

No. 23-16032

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

EAST BAY SANCTUARY COVENANT, ET AL.,
Plaintiffs-Appellees,

v.

JOSEPH BIDEN, ET AL.,
Defendants-Appellants,

v.

ALABAMA, ET AL.,
Proposed Intervenor-Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 4:18-cv-06810-JST

**STATES OF FLORIDA, ARKANSAS, INDIANA, IOWA,
KENTUCKY, MISSISSIPPI, MISSOURI, MONTANA,
NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA,
OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS,
UTAH, AND VIRGINIA'S MOTION FOR LEAVE TO
FILE BRIEF AS AMICI CURIAE IN SUPPORT OF
PROPOSED INTERVENOR-DEFENDANTS**

March 18, 2024

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Federal Rule of Appellate Procedure 29, the States of Florida, Arkansas, Indiana, Iowa, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, and Virginia (the “Amici States”) move for leave to file an amicus brief in support of the proposed intervenor States of Alabama, Kansas, Georgia, Louisiana, and West Virginia’s (the “Intervenor States”) motion to intervene.

Rule 29(a) “governs amicus filings during a court’s initial consideration of a case on the merits” and permits a State to file an amicus brief without leave of the Court. Fed. R. App. P. 29(a)(2). As to timing, however, that rule ordinarily requires amici to file briefs in support of a party “no later than 7 days after the principal brief of the party being supported is filed” unless the “court . . . grant[s] leave for later filing.” Fed. R. App. P. 29(a)(6).

Here, the Amici States seek to file this amicus brief in support of the Intervenor States’ motion, not in support of a “principal brief,” which the Intervenor States have not yet had an opportunity to file. But to the extent the 7-day time limit applies here, the Amici States move for leave

to file their brief eleven days after the filing of the Intervenor States' motion.

This Court granted the parties' joint motion to hold this appeal in abeyance on February 22, 2024. DE83; DE85-1. Fourteen days later, the Intervenor States moved to intervene. DE86. Now, six business days after Florida learned of this matter, the Amici States seek leave to file their brief. This Court should grant the Amici States' motion and deem the attached amicus brief timely filed because they worked diligently to prepare their brief and consult with other affected Amici States when they learned of the Intervenor States' motion to intervene.

On behalf of the Amici States, Florida's counsel conferred with counsel for Plaintiffs-Appellees and Defendants-Appellants to determine the parties' positions on this motion. Plaintiffs-Appellees stated: "Plaintiffs-Appellees oppose the motion given that the late filing will not allow them an opportunity to respond." And Defendants-Appellants reported: "The government takes no position on the motion in light of the untimeliness of the proposed amicus brief." The Amici States, however, are authorized to represent that the Intervenor States do not oppose permitting

the parties additional time to respond to their motion or to file a separate response to the Amici States' brief.

Dated: March 18, 2024

Respectfully submitted,

ASHLEY MOODY

Attorney General of Florida

/s/ Henry C. Whitaker

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CERTIFICATE OF COMPLIANCE

1. This document complies with Federal Rule of Appellate Procedure 27(d)(2)(A)'s word limit because it contains 410 words.

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/s/ *Henry C. Whitaker*
Solicitor General

CERTIFICATE OF SERVICE

I certify that on March 18, 2024, I electronically filed this document with the Clerk of Court using the Court's CM/ECF system, which will send a notice of docketing activity to all parties who are registered through CM/ECF.

/s/ Henry C. Whitaker
Solicitor General