

No. 13-56203

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Charles Nichols

Plaintiff-Appellant,

v.

Edmund Brown, Jr., et al

Defendants-Appellees.

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U.S. COURT OF APPEALS

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(2:11-cv-09916-SJO-SS)

APPELLANT'S MOTION TO FILE OVERSIZE REPLY BRIEF

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In Pro Per

PLAINTIFF-APPELLANT'S MOTION TO EXCEED PAGE LIMIT

Pro Se Plaintiff-Appellant, Charles Nichols (In Pro Per) moves pursuant to Circuit Rule 32-2, and pursuant to the Clerk's letter of October 1, 2013 directing him to file a motion for an oversize reply brief, for permission to exceed the page limit and type volume limit for his Reply Brief.

MEMORANDUM OF POINTS AND AUTHORITIES

Circuit Rule 32-5 "UNREPRESENTED LITIGANTS" states:

"If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, neither the optional reply brief nor any petition for rehearing need comply with FRAP 32.

Alternatively, if an unrepresented litigant elects to file a brief that complies with FRAP 28 and Circuit Rule 28-2 but not with FRAP 32, any principal brief shall not exceed 40 pages, and an optional reply brief shall not exceed 20 pages."

Plaintiff-Appellant Nichols used the form brief to file his opening brief.

Presumably, the Clerk concluded that Plaintiff-Appellant Nichols' optional reply brief complies with both FRAP 28 and Circuit Rule 28-2 but not with FRAP 32 although the Clerk's letter does not give a specific reason as to why his optional reply brief is limited to 20 pages in length. Hence this motion.

Appellees' Answering Brief is 38 pages long, excluding the: Cover Sheet, Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service. The Table of Authorities is four pages long.

Appellees' Supplemental Excerpts of Record consists of three volumes totaling 358 pages.

Plaintiff-Appellant Nichols' optional reply brief was 37 pages long and contained 9,527 words, including citations. It did not comply with FRAP 28 and Circuit Rule 28-2.

His reply brief has now been trimmed to 27 pages consisting of 6,984 words and 631 lines (Microsoft Office Word 2003 – Form 8 attached).

Appellees' Answering Brief is almost purely procedural in nature, avoiding almost entirely the Constitutional questions in this appeal and does not even respond to half of the issues Plaintiff-Appellant Nichols' raised on appeal.

Unlike the 33 page reply brief in the related case of *Richards v. Prieto* and the 31 page reply briefs of the related cases of *Peruta v. San Diego* and *McKay v. Hutchens*, Plaintiff-Appellant Nichols' optional reply brief was divided into sections where he specifically replied to the corresponding sections of the Appellees' Answering Brief.

Unaware of the 20 page limit, Plaintiff-Appellant Nichols' who is not an attorney, attempted to make his brief as concise as possible; ever mindful of Chief Judge Alex Kozinski's law review article saying the best way to ensure a brief is not read is to make it long.

If Plaintiff-Appellant Nichols is forced to file a corrected 20 page brief, it would not be possible to treat all of these claims with any substance and to meaningfully respond to Appellees' arguments within the 20 page limit. The 3 judge panel could, and probably would, assume that the unanswered procedural claims have merit and rule against Plaintiff-Appellant Nichols without ever reaching the Constitutional questions raised in this appeal.

CONCLUSION

The Constitutional questions in this appeal are simple. Stare decisis requires that the injunction be issued. Had Appellees chosen to limit their Answering Brief to the Constitutional questions at issue, Plaintiff-Appellant Nichols' could have limited his optional reply brief to 20 pages, had he know that there was a 20 page limit. Therefore to fully apprise the Court of the issues and claims, Plaintiff-Appellant Nichols respectfully requests permission to exceed the page limit and type volume limit set forth in Circuit Rule 32-5, FRAP 32 and/or any other Circuit Rule or FRAP which limits the length of Plaintiff-Appellant Nichols' optional reply brief.

Date: October 2, 2013

Respectfully Submitted,



Charles Nichols
Plaintiff-Appellant
In Pro Per

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2013, I filed and served the foregoing **APPELLANT'S MOTION TO FILE OVERSIZE REPLY BRIEF** by causing an original and three copies of the document and any attachments to be delivered to the Clerk of the Court by United States Mail and two copies by United States

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