

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STATE OF IDAHO,
Defendant-Appellant.

No. 23-35440

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STATE OF IDAHO,
Defendant-Appellant,

No. 23-35450

v.

MIKE MOYLE, speaker of the Idaho House of Rep-
resentatives, et al.,
Movants-Appellants.

**JOINT MOTION BY STATE OF IDAHO AND UNITED STATES OF
AMERICA TO PARTIALLY CONSOLIDATE BRIEFING**

These appeals seek review of the same order entered on May 4, 2023, in which the district court denied reconsideration of an order entering a preliminary injunction. Defendant-appellant State of Idaho and plaintiff-appellee United States jointly request that the Court partially consolidate the briefing in these appeals and enter the following schedule, which would permit appellants to submit separate standard-length briefs (of no more than 14,000 words each) and permit the United States to file a single consolidated brief not to exceed 17,000 words:

| | |
|---|--------------------|
| Appellants' Opening Briefs | August 7, 2023 |
| Appellee's Consolidated Brief | September 8, 2023 |
| Appellants' Reply Briefs (if necessary) | September 29, 2023 |

Counsel for movants-appellants Mike Moyle et al. (the "Idaho Legislature") has stated that they do not oppose the relief sought in this joint motion.

1. In August 2022, the United States filed suit against the State of Idaho and sought preliminary relief to enjoin the operation of Idaho Code § 18-622 before it had taken effect and to the extent that it would be preempted by the Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd. *See United States v. Idaho*, No. 1:22-cv-00329-BLW (D. Idaho). The State of Idaho appeared through the State's Office of the Attorney General. In addition, the Idaho Legislature moved to intervene (Dkt 16), which the district court granted in part and denied in part (Dkt. 27).

2. On August 24, 2022, the district court entered a preliminary injunction (Dkt. 95). Both the State of Idaho and the Idaho Legislature moved for reconsideration

(Dkts. 97, 101) of that same order. Following supplemental briefing, the district court denied reconsideration (Dkt. 135) on May 4, 2023.

3. These appeals seek review of the same May 4 order. The State of Idaho filed its notice of appeal (Dkt. 136) on June 28, 2023. That appeal has been docketed in this Court as *United States v. Idaho*, No. 23-35440. The Idaho Legislature filed its notice of appeal (Dkt. 138) on July 3, 2023. That appeal has been docketed in this Court as *United States v. Moyle*, No. 23-35450.

As both appeals implicate the same preliminary injunction, this Court has ordered that Ninth Circuit Rule 3-3 applies. Accordingly, in Case No. 23-35440, the State of Idaho's opening brief is due on July 26, 2023, and the United States' answering brief is due on August 23, 2023. In Case No. 23-35450, the Idaho Legislature's opening brief is due on July 31, 2023, and the United States' answering brief is due on August 28, 2023.

4. "When two or more parties are entitled to appeal from a district-court judgment or order, and ... have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals." Fed. R. App. P. 3(b)(1), (2); *cf. Chem One, Ltd. v. M/V Rickmers Genoa*, 660 F.3d 626, 642 (2d Cir. 2011) (granting unopposed motion to consolidate appeals because doing so would be "efficient and equitable").

Granting this joint motion by the State of Idaho and United States would promote efficiency and judicial economy and is equitable. The United States anticipates

that the appeals will raise related issues that the United States can address most efficiently in a single brief. Further, allowing the United States to file a single consolidated brief of up to 17,000 words, rather than two separate briefs of up to 14,000 words each, would conserve the resources of the Court and of the parties. Finally, good cause exists for this proposal because it would align the briefing schedules across the two appeals and it would reflect a modest extension of the default Rule 3-3 timeline for opening and answering briefs—of 12 days for the State of Idaho, 7 days for the Idaho Legislature, and 4 days for the United States—to accommodate personal developments of State staff, counsel’s briefing and oral-argument obligations in other pending matters, and the Labor Day holiday.

5. Counsel for the Idaho Legislature authorized us to state that the Legislature does not oppose the relief requested in this joint motion.

CONCLUSION

The State of Idaho and United States jointly request that the Court enter the following schedule allowing appellants to submit separate standard-length briefs (of no more than 14,000 words each) and permitting the United States to file a single consolidated answering brief not to exceed 17,000 words:

| | |
|---|--------------------|
| Appellants’ Opening Briefs | August 7, 2023 |
| Appellee’s Consolidated Brief | September 8, 2023 |
| Appellants’ Reply Briefs (if necessary) | September 29, 2023 |

Respectfully submitted,

MICHAEL S. RAAB
McKAYE L. NEUMEISTER

/s/ Nicholas S. Crown

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JULY 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 740 words, according to Microsoft Word.

/s/ Nicholas S. Crown

Nicholas S. Crown

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Nicholas S. Crown

Nicholas S. Crown

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Representatives, et al.,
Movants-Appellants.

**DECLARATION OF COUNSEL FOR STATE OF IDAHO IN SUPPORT
OF JOINT MOTION TO PARTIALLY CONSOLIDATE BRIEFING**

I, Brian V. Church, declare as follows:

1. I am a Deputy Attorney General for the State of Idaho in the Office of the Attorney General's Civil Litigation and Constitutional Defense Division. I am one of the attorneys of record for the State of Idaho in its appeal, Appeal No. 23-35440.

2. The State's appeal arises from the district court's order (D.C. Dkt. 135) denying the State's and the Idaho Legislature's motions for reconsideration (D.C. Dkts. 101, 97) of the district court's entry of a preliminary injunction (D.C. Dkt. 95).

3. I am aware that the Idaho Legislature has also filed an appeal from the same district court order and that the appeal has been assigned Appeal No. 23-35450.

4. In the State's appeal, the Ninth Circuit ordered that the State's opening brief is due no later than July 26, 2023; that the United States's answering brief is due August 23, 2023, or 28 days after the State files its brief, whichever is earlier; and that the State's optional reply brief is due no later than 21 days after service of the answering brief. *See* Dkt. 2, Appeal No. 23-35440.

5. I understand that in the Legislature's appeal, the Ninth Circuit ordered that the Legislature's opening brief is due no later than July 31, 2023; that the United States's answering brief is due August 28, 2023, or 28 days after the Legislature files its brief, whichever is earlier; and that the Legislature's optional reply brief is due no later than 21 days after service of the answering brief.

6. The United States and the State of Idaho jointly request that the Ninth Circuit partially consolidate the briefing in the State's and Legislature's appeals, such

that the State and the Legislature would each file an opening brief in their respective appeals no later than Monday, August 7; the United States would file a combined response brief of up to 17,000 words no later than Friday, September 8; and the State and Legislature would each have the opportunity to file a reply 21 days after service of the United States' answering brief.

7. In the State's appeal, this requested briefing schedule would result in a 12-day extension for the State's opening brief and a 4-day extension for the United States' answering brief. In the Legislature's appeal, this requested briefing schedule would result in a 7-day extension for the Legislature's brief and a 4-day extension for the United States' answering brief.

8. The extension is necessary for the State given personal developments and other briefing and hearing deadlines of the attorneys involved in authoring the State's answering brief. One of the attorneys for the State just welcomed a baby who was born last Friday, July 7; that baby is currently in the hospital's newborn intensive care unit as she was born early. In addition, the attorneys for the State have or are overseeing briefing due in the Idaho Supreme Court or the Idaho state district courts, on July 25, July 26, July 28, and July 31. The briefing due to the Idaho Supreme Court on July 25 was only ordered this past Tuesday, July 11, after that court granted a motion to expedite in an original proceeding. And the attorneys for the State have hearings currently scheduled in separate matters involving dispositive motions and preliminary injunction motions, on August 2 and August 4.

9. The State has exercised diligence, and the additional time will allow the State to prepare a brief and file it no later than Monday, August 7.

10. The State has confirmed that the Legislature does *not* object to this request.

11. The State is unaware of the court reporter being in default. The State submitted a transcript request form on Monday, July 3, requesting the entire transcript of the preliminary injunction hearing. *See* Dkt. 6, No. 23-35440.

I certify under penalty of perjury of the laws of the State of Idaho that the foregoing is true.

Dated: July 14, 2023

s/ Brian V. Church
BRIAN V. CHURCH
Deputy Attorney General

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resentatives, et al.,
Movants-Appellants.

**DECLARATION OF COUNSEL FOR UNITED STATES OF AMERICA
IN SUPPORT OF JOINT MOTION TO PARTIALLY CONSOLIDATE
BRIEFING**

I, Nicholas S. Crown, declare as follows:

1. I am an attorney with the United States Department of Justice. I am one of the attorneys of record for the United States in Case Nos. 23-35440 and 23-35450.

2. These appeals arise from the district court's order (Dkt. 135) denying the State of Idaho's and the Idaho Legislature's motions for reconsideration (Dkts. 97, 101) of the district court's entry of a preliminary injunction (Dkt. 95).

3. In Case No. 23-35440, the Ninth Circuit ordered that the State of Idaho's opening brief is due no later than July 26, 2023; that the United States' answering brief is due August 23, 2023, or 28 days after the State files its brief, whichever is earlier; and that the State's optional reply brief is due no later than 21 days after service of the answering brief. *See* Dkt. 2, Appeal No. 23-35440.

4. I understand that in Case No. 23-35450, the Ninth Circuit ordered that the Legislature's opening brief is due no later than July 31, 2023; that the United States' answering brief is due August 28, 2023, or 28 days after the Legislature files its brief, whichever is earlier; and that the Legislature's optional reply brief is due no later than 21 days after service of the answering brief. *See* Dkt. 2, Appeal No. 23-35450.

5. The United States and the State of Idaho jointly request that the Ninth Circuit partially consolidate the briefing in the State's and Legislature's appeals, such that the State and the Legislature would each file an opening brief in their respective appeals no later than Monday, August 7, 2023; the United States would file a combined response brief of up to 17,000 words no later than Friday, September 8, 2023; and the

State and Legislature would each have the opportunity to file a reply 21 days after service of the United States' answering brief.

6. In the State's appeal, this requested briefing schedule would result in a 12-day extension for the State's opening brief and a 4-day extension for the United States' answering brief. In the Legislature's appeal, this requested briefing schedule would result in a 7-day extension for the Legislature's brief and a 4-day extension for the United States' answering brief.

7. The extension is necessary for the United States given personal travel, the Labor Day holiday, and other briefing and hearing deadlines of the attorneys involved in authoring the United States' answering brief. The United States has exercised diligence, and the additional time will allow the United States to prepare a brief and file it no later than September 8, 2023. The attorneys with responsibility for drafting the United States' brief in these appeals are McKaye Neumeister and myself. Ms. Neumeister also has responsibility in *Texas v. Becerra*, No. 23-10246 (5th Cir.) (reply brief due August 4, 2023), and *United States v. Idaho*, No. 23-35153 (9th Cir.) (brief due September 11, 2023), and for several time-sensitive internal matters. Ms. Neumeister is also traveling domestically on pre-planned leave from July 14-16, 2023, and then travelling internationally on pre-planned leave from July 17-30, 2023. I also have responsibility in *Texas v. Becerra*, No. 23-10246 (5th Cir.) (reply brief due August 4, 2023), *United States v. Idaho*, No. 23-35153 (9th Cir.) (brief due September 11, 2023), and *Ellis v. Werfel*, No. 22-6401 (consolidated with Nos. 22-6402 and 22-6422) (4th Cir.) (oral argument tentatively

calendared for September 19-22, 2022), and for several time-sensitive internal matters. Michael Raab, who has supervisory responsibility over these appeals on behalf of the United States, also has supervisory responsibility over numerous other appellate matters, including *Borja v. Nago*, No. 22-16742 (9th Cir.) (brief due July 31, 2023, as extended); and *United Parcel Service Inc. v. PRC*, Nos. 23-1006 & 1029 (D.C. Cir.) (briefs due August 14, 2023, as extended).

8. The United States respectfully submits that allowing the United States to file a single consolidated brief of up to 17,000 words, rather than two separate briefs of up to 14,000 words each, would promote judicial economy and preserve party resources. The United States anticipates that the opening briefs in these appeals will involve related issues, as the appeals arise from the same order denying reconsideration of the same preliminary injunction.

9. Counsel for the Idaho Legislature has stated that the Legislature does not oppose this request.

10. The United States is unaware of the court reporter being in default. The State submitted a transcript request form on Monday, July 3, requesting the entire transcript of the preliminary injunction hearing. *See* Dkt. 6, No. 23-35440.

I certify under penalty of perjury of the laws of Virginia that the foregoing is true.

Dated: July 14, 2023

s/ Nicholas S. Crown

NICHOLAS S. CROWN

Attorney, Appellate Staff

Civil Division, U.S. Dept. of Justice