

No. 13-17132

IN THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

JOHN TEIXEIRA; et al.,
Plaintiffs - Appellants,

vs.

COUNTY OF ALAMEDA; et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
[Dist Ct. No.: 3:12-CV-03288-WHO]

APPELLANTS' RESPONSE RE:
DEFENDANTS-APPELLEES' STIPULATED MOTION TO FILE
SUPPLEMENTAL BRIEF IN RESPONSE TO AMICUS BRIEFS
SUBMITTED AFTER GRANT OF REHEARING EN BANC
[DktEntry: 153]

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This filing constitutes Appellants' response and recitation of agreement between the parties regarding:

DEFENDANTS-APPELLEES' STIPULATED MOTION TO FILE SUPPLEMENTAL BRIEF IN RESPONSE TO AMICUS BRIEFS SUBMITTED AFTER GRANT OF REHEARING EN BANC [DktEntry: 153]

And

DEFENDANTS-APPELLEES' SUPPLEMENTAL BRIEF IN RESPONSE TO AMICUS BRIEFS SUBMITTED AFTER GRANT OF REHEARING EN BANC [DktEntry 154]

On January 4, 2017, the parties agreed that Appellees would consent to amici filings in support of Appellants, in consideration of Appellees having an opportunity to respond to any amici filings, if they deemed it necessary.

Specifically addressed in that series of correspondence between the parties was the issue of whether supplemental merits briefing by the parties should be undertaken. Both parties agreed to rely on the material already presented to the Court, unless the Court - sua sponte - requested supplemental briefing.

Several amici in support of Appellants, subsequently filed briefs. The last one was filed on February 1, 2017, with paper copies received by the court in due course.

Then on February 28, 2017 (less than three weeks before the date reserved for en banc oral argument) the Appellees exercised their right to file responses to several amici briefs filed in support of Appellants.

Three controversies arose:

1. The inclusion or exclusion of an exhibit, via judicial notice to this Court, of material that was not part of the trial court record. That controversy was resolved when Appellees withdrew the exhibit and filed a corrected brief on March 1, 2017.
2. The timing of Appellees' filing so close to the dates reserved for oral arguments seemed an unfair advantage.
3. Appellants' also took issue the breadth and scope (not to mention length) of the Appellees' supplemental brief.

Furthermore the filing was seen by Appellants as a violation of the spirit of the January 4, 2017 agreement that no supplemental briefing by the parties would take place.

Appellees (in their defense) characterized their effort as merely a zealous response to issues raised by amici.

Since reasonable minds can differ, the parties met and conferred on these remaining issues and came up with the solution that follows.

Appellants' will be permitted to file a reply brief, conforming to the Federal and Circuit Rules of Appellate Procedure for reply briefs, addressing only the issues raised in the corrected version of DEFENDANTS-APPELLEES' SUPPLEMENTAL BRIEF IN RESPONSE TO AMICUS BRIEFS SUBMITTED AFTER GRANT OF REHEARING EN BANC [DktEntry 154].

Said reply brief will be filed, along with the unopposed (stipulated) motion for said filing, on Monday, March 6, 2017.

Respectfully Submitted on March 2, 2017.

/s/ Donald Kilmer

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Attorney for Appellants

CERTIFICATE OF SERVICE

On March 2, 2017, I served the foregoing APPELLANTS' RESPONSE RE: DEFENDANTS-APPELLEES' STIPULATED MOTION TO FILE SUPPLEMENTAL BRIEF IN RESPONSE TO AMICUS BRIEFS SUBMITTED AFTER GRANT OF REHEARING EN BANC [DktEntry: 153]; by electronically filing it with the Court's ECF/CM system, which generated a Notice of Filing and effects service upon counsel for all parties in the case. I declare under penalty of perjury that the foregoing is true and correct. Executed March 2, 2017.

/s/ Donald Kilmer
Attorney for Appellants