

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

PETER POE, *et al.*,

Plaintiff-Appellants,

v.

No. 23-5110

GENTNER DRUMMOND, in his
official capacity as Attorney General of
the State of Oklahoma, *et al.*,

Defendants-Appellees.

**JOINT SUPPLEMENTAL RESPONSE TO OCTOBER 17, 2023
ORDER REGARDING CONSENT MOTION TO EXPEDITE BRIEFING
SCHEDULE AND ORAL ARGUMENT**

Pursuant to the Court's October 17, 2023 Order, the parties hereby file this joint supplemental response to Plaintiffs-Appellants' Consent Motion to Expedite Briefing Schedule and Oral Argument, and state as follows:

1. On October 11, 2023, Plaintiffs-Appellants, with the consent of Defendants-Appellees, filed a motion requesting to expedite the briefing and oral argument of their appeal of the district court's October 6, 2023 order denying their motion for a preliminary injunction.

2. In the motion to expedite, Plaintiffs-Appellants, with the consent of Defendants-Appellees, requested the Court to adopt the following schedule in this case:

Appellants' Opening Brief:	November 9, 2023
Joint Appendix:	November 9, 2023
Appellees' Brief:	December 11, 2023
Appellants' Reply Brief:	December 29, 2023
Oral Argument:	January 16-19, 2024

3. On October 12, 2023, the Court entered an order indicating it was “tak[ing] the motion under consideration pending receipt and review of: (1) appellants’ docketing statement; and (2) defendants-appellees’ counsel’s entry of appearance.”

4. Plaintiffs-Appellants filed the docketing statement and counsel for Defendants-Appellees entered their appearances on October 16, 2023.

5. On October 17, 2023, the Court issued an order advising “the parties that both principal briefs must be on file by December 1, 2023 in order for the court to consider setting this case for argument during the January 2024 term of court,” and directing “the parties—on or before October 24, 2023—to file a supplement to the motion, advising the court whether they can agree to a briefing schedule by which both principal briefs are on file by December 1, 2024.”

6. Counsel for Plaintiffs-Appellants and Defendants-Appellants have conferred in good faith to ascertain whether there is a briefing schedule that would

work for the parties and by which both principal briefs would be on file by December 1, 2023. However, the parties have been unable to come to an agreement.

7. In response to the Court's October 17 Order, Plaintiffs-Appellants suggested to Defendants-Appellees the following schedule:

Appellants' Opening Brief: November 3, 2023

Joint Appendix: November 3, 2023

Appellees' Brief: December 1, 2023

Appellants' Reply Brief: December 15, 2023

8. Unfortunately, this schedule does not work for Defendants-Appellees, in part because of Thanksgiving and pre-existing travel commitments for counsel. Most prominently, the lead counsel for State Defendants will be out of the country and unavailable to work from November 25 to December 3.

9. As such, the parties respectfully request that the Court reconsider whether the originally proposed schedule provides adequate time for the Court to consider this matter in advance of an argument during the January 2024 Session. Moreover, if it assists the Court in setting the matter for oral argument in January, Plaintiffs-Appellants would be prepared to file their reply brief on December 22 rather than December 29, 2023.

10. Alternatively, should the Court not be able to set this matter for oral argument during its January 2024 Session, the parties respectfully ask the Court to

set the matter for oral argument at a special session/sitting in late January or February, and no later than the currently scheduled March 2024 Session, and to set a briefing schedule consistent with such setting.

Dated this 23rd day of October 2023.

Respectfully submitted,

Counsel for Plaintiffs-Appellants:

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
(646) 307-7406
ogonzalez-pagan@lambdalegal.org

Sasha Buchert
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006
(202) 804-6245
sbuchert@lambdalegal.org

Laura J. Edelstein
JENNER & BLOCK LLP
455 Market Street, Suite 2100
San Francisco, CA 94105
(628) 267-6800
LEdelstein@jenner.com

Megan Lambert
AMERICAN CIVIL LIBERTIES UNION OF
OKLAHOMA FOUNDATION
P.O. Box 13327
Oklahoma City, OK 73113
(405) 524-8511
mlambert@acluok.org

Harper Samuel Seldin
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(267) 615-4686
hseldin@aclu.org

Luke C. Platzer
JENNER & BLOCK LLP
1099 New York Ave., NW, Suite 900
Washington, DC 20001
(202) -639-6094
LPlatzer@Jenner.com

Counsel for State Defendants-Appellees:

/s/ Zach West (with permission)

GARRY M. GASKINS, II, OBA #20212

Solicitor General

ZACH WEST, OBA #30768

Director of Special Litigation

AUDREY WEAVER, OBA #33258

WILL FLANAGAN, OBA #35110

Assistant Solicitors General

OFFICE OF ATTORNEY GENERAL

STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

(405) 521-3921

Garry.Gaskins@oag.ok.gov

Zach.West@oag.ok.gov

Audrey.Weaver@oag.ok.gov

William.Flanagan@oag.ok.gov

Counsel for OU Defendants-Appellees:

/s/ J. Craig Buchan (with permission)

J. Craig Buchan, OBA No. 19420

McAfee & Taft

A Professional Corporation

Two West Second Street, Suite 1100

Tulsa, Oklahoma 74103

Telephone: (918) 587-0000

Facsimile: (918) 599-9317

craig.buchan@mcafeetaft.com

Ronald T. Shinn Jr., OBA No. 19569

Jennie Mook, OBA No. 34727

McAfee & Taft

A Professional Corporation

Two Leadership Square, 8th Floor

211 N. Robinson

Oklahoma City, OK 73102-7103

Telephone: (405) 235-9621

Facsimile: (405) 235-0439

ron.shinn@mcafeetaft.com

jennie.mook@mcafeetaft.com

CERTIFICATE OF COMPLIANCE

I certify that this motion is proportionately spaced, using Times New Roman, 14-point font. Based on a word count under Microsoft Word, the body of this motion contains 543 words.

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2023, I electronically filed the foregoing brief by using the Court's appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan

Counsel for Plaintiffs-Appellants