Nos. 18-56102, 18-56105

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUDICIAL WATCH, INC., et al.,
Plaintiffs-Appellees,

v.

DEAN C. LOGAN etc, et al.
Defendants-Appellees,

v.

MI FAMILIA VOTA EDUCATION FUND, et al.,
Movants-Appellants.

Appeal from Dst. Ct. No. 2:17-cv-08948-R-SK
Central District of California
The Honorable Manual L. Real, Judge Presiding

RESPONSE BY APPELLEE DEAN C. LOGAN TO APPELLANTS' EMERGENCY MOTION TO EXPEDITE PROCEEDINGS

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Appellants spend the bulk of their emergency motion to expedite this appeal ("the Emergency Motion" or "E.M.") in arguing that the District Court wrongly denied their motion to intervene in this voter registration litigation. But the merits of that order denying intervention ("the Order") are not now before this Court. The only issue presently before the Court is whether Appellants meet the standards for the extraordinary relief of expedited treatment *pending* a determination of the merits. Appellants do not, as Appellee Dean C. Logan in his official capacity as the Registrar-Recorder/County Clerk of Los Angeles County ("Logan") now shows. [1]

Appellants invoke Fed.RuleApp.Proc. 27-12. E.M. 1, 11. That rule requires a showing of "good cause" for expediting an appeal. *Id.* "Good cause" is defined as a situation in which, absent expedited treatment, "irreparable harm may occur or the appeal may become moot." *Id.* Appellants do not satisfy either prong of Rule 27-12.

First, this appeal *is already moot*. As Appellants acknowledge (E.M. 10), the case from which this appeal was taken was dismissed by

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[1]Since the merits of the Order are not now before the Court, Logan will reserve his arguments thereon rather than setting them forth in this response. His deferral of the arguments on the merits is not, and should not be taken as, acquiescence in Appellants' contentions.

the District Court on September 5, 2018. Dist. Ct. Dkt. No. 94. When the underlying litigation has been dismissed, an appeal from an order denying leave to intervene in that litigation becomes moot. *U.S. v. Ford*, 650 F.2d 1141, 1142-1143 (9th Cir. 1981) (dismissing appeal). As the *Ford* court explained, "Since there is no longer any action in which appellants can intervene, judicial consideration of the question would be fruitless." *Id.* at 1142 (citing cases).

The *Ford* court was not persuaded by the appellants' argument, very similar to that made by Appellants here (E.M. 11), that unless the court acted, they would be deprived of an opportunity to litigate their constitutional claims. *Id.* at 1143. The *Ford* court stated:

> "[I]t is apparent that [appellants] misconceive the issue on this appeal and the relief which this Court can grant them. This is an appeal from the denial of appellants' motion to intervene, not an appeal of any order or judgment of the district court on the merits in the underlying action. Even if we were to conclude that the district court erred in denying appellants' motion to intervene,

> none of their claims could be adjudicated now that the . . . proceeding has been dismissed. Since there is no proceeding in which appellants can intervene, this appeal is moot. *Id.* at 1143.

Not only is this appeal already moot, Appellants also fail to meet the second prong of Rule 27-12, which requires a showing that absent expedited treatment, "irreparable harm may occur." *Id.* Appellants contend that under the terms of the settlement of this litigation, they, and their members, might be wrongly disenfranchised in elections scheduled for next year. E.M. 2-5, 11-13. First, Appellants freely admit that they do not know whether the settlement will actually result in any wrongful removal of their members from the voter rolls. E.M. 2.

Furthermore, there is no showing that expedited treatment of this appeal would mitigate the potential harm that Appellants allege. The Appellants raise the specter of 14 elections scheduled in Los Angeles County alone between March 5 and June 4, 2019. E.M. 17, n.4. But there is no certainty that the settlement will be even finalized, let alone result in the wrongful removal of Appellants' members from the voter rolls for the elections held within only a few months of any

consummation of the settlement.

Additionally, even if oral argument were held *and* an opinion were issued by the Court before January 3 or March 5 or June 4, 2019 (none of which Appellants show is likely), *and* the Court were to reverse the Order (equally unlikely), that *still* would not remedy the potential harm of disenfranchisement alleged by Appellants. Appellants would have merely gained the right to intervene (in a case that does not presently exist and may never be reinstated). They would then have to litigate their claims, from scratch, in the District Court — a process that could take months, if not years — and then prevail on those claims. In short, Appellants in this case, like those in *Ford*, are confusing the right to intervene with ultimate success on the merits of their claims.

Thus, there is no basis under either prong of Rule 27-12 for expedited treatment of this appeal and no emergency under Rule 27-3(a). Indeed, if Appellants find themselves short on time, that is a situation largely of their own making. The underlying case was filed on December 13, 2017. Dst. Ct. Dkt. No. 1. Appellants did not file their motion to intervene for four months, until April 17, 2018. Dst. Ct. Dkt. No. 31. The Order denying the motion was entered on July 12, 2018.

Dst. Ct. Dkt. No. 76. Appellants did not file their notice of appeal until August 10, 2018, using up virtually the entire 30 days permitted by the Rules of Appellate Procedure. Dst. Ct. Dkt. No. 79. Then they waited yet another month, until September 10, 2018, before bringing this "emergency" motion to expedite the appeal. 9th Cir. Dkt. No. 12.

When an appellant seeking to expedite an appeal does not himself proceed expeditiously, especially without explanation or excuse for the delay, the motion will be denied. *Nader v. Land*, 115 Fed.Appx. 804, 806 (6th Cir. 2004). In *Nader*, another election dispute, the appellants sought to expedite an appeal from a district court order refusing to order that a candidate be placed on the ballot for an upcoming election. *Id*. at 805. The Sixth Circuit denied the motion on facts very similar to those here:

> "We deny the motion to expedite this appeal, principally because the plaintiffs have not proceeded expeditiously. Plaintiffs allowed six weeks to pass between the appealed-from order and the motion to expedite. The order was entered on September 2, 2004, and the plaintiffs

> filed a notice of appeal on September 10, 2004. Plaintiffs did not seek to expedite the appeal until the instant motion was filed on October 15, 2004. The election is set for November 2, 2004. It is within our discretion not to expedite an appeal where the appellants have delayed such a long time for no stated or apparent reason." *Id.* at 806.

Appellants in this case delayed even longer than those in *Nader*, who at least filed their appeal within eight days of entry of the order instead of the 29 consumed by Appellants here. Since Appellants have not treated this appeal with any urgency, the Court should not do so either. The briefing schedule previously issued by the Court already requires briefing to be completed no later than December 3, 2018. 9th Cir. Dkt. No. 1. No further expedited treatment is warranted, especially in view of the fact that the underlying case has been dismissed and the settlement about which Appellants are concerned is

not yet approved and finalized.

Dated: Sept. 14, 2018

GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP
and
OFFICE OF THE COUNTY COUNSEL

By: */s/ Andrew Baum, E.G. Chilton*
ANDREW BAUM
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CERTIFICATE OF COMPLIANCE

Pursuant Federal Rules of Appellate Procedure 27(d)(1)(E), 27(d)(2)(A), and 32(g), I certify that the attached Response to Emergency Motion is proportionately spaced, has a typeface of 14 points, was produced on a computer and, according to the word count of the computer program used to prepare the Response, contains 1,188 words, exclusive of those items set forth in Federal Rule of Appellate Procedure 32(f), within the above-stated limits applicable to said Response. In addition, pursuant to Circuit Rule 27-1, the Response does not exceed the 20-page limit.

Dated: Sept. 14, 2018

GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP
and
OFFICE OF THE COUNTY COUNSEL

By: */s/ Andrew Baum, E.G. Chilton*
ANDREW BAUM
ELIZABETH G. CHILTON
Attorneys for Appellee Dean C. Logan etc.

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2018, I electronically filed the foregoing Response to Emergency Motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

All the participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: Sept. 14, 2018

GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP
and
OFFICE OF THE COUNTY COUNSEL

By: */s/ Andrew Baum, E.G. Chilton*
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