

No. 23-2807

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

REBECCA ROE, by and through her parents and next friends, Rachel and
Ryan Roe, et al.,

Plaintiff-Appellants,

v.

DEBBIE CRITCHFIELD, in her official capacity as Idaho State Superintendent
of Public Instructions, et al.,

Defendant-Appellees,

On Appeal from the United States District Court
for the District of Idaho
No. 1:23-cv-00315-DCN
Hon. David C. Nye, Chief District Judge

OPPOSITION TO MOTION FOR EXTENSION OF TIME

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Plaintiffs wanted this Court to quickly consider whether they should get an injunction pending appeal. *See* Dkt. #3.1. The Court obliged, ordering fast-paced briefing. Dkt. #5.1. Defendants dutifully complied with that directive. Dkts. #8.1, #8.2. And a motions panel granted Plaintiffs the injunction they requested. Dkt. #11.1. But now that the panel's injunction is in place and Defendants have asked the Court to expeditiously reconsider it en banc, Plaintiffs want to slow down the merits briefing. This would only further extend the harm to Idaho while it awaits a potential en banc decision on the limited issue of whether the injunction pending appeal should be vacated. Respectfully, the Court should deny Plaintiffs' request to extend their merits briefing deadline.

In a normal appeal, Defendants would happily consent to Plaintiffs' request for additional time to complete the merits briefing. But this appeal is different: it's an appeal of the denial of a preliminary injunction related to a law that would otherwise go into effect tomorrow. Not only that, but Plaintiffs have already briefed the merits before the district court and this Court, and they have 12 attorneys representing them. All the while, Idaho will "suffer[] irreparable injury" by the injunction against implementation of "an enactment of its people or their representatives." *Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) (per curiam) (citation omitted).

Before the district court, Plaintiffs filed thorough briefing supporting their motion for a preliminary injunction, which addressed the merits of why they asserted a preliminary injunction was warranted. D.Ct. Dkt. #15-1 When Defendants sought

additional time below, Plaintiffs called the request “unjustified” and stressed “the importance of prompt relief.” D.Ct. Dkt. #25 at 3, 6. Ultimately, Plaintiffs received a 37-page, well-reasoned decision from the district judge, issued only one month from the date the motion was heard. D.Ct. Dkt. #60.

Before this Court, Plaintiffs have likewise provided briefing addressing the preliminary injunction factors. *See* Dkt. #4.1 at 12–25. Plaintiffs’ merits briefing will tackle the same factors on appellate review, and so there is good reason to think that Plaintiffs through their 12 attorneys will be able to tackle their merits brief that is due November 13th by that deadline. Furthermore, holding Plaintiffs to their original schedule, of which they have been on notice since October 18th, will not meaningfully interfere with Mr. Renn’s trip beginning November 12th or with the Thanksgiving holiday, particularly where they have such a large team of lawyers to assist them.

As long as Idaho law remains enjoined, Defendants will maintain their request for expedited resolution of this matter. Plaintiffs, if the position were reversed, would certainly seek for the Court to act quickly. This much they already demonstrated by their emergency motion seeking the injunction pending appeal. The merits portion of this appeal should proceed on the track already ordered by the Court. Otherwise, Idaho will continue to be subjected to the harm from being unable to effectuate Idaho law enacted by the representatives of its people. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, J., in chambers) (quotation omitted).

Plaintiffs' request for an extension of time to file their opening brief should be denied.

Dated: November 1, 2023

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s/ James E. M. Craig

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing/attached documents on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Case Management System, which served registered parties.

Description of Documents:

Opposition to Motion for Extension of Time

s/ James E. M. Craig
JAMES E. M. CRAIG

November 1, 2023