

No. 19-56271

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Cara O'Callaghan and Jeneè Misraje,

Plaintiffs-Appellants,

v.

Janet Napolitano, in her official capacity as President of the
University of California; Teamsters Local 2010; and Xavier Becerra,
in his official capacity as Attorney General of California,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
No. 2:19-CV-02289
Honorable James V. Selna

**APPELLEE TEAMSTERS LOCAL 2010'S REPLY IN SUPPORT OF
MOTION TO STAY PROCEEDINGS PENDING THIS COURT'S
DECISION IN *BELGAU V. INSLEE***

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REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS

This Court has stayed appellate proceedings pending a decision in *Belgau v. Inslee*, No. 19-35137, in at least six other cases. *See* Mot. to Stay Proceedings (Dkt. 31-1) at 2-3. As the Court's stay orders in those cases attest, staying further proceedings in this appeal will conserve judicial resources by preventing a second panel from incurring time and effort in preparing for oral argument while *Belgau*, another case presenting the same legal issues at issue in this appeal, is under submission before another panel of this Court and awaits decision. A stay will also avoid the panel receiving merits briefing that is unhelpful because it was prepared before a decision in *Belgau*.

Plaintiffs do not dispute that their claims in this case involve the same basic legal claims as in *Belgau*: Plaintiffs-Appellants in both cases are former public-sector union members who argue that their First Amendment rights were violated when the government deducted union membership dues that the employees had agreed to pay by signing union membership and dues deduction authorization agreements. The district courts in both cases rejected those claims.

Plaintiffs contend that the cases are different because, according to Plaintiffs, the agreements they signed with their union had a longer term than the dues-deduction agreements addressed in *Belgau*. *Opp. to Mot. to Stay Proceedings* (Dkt. 32) at 1. A similar argument was made in *Smith, et al., v. Teamsters Local 2010, et*

al., No. 19-56503 (Dkt. 12), by plaintiff-appellants in opposition to a motion to stay and was rejected by the Court. See Exh. 1. Whether such facts are sufficient to distinguish the outcome in the present case from whatever the outcome is in *Belgau* is no reason not to stay proceedings where the essential legal questions are identical in the two cases.

Moreover, because Plaintiffs' complaint raises the same legal issues that are before the Court in *Belgau*, no decision may issue in this case until the Court resolves *Belgau*, regardless of whether proceedings are stayed here. See Ninth Circuit Advisory Committee Note to Circuit Rules 34-1 to 34-3, (1) (where appeals raise the same legal issue, "[t]he first panel to whom the issue is submitted has priority").

To best utilize judicial resources and most efficiently resolve this appeal, the Court should stay further appellate proceedings until this Court issues its decision in *Belgau v. Inslee*, No. 19-35137.

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2). The motion was prepared in 14-point Times New Roman, and it contains 399 words.

Dated: August 6, 2020

/s/ Andrew H. Baker
Andrew H. Baker

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2020, I electronically filed the forgoing Appellees' Reply in Support of Motion to Stay Proceedings Pending this Court's Decision in *Belgau v. Inslee* of Appellant Teamsters Local 2010 with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 6, 2020

 /s/ Andrew H. Baker
Andrew H. Baker

EXHIBIT 1

No. 19-56503

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Douglas Smith, *et al.*,
Plaintiffs-Appellants,

v.

Teamsters Local 2010, *et al.*,
Defendants-Appellees.

On Appeal from The United States District Court,
Central District of California
No. 5:19-cv-00771-PA (FFMx)

**PLAINTIFFS-APPELLANTS DOUGLAS SMITH AND PAUL HOMSTAD'S
OPPOSITION TO DEFENDANT-APPELLEE TEAMSTERS LOCAL 2010'S
MOTION TO HOLD BRIEFING IN ABEYANCE PENDING THIS
COURT'S DECISION IN *BELGAU V. INSLEE***

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Plaintiffs-Appellants Douglas Smith and Paul Homstad (“Appellants”) respectfully oppose Defendant-Appellee Teamsters Local 2010’s (“Union”) motion to stay the briefing schedule (“Motion to Stay”) in the instant case pending this Court’s decision in *Belgau v. Inslee*, No. 1935137, filed by the Union on March 10, 2020 for one simple reason: unlike in *Belgau*, the authorization for dues deductions signed by Appellants did not specify the length of time during which the dues deductions would continue to be deducted and instead required employees who wanted to resign the Union to keep paying dues for up to three years.

Appellants’ opening brief is due on March 23, 2020. The Union argues that the Motion to Stay should be granted because the issues presented in this appeal are similar to those fully briefed in *Belgau*. However, while the issues may be similar, this appeal involves facts that are unique from *Belgau* and therefore Appellants deserve a separate review. Specifically, in *Belgau*, the dues deductions cards renewed automatically every year unless appellants revoked the authorizations to deduct dues between 10 and 20 days prior to the anniversary of the day the appellants signed the authorization. (*Belgau*, ER 102, ¶ 29). In other words, if appellants decided to revoke their authorization on the first day after signing the dues deduction authorization, and then noticed their revocation in the required timeframe, the most they could be required to pay dues is one year.

The facts here present an even more egregious violation of Appellants' First Amendment rights. Appellants signed dues deduction authorizations which ***did not specify the length of time during which the dues deductions would continue to be deducted.*** Instead, the authorization card states that Appellants may resign union membership only during a period of 30 days prior to the expiration the Collective Bargaining Agreement ("CBA"). Appellants signed their authorization cards in September 2017. The CBA was signed on January 26, 2016 and is set to expire June 30, 2020. As such, Appellants were locked into paying dues, in violation of their First Amendment rights, for two years after their request to resign. Worse still, under this scheme, others Union members could have been required to remain part of the Union against their will for over three years.

Lastly, it would be fundamentally unjust for the fate of Appellants' claims to rely on a case in which they have no say, and a case with critically different facts. See *Landis v. North American Co.*, 299 U.S. 248, 255 (1936) ("Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.").

Because of the unique facts in this appeal, this Court should not stay the briefing in this case and should review it regardless of the decision in *Belgau*.

CONCLUSION

The Court should deny the Union's Motion to Stay based on the difference in facts between this appeal and *Belgau*.

Respectfully submitted,

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I certify that this document complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2). The motion was prepared in 14-point Times New Roman, and it contains 494 words.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 12, 2020. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 12, 2020.

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