

CASE NO. 08-56320

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

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**ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, et al.,  
Plaintiffs-Appellants,**

**v.**

**ROMAN STEARNS, et al.,  
Defendants-Appellees.**

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On Appeal from the United States District Court  
for the Central District of California

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**APPELLEES' MOTION TO EXTEND TIME FOR FILING  
RESPONSIVE BRIEF; SUPPORTING DECLARATION**

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Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2.2(b), Appellees respectfully move for a forty-four (44) day extension of time, to and including April 10, 2009, in which to file their responsive brief.

By Time Schedule Order entered August 12, 2008, Appellees' brief is currently due on February 25, 2009. Declaration of Bradley S. Phillips ¶ 2. Appellees have not previously requested any extension of time to file their brief. *Id.* ¶ 3. Appellants have stated that they will not agree to an extension of more than twenty-one (21) days. *Id.* ¶ 4.

Good cause exists for the requested extension, as set forth in detail in the attached declaration. Appellants' brief, which was prepared over a period of more than five months since judgment was entered, raises many constitutional and other issues, and the record comprises thousands of pages. *Id.* ¶¶ 2, 5, 6. All counsel for appellees have significant other professional commitments during the next 60 days, including (among others) briefs due in this Court, the Fifth Circuit, and the California Court of Appeal; an expedited preliminary injunction hearing in the Northern District of California; and a multi-week trial in California Superior Court. *Id.* ¶¶ 8-12. Some counsel also have family vacations scheduled during that same period. *Id.* ¶ 13.

Counsel for Appellees have at all times exercised diligence to provide the District Court timely and professional briefing. *Id.* ¶¶ 14. A forty-four (44) day extension for Appellees' brief would enable counsel to do the same in this Court, while at the same time fulfilling their obligations in other courts and other matters. *Ibid.* No significant delay of this matter, which has been pending for 3 ½ years and in which no preliminary relief has ever been sought, will result from such an extension. *Ibid.* With the requested extension, briefing of this matter would still be completed within eight (8) months of the filing of the Notice of Appeal, on August 8, 2008. *Ibid.*

For these reasons, Appellees' respectfully request that this motion be granted and that they be allowed until and including April 10, 2009 in which to file their responsive brief.

Dated: February 9, 2009

MUNGER, TOLLES & OLSON, LLP

/s/ *Bradley S. Phillips*

Bradley S. Phillips

Attorneys for Defendants-Appellees

DECLARATION OF BRADLEY S. PHILLIPS

I, Bradley S. Phillips, do hereby declare as follows:

1. I am an attorney at the law firm of Munger, Tolles & Olson LLP, counsel of record for Defendants-Appellees, all of whom are officials of the University of California sued in their official capacities (hereinafter, “the University of California”). In accordance with Ninth Circuit Rule 31-2.2(b), I submit this declaration in support of Appellees’ Motion to Extend Time In Which To File A Responsive Brief. Except as otherwise stated, the matters set forth herein are based upon my personal knowledge, and I could and would testify competently thereto if called upon to do so.

2. Judgment was entered in the District Court on August 8, 2008. Appellants filed their Opening Brief and Excerpts of Record more than five months later, on January 26, 2009. Pursuant to a Time Schedule Order entered August 12, 2008, Appellees’ brief is currently due thirty (30) days later, on February 25, 2009.

3. Appellees have not previously sought any extension of time for filing their responsive brief.

4. A forty-four (44) day extension, through and including April 10, 2009, is necessary to provide counsel for Appellees sufficient time to prepare Appellees’ responsive brief. Such an extension is necessary because of the number and nature of the issues raised by Appellants’ Opening Brief, the extent of the record below, and the other commitments of counsel during the next sixty (60) days. Counsel for Appellants have informed me that Appellants will not agree to an extension of more than twenty-one (21) days, which extension would make Appellees’ Brief due on March 18, 2009.

5. Appellants’ Brief raises numerous constitutional issues under the Free Speech Clause, the Free Exercise Clause, the Establishment Clause, the Equal Protection Clause and the Due Process Clause. Appellant’s Brief raises issues also with respect to the standing of one of Appellants and the District Court’s rulings on the scope of

Appellants' as-applied claims. Appellants' Brief contains a Table of Contents that is itself four single-spaced pages.

6. The Excerpts of Record filed by Appellants comprise 2483 pages, and Appellants' Brief contains, in Appellees' view, numerous misrepresentations of those thousands of pages. There are, in addition, thousands more pages that were included in the summary judgment record below, many of which will need to be cited and filed as Supplemental Excerpts of Record by Appellees.

7. Even absent other commitments, it would be extremely difficult for Appellees' counsel to adequately brief the issues and compile Supplemental Excerpts of Record by February 25 or March 18, 2009. Counsel does, however, have numerous other commitments, both professional and personal, as outlined below.

8. Stuart Senator and I, the two lead counsel for Appellants in this matter, are also lead counsel for the appellees in *Madani v. Shell Oil Company*, No. 08-56332, in which the appellees' brief is currently also due in this Court on February 25, 2009. Mr. Senator and I will be filing a brief on behalf of all appellees, some of who are separately represented, and we anticipate availing ourselves of the 21-day extension afforded by Rule 28-4, making our brief due on March 18, 2009.

9. Mr. Senator and I are also lead counsel for one of the appellees in *Rodriguez v. West Publishing Co.*, No. 07-56643, in which oral argument is scheduled in this Court on March 3, 2009. Although counsel for another appellee will be arguing, Mr. Senator and I will be involved in the preparation for that argument.

10. I am lead appellate counsel for the Respondents in *Prediwave Corporation v. Simpson Thacher & Bartlett LLP*, California Court of Appeal, Sixth Appellate District, Case No. H033422, in which Respondents' brief is currently due April 3, 2009.

11. Mr. Senator (I am informed and believe) and I also have numerous other commitments to ongoing cases, including depositions and other court appearances, during the next 60 days.

12. I am informed and believe, as set forth in this paragraph, that all of the associates in my firm who have worked on this matter also have significant other professional commitments during the next 60 days. Michelle Friedland has a responsive brief due on February 27, 2009, in the Fifth Circuit in *United States of America ex rel. Donald Adrian v. Regents of the University of California, et. al.*, No. 08-31140, and a reply brief due on March 23, 2009, in this Court in *In re Abbott Laboratories Norvir Antitrust Litigation*, No. 08-17699. In addition, Ms. Friedland was one of the principal authors of the brief for the lead Petitioners in *Strauss, et al. v. Horton, et al.*, Supreme Court of California, No. S168047, the constitutional challenge to Proposition 8, and oral argument in that matter is scheduled for March 5, 2009. Rebecca Lynch is working under an expedited discovery and briefing schedule leading to a preliminary injunction hearing the week of April 1, 2009, before the Honorable Marilyn Hall Patel in *Real Networks, Inc., et al. v. DVD Copy Control Association, Inc.*, United States District Court, Northern District of California, Case No. C08 04548 MHP. Soraya Kelly is preparing for a multi-week trial of *Starrh and Starrh Cotton Growers v. Aera Energy LLC*, Superior Court of California, County of Kern, Case No. S-1500-CV-245287 MGB, which is scheduled to begin on March 9, 2009. Ms. Kelly is also scheduled to attend a three-day hearing starting on March 3, 2009, before the California Labor Commissioner in *Burnett, et al. v. Riggs, et al.*, TAC No. 10192.

13. In addition to these professional commitments, counsel have pre-existing personal commitments during the next 60 days. I am scheduled to be on vacation (visiting my adult daughter in New York City) with my family during the week of March 28, 2009, during my school-age daughter's Spring break. I am informed and believe that Mr. Senator also has a family vacation planned during that week, which is again his children's Spring break, and that Mr. Senator is scheduled to serve jury duty in the Los Angeles County Superior Court during the week of February 17, 2009. I am informed

and believe that Ms. Friedland has a family vacation scheduled February 14 though 17, 2009.

14. Appellees' counsel has at all times during this matter exercised diligence in providing timely and professional briefing to the District Court, and we intend and expect to do the same in this Court. A forty-four (44) day extension would enable us to do that while doing the same in the other courts and matters to which we have commitments. No significant delay of this matter, which has been pending for 3 ½ years and in which no preliminary relief has ever been sought, will result from such an extension. With the requested extension, briefing of this matter would still be completed within eight (8) months of the filing of the Notice of Appeal, on August 8, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California, on February 9, 2009.

/s/ Bradley S. Phillips

Bradley S. Phillips