

FILED

UNITED STATES COURT OF APPEALS

FEB 20 2013

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

<p>MARK WANDERING MEDICINE; et al.,</p> <p style="text-align: center;">Plaintiffs - Appellants,</p> <p style="text-align: center;">v.</p> <p>LINDA MCCULLOCH, in her official capacity as Montana Secretary of State; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 12-35926

D.C. No. 1:12-cv-00135-RFC  
District of Montana,  
Billings

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

This is a preliminary injunction appeal.

Appellees' joint motion to dismiss this appeal for lack of jurisdiction is denied without prejudice to renewing the arguments in the answering brief. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (stating that merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss).

Appellees' request for damages and double costs, contained in the joint motion to dismiss, is referred to the panel assigned to decide the merits of this appeal for whatever consideration the panel deems appropriate.

MT/MOATT

Appellants' motion for an extension of time to file the opening brief is denied as unnecessary. *See* 9th Cir. R. 27-11 (motions to dismiss stay the briefing schedule).

The briefing schedule shall proceed as follows: the opening brief and excerpts of record are now due March 19, 2013; the answering brief is now due April 16, 2013 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 14 days after service of the answering brief. *See* 9th Cir. R. 3-3(b).

Failure to timely file the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.