

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

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

THOMAS E. PRICE, Secretary of the
United States Department of Health and
Human Services, *et al.*,

Defendants.

No. 17-10135

**PROPOSED INTERVENORS' REPLY IN FURTHER SUPPORT OF
MOTION TO BIFURCATE INTERVENTION AND
SUSPEND BRIEFING ON THE MERITS**

Proposed Intervenors respectfully submit this reply in further support of their request for an order: (1) bifurcating Proposed Intervenors' appeal of the denial of intervention as of right from their protective appeal of the preliminary injunction; and (2) suspending briefing on Proposed Intervenors' protective appeal of the preliminary injunction until after intervention is decided.

Plaintiffs have no substantive objection to bifurcation, but they have nevertheless withheld consent in order to use this motion as leverage for demanding an extension of time for *all* briefing, including briefing on Proposed Intervenors' motion for a stay pending appeal and briefing on the appeal from denial of intervention as of right.

In arguing that Proposed Intervenors would not be harmed by suspending all briefing (Opp. 2), Plaintiffs inexplicably fail to disclose that have filed a motion in the district court seeking summary judgment before any responsive pleading has been filed and any discovery has been conducted. Dkt. No. 82. Although Proposed Intervenors have asked the district court to stay proceedings pending resolution of this appeal, Plaintiffs oppose that stay. Dkt. Nos. 85, 89.

Plaintiffs are engaged in an extraordinary campaign to railroad through a nationwide injunction and final judgment before Proposed Intervenors are able to obtain review from the denial of their timely motion to intervene as of right. By rushing through a motion for summary judgment while obstructing Proposed

Intervenors from obtaining review of the denial of intervention as of right, Plaintiffs seek to strike down critical civil rights protections for Proposed Intervenors and their members while denying Proposed Intervenors their right to participate in the proceedings.

The Court should not allow Plaintiffs to use Proposed Intervenors' straightforward request for bifurcation as a basis for further obstruction.

CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully request that the Court: (1) bifurcate Proposed Intervenors' appeal of the denial of intervention as of right from their appeal of the preliminary injunction; (2) suspend briefing on Proposed Intervenors' appeal of the preliminary injunction until after intervention is decided.

Respectfully submitted this 8th day of April, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2017, this document was served upon all registered CM/ECF users via the via the Court's CM/ECF Document Filing System; and transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, via the Court's CM/ECF Filing System.

/s/Brigitte Amiri
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CERTIFICATE OF COMPLIANCE

This reply in support of Proposed Intervenors' motion complies with the word limit of Fed. R. App. P. 27(d)(2)(C) because, excluding the parts exempted by Fed. R. App. P. 32(f), it contains 332 words. This reply complies with the requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface (Times New Roman) using Microsoft Word 2010.

/s/Brigitte Amiri
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