

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

FRONT RANGE EQUINE RESCUE, et al.,

Plaintiffs-Appellants,

and

STATE OF NEW MEXICO,

Plaintiff-Intervenor-Appellant,

v.

TOM VILSACK, et al.,

Defendants-Appellees,

and

RESPONSIBLE TRANSPORTATION,
LLC, et al.,

Defendants-Intervenors- Appellees.

No. 13-2187

(D.C. No. 1:13-CV-00639-MCA-RHS)
(D. N.M.)

**APPELLANTS' MOTION FOR ENLARGEMENT OF TIME TO
FILE OPENING BRIEF**

Pursuant to Fed. R. App. P. 27 and 10th Cir. R. 27.4, Plaintiff-Appellants Front Range Equine Rescue, The Humane Society of the United States et al. and the State of New Mexico (collectively "Appellants"), by and through their undersigned counsel, respectfully move this Court for a 28-day enlargement of time to file their Opening Brief in this case, up to and including January 23, 2014. Appellants respectfully submit that an

enlargement of time is appropriate due to the intervening holidays and the unavailability of counsel due to previously scheduled personal and professional commitments.

In support of and as good cause for this Motion, Appellants state as follows:

1. Appellants filed this appeal on November 1, 2013, on the same day as the District Court order that is being appealed. Pls' Notice of Appeal, Nov. 1, 2013, ECF No. 206. The Opening Brief in this case is presently due on or before December 26, 2013, one day after the Christmas holiday. *See* Notice, Nov. 15, 2013, Doc. No. 10125370.

2. Due to the upcoming Christmas holiday and the previously scheduled travel plans of Appellants' counsel, it will be not be possible for Appellants to file their Opening Brief by December 26, 2013 without extreme hardship, even if Appellants and their counsel exercise due diligence and give priority to preparing the brief.

3. One of Appellants' counsel at Schiff Hardin LLP, Adam Diederich, who is one of the primary drafters of the Opening Brief, has a longstanding commitment to be with family and friends out-of-state, first in Wisconsin and then in Florida, during the period in which the Opening Brief would need to be prepared, if the current schedule was followed.

4. Appellants' named counsel, Bruce Wagman, who will be principally in charge of overseeing the drafting and editing of the Opening Brief, is responsible for drafting an opposition and reply on a motion for summary judgment in an Endangered Species Act case in the District of Columbia District Court,¹ where the government and multiple amici are filing oppositions to Mr. Wagman's clients' opening motion for summary judgment. The briefing on this motion was delayed because of the government shutdown and now requires that the reply/opposition be prepared in part over the second

¹ *The Humane Society of the United States, et al. v. Jewell, et al.*, Civil Action No. 13-00186-BAH.

half of December, when Mr. Wagman already has a previously-scheduled vacation planned.

5. Schiff Hardin's appellate specialist Neil Lloyd will also be responsible for a significant part of the drafting of the Opening Brief. Mr. Lloyd has a prepaid, nonrefundable trip planned to the United Kingdom to visit friends and family during the period in which the Opening Brief would need to be prepared, if the current schedule was followed.

6. Similarly, counsel for Appellant the State of New Mexico faces multiple deadlines in the first half of December that are not amenable to adjustment. In one case, *David Stanley v. Board of County Commissioners of Colfax County et al.*, Case No. D-809-CV-2011-00252 (N.M. District Court, 8th Judicial District), counsel must complete numerous pretrial deadlines in a property dispute, including taking at least six depositions and making disclosures for multiple expert witnesses. In another matter, *State of New Mexico v. American Tobacco Co. et al.*, Case No. D-101-CV-1997-01235 (N.M. District Court, 1st Judicial District), counsel for New Mexico must meet a filing deadline for a complex motion in mid-December. This motion requires not only preparation of a 40-page legal brief but also coordination with an expert witness and review of her affidavit, and preparation and submission of hundreds of pages of calculations and exhibits.

7. The modest extension of time requested by this Motion will permit counsel for all Appellants to fulfill their obligations to their clients in other matters without compromising their opportunity to adequately brief this Appeal, as well as afford them the ability to observe the Christmas holiday and maintain their preexisting travel and family commitments.

8. Appellants have not previously moved for any extensions in connection with this appeal.

9. On December 1, 2013, at approximately 8 a.m., counsel for Appellants informed the parties to this appeal of Appellants' intention to file this motion. Counsel for Intervenor Responsible Transportation did not take a position, but inquired whether Appellants would "extend the bonds." Counsel for Intervenor Valley Meat, Rains Natural Meats and Chevaline LLC stated that those intervenors opposed the motion unless Appellants were willing to "extend the bonds." There are no bonds at issue in this appeal, nor is there any cause or reason for a bond to be posted, but Appellants assume these intervenors oppose this motion. At the time of filing, counsel for Appellants has not heard from any other parties with respect to their position on the motion.

WHEREFORE, Appellants respectfully request that the Court grant a 28-day enlargement of time to file their Opening Brief in this case, and extend the due date for Appellants' Opening Brief from December 26, 2013, to January 23, 2014.

Respectfully submitted this 2nd day of December, 2013.

Respectfully submitted,

/s/ Bruce A. Wagman

BRUCE A. WAGMAN
(Application for Admission Pending)
ROCKY N. UNRUH (NM Bar#3626)
SONDRA A. HEMERYCK
SCHIFF HARDIN LLP
One Market, Spear Tower, 32nd Fl.
San Francisco, CA 94105
Telephone: (415) 901-8700
Facsimile: (415) 901-8701
bwagman@schiffhardin.com
runruh@schiffhardin.com
shemeryck@schiffhardin.com

Attorneys for Appellants

BRIAN EGOLF
Egolf + Ferlic + Day, LLC
128 Grant Avenue
Santa Fe, NM 87501
Telephone: (505) 986-9641
brian@egolfaw.com

*Attorneys for Appellant Foundation to
Protect New Mexico Wildlife*

GARY K. KING
NEW MEXICO ATTORNEY
GENERAL

/s/ Ari Biernoff

Ari Biernoff
Assistant Attorney General
408 Galisteo Street
Santa Fe, NM 87501
Telephone: (505) 827-6086
Facsimile: (505) 827-6036
abiernoff@nmag.gov

*Attorneys for Appellant State of
New Mexico*

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

I further certify that on December 2, 2013, I served the foregoing motion via the CM/ECF system and via e-mail on all counsel of record.

/s/ Bruce A. Wagman

BRUCE A. WAGMAN
SCHIFF HARDIN LLP