fed. R. App. P. 32(a)(5)–(6) because it has been prepared in proportionally spaced typeface with 14 point CenturyExpd BT and uses the word processing system Microsoft Word.

Additionally, pursuant to Eighth Circuit Local Rule 28A(h)(2), the undersigned counsel certifies that this PDF file was scanned for viruses, and no viruses were found on the file.

*/s/ Leslie Cooper*

Leslie Cooper

## CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. I further certify that upon approval by the Clerk, I will serve paper copies of the foregoing document to Petitioners-Appellants by mailing a true and correct copy thereof to their attorneys of record at the address on file with the Clerk.

/s/ Leslie Cooper

Leslie Cooper