

No. 17-35105

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

STATE OF WASHINGTON, et al.,
Plaintiffs-Appellees, v.

DONALD TRUMP, President of the United States, et
al., Defendant-Appellants.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON

**MOTION FOR EXTENSION OF TIME TO FILE
AMICUS CURIAE BRIEF OF THE ANTI-
DEFAMATION LEAGUE IN SUPPORT OF THE
PLAINTIFFS-APPELLEES**

RICHARD D. BARTON
(Bar No. 102613)
SHELLEY A. CARDER
(Bar No. 137755)
KENDRA J. HALL
(Bar No. 166836)
Procopio, Cory, Hargreaves
& Savitch, LLP
12544 High Bluff Dr., Ste.

JOHN B. HARRIS
Counsel for *Amicus Curiae*
ADL
Frankfurt Kurnit Klein &
Selz, P.C.
488 Madison Avenue
New York, NY 10022
(212) 705-4823
jharris@fkks.com

STEVEN M. FREEMAN
The Anti-Defamation
League
605 Third Avenue
New York, New York
10158
(212) 885-7700
sfreeman@adl.org

300

San Diego, CA 92130

(619) 515-3299

rick.barton@procopio.com

MOTION TO EXTEND TIME & DEEM BRIEF TIMELY-FILED

The undersigned respectfully moves this Court for a request an extension of time to file the amicus curiae brief concurrently filed and for an order deeming the brief timely filed. This motion is filed pursuant Federal Rules of Appellate Procedure 29 and/or 26(a)(3) and/or 26 (b) and/or based upon the Court’s power to grant equitable relief, for good cause shown, and the declaration of Shelley A. Carder (“SAC Declaration”), filed concurrently with this motion.

All parties consented to the submission of amici briefs in this case up to midnight on February 5, 2017 and due to scheduled ECF maintenance, the Court extended the filing deadline to 1:00 a.m. PST on February 6, 2017. Due to the technical problems with access to the ECF filing system, as outlined in the SAC Declaration, the ADL *amicus curiae* brief was not timely filed. In addition, the documents were later rejected as they were not separately-filed and it was missing the motion for leave to file. These problems are corrected with this filing.

///

///

///

///

///

///

The ADL respectfully requests this Court issue an order extending the time for the ADL to file the *amicus curiae* brief concurrently-filed with this motion and/or to deem the brief timely-filed.

Dated: February 6, 2017

Respectfully submitted,

/s/ Shelley A. Carder

/s/ John B. Harris

/s/ Steven M. Freeman

RICHARD D. BARTON
(Bar No. 102613)
SHELLEY A. CARDER
(Bar No. 137755)
KENDRA J. HALL
(Bar No. 166836)
Procopio, Cory, Hargreaves
& Savitch, LLP
12544 High Bluff Dr.,
Ste.300
San Diego, CA 92130
(619) 515-3299
rick.barton@procopio.com

JOHN B. HARRIS
Counsel for *Amicus Curiae*
ADL
Frankfurt Kurnit Klein &
Selz, P.C.
488 Madison Avenue
New York, NY 10022
(212) 705-4823
jharris@fkks.com

STEVEN M. FREEMAN
The Anti-Defamation
League
605 Third Avenue
New York, New York
10158
(212) 885-7700
sfreeman@adl.org

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that I am a registered CM/ECF user and that all parties have registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 6, 2017

/s/Richard D. Barton

RICHARD D. BARTON (Bar No. 102613)
SHELLEY A. CARDER (Bar No. 137755)
KENDRA J. HALL (Bar No. 166836)
Procopio, Cory, Hargreaves & Savitch, LLP
12544 High Bluff Dr., Ste. 300
San Diego, CA 92130
(619) 515-3299
rick.barton@procopio.com
shelley.carder@procopio.com

DECLARATION OF SHELLEY A. CARDER

I, Shelley A. Carder, declare and state, as follows:

1. I am a resident of the County of San Diego, State of California and am a member of the law firm of Procopio, Cory, Hargreaves & Savitch, LLP in the position of Senior Counsel. I make this declaration based on matters within my personal knowledge, save and except for those matters based on information and belief, which I believe to be true, and if called would and could testify thereto under penalty of perjury under the laws of the United States.

2. I am an attorney admitted to practice in the State of California and before the Ninth Circuit Court of Appeals. My bar no. is 13755. I last appeared before this Court in the matter of Dennis Wilcox v. Hi-Desert Memorial Healthcare, et al., Case No. 0:13-cv-55299.

3. Yesterday, I had the privilege of being asked to participate in the filing of an *amici curiae* brief by the e Anti-Defamation League (“ADL”) opposing the motion to stay the Temporary Restraining Order (TRO) issued by the U.S. District Court for the Western District of Washington.

4. Unfortunately, I was unable to log in to my ECF/Pacer account to accomplish the filing. I began trying to gain access early in the evening yesterday, Sunday February 5, 2017, waited through the system maintenance downtime and tried

again after midnight, attempting to get the brief filed by the 1:00 AM deadline. Despite my best efforts, I received an error message that my PACER user account is currently inactive. One of the error windows I received said: :”For information on how to make your account status active, contact the PACER Service Center at (800) 676-6856 Monday through Friday between 8 AM and 6 PM CT. . . .” Another error message I received said: “You logged in to the CM/ECF Document Filing System with a PACER account that does not have e-filing privileges. Please choose one of the following options to continue.” Although I attempted to link my PACER account from my old firm, Di Caro, Coppo & Popcke, and did just about everything else I could think of, I could not gain access. In fact, I also attempted to set up a new account and my boss, Richard D. Barton attempted to do so, as well. Despite our best efforts, we could not gain access to the e-filing system.

5. This morning, I called PACER at or about 8 AM and went through several steps and was told that the Court was not recognizing my account. I next called the Court and received the recorded message that I am required to send an e-mail to 'cmecf_ca9help@ca9.uscourts.gov'. This was accomplished by 9:03 a.m. I next spoke with a motions clerk regarding how to seek relief and it was suggested I file a motion for extension of time and an order deeming the brief of the Anti-Defamation League timely filed.

6. Despite all of these steps and additional calls to the court and ECF/Pacer, I still have yet to be able to file a document. However, as soon as another attorney with filing privileges, Ms. Kendra Hall was available, we undertook steps to get the document filed and did so at approximately 11:00 a.m.

7. As there is some concern that Defendants and Appellants may object to the filing of the brief, as it did not make the 1:00 a.m. PST deadline, and even though the motion for extension of time and order deeming the brief timely has been filed, the ADL is hereby filing this motion for relief and leave to file the ADL *Amicus Curiae* brief in support of Plaintiffs-Appellees and Affirmance over any objection of Defendants and Appellants.

8. In addition, at or about 1:00 p.m. today, we received a rejected filing from the Court because the Motion to Extend Time was filed with the *Amicus Curiae* brief and there was no motion for leave to file accompanying the brief. Accordingly, we have prepared the motion for leave to file, referenced above, and added paragraphs 6-8 to my declaration, but have not changed the substance of the *Amicus Curiae* brief.

///

///

///

///

///

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 6th day of February 2017 at San Diego, California.

Respectfully submitted,

/s/ Shelley A. Carder

RICHARD D. BARTON (Bar No. 102613)

SHELLEY A. CARDER (Bar No. 137755)

KENDRA J. HALL (Bar No. 166836)

Procopio, Cory, Hargreaves & Savitch, LLP

12544 High Bluff Dr., Ste. 300

San Diego, CA 92130

(619) 515-3299

rick.barton@procopio.com

shelley.carder@procopio.com

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that I am a registered CM/ECF user and that all parties have registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 6, 2017

/s/Richard D. Barton

RICHARD D. BARTON (Bar No. 102613)
SHELLEY A. CARDER (Bar No. 137755)
KENDRA J. HALL (Bar No. 166836)
Procopio, Cory, Hargreaves & Savitch, LLP
12544 High Bluff Dr., Ste. 300
San Diego, CA 92130
(619) 515-3299
rick.barton@procopio.com
shelley.carder@procopio.com