

Nos. 26-5000, 26-5001, 26-5002, 26-5003, 26-5004, 26-5005, 26-5010

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

STATE OF OKLAHOMA, *ex rel.* GENTNER DRUMMOND, in his capacity as
Attorney General of the State of Oklahoma, *et al.*,

Plaintiffs-Appellees,

v.

TYSON FOODS, INC., *et al.*,

Defendants-Appellants.

On appeal from the United States District Court
for the Northern District of Oklahoma
The Hon. Gregory K. Frizzell
No. 05-cv-329-GFK-SH

**STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION TO
EMERGENCY MOTION TO HOLD CASES IN ABEYANCE**

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INTRODUCTION

The settling appellants ask this Court to hold four of the seven consolidated appeals in abeyance while the district court considers joint motions to enter consent decrees. The State would prefer to keep those settlements in place. But it cannot allow the settlements to be used by the non-settling defendants to further delay these twenty-year-old proceedings. The State opposes this motion for the following reasons.

First, the settling appellants' own evidence refutes their claim that the State "renege[d]" on a promise. As Mr. Tucker himself admitted when confronted with the State's objection: "Apparently I misunderstood." Ex. 1. There was no agreement to renege on. The settling appellants were coordinating with the non-settling appellants to obtain a stay or extension for *all* defendants—not just the settling ones. The moment it became clear that the settling defendants were seeking relief for all defendants, the State objected.

Second, the settling appellants have already received a substantial extension. Under Federal Rule of Appellate Procedure 28.1(f), appellants' principal briefs would have been due on March 3, 2026. The State agreed to extend that deadline to April 30, 2026—nearly two additional months.

Extensions are “disfavored” by this Court, 10th Cir. R. 27.6(A); 10th Cir. R. 31.4, and the settling appellants have not shown that a timely filing is impossible even with due diligence, as the rules require, *see id.*, R. 27.6(D).

Third, the motion’s premise is self-defeating. The State has filed a notice with the district court advising that it will withdraw from the proposed consent decrees if the non-settling defendants obtain an abeyance or extension as a result of this motion. *Notice*, No. 05-cv-329-GKF-SH, Doc. 3299 (N.D. Okla. Apr. 7, 2026). If that occurs, there will be no pending settlement motions before the district court and no basis for abeyance. The settling appellants’ coordination with the non-settling defendants threatens to undermine the very settlements on which they rely.

This Court should deny the motion in its entirety.

STATEMENT OF FACTS

A. Background.

This litigation has been pending for over twenty years. After decades of proceedings—including a preliminary-injunction trial, a five-

month liability trial, and a two-week evidentiary hearing—the district court entered final judgment in December 2025.

Under the default schedule prescribed by Federal Rule of Appellate Procedure 28.1(f), appellants’ opening briefs would have been due on March 3, 2026. The State agreed to extend that deadline to April 30, 2026, providing appellants nearly two additional months for briefing. The Court entered the agreed briefing schedule on January 30, 2026. *See* Dkt. 26.

After the briefing schedule was set, several appellants reached settlements with the State and jointly moved the district court for indicative rulings under Federal Rules of Civil Procedure 60(b) and 62.1. Those motions remain pending. The State does not oppose the settlements themselves and has worked diligently toward their consummation.

B. The settling defendants sought relief for all defendants, not just themselves.

The motion’s account of the negotiations is incomplete and misleading in a material respect. When the Oklahoma Solicitor General communicated on March 20 that the State would “do whatever is necessary” to ensure the settling defendants received relief from the April

30 briefing deadline, that communication was made in the specific context of discussions about the *settling* defendants' briefing obligations. The State's willingness to cooperate was expressly conditioned on the settling defendants waiting until approximately April 15 to seek scheduling relief. That date was not arbitrary: it was designed to give the State additional time to assess whether the non-settling defendants—Simmons Foods, Inc. and Cal-Maine Foods, Inc.—would attempt to leverage the pending consent decrees to delay their own briefing obligations.

What the motion fails to disclose is what happened next. On March 25, counsel for the settling appellants, Mr. John Tucker, sent an email to the Oklahoma Solicitor General stating: "Just to confirm it would be all defendants." Ex. 1. The Oklahoma Solicitor General immediately responded: "We vehemently oppose an extension for the non-settling defendants. If that is the ask, then the State objects." *Id.* Mr. Tucker replied that the "[d]efendants need to be on the same briefing schedule" and urged the State to accept a stay for all parties. *Id.* Notably, Mr. Tucker began his reply by acknowledging: "Apparently I misunderstood." *Id.*

This exchange, which the motion conspicuously omits, reveals that the settling defendants were not seeking relief for themselves alone. They were coordinating with the non-settling defendants to obtain a universal extension or abeyance. The State's agreement to support scheduling relief was never extended to the non-settling defendants. The State withdrew its support when it became apparent that the settling defendants' request was being leveraged for that broader purpose.

C. The State's notice regarding the consent decrees.

The State has filed a notice with the district court advising that it will withdraw from the proposed consent decrees if the non-settling defendants obtain an abeyance or extension of the appellate briefing schedule as a result of the settling defendants' motion. *See Notice*, No. 05-cv-329-GKF-SH, Doc. 3299 (N.D. Okla. Apr. 7, 2026). This reflects the Attorney General's considered judgment that the State's interests are better served by proceeding promptly with this appeal than by allowing the settlements to become a vehicle for delay of the non-settling defendants' appeals.

The State remains willing to consummate the settlements on their original terms. But if granting the settling defendants' motion has the

effect of delaying the non-settling defendants' briefing obligations, the State will withdraw from the consent decrees, the joint motions pending before the district court will become moot, and the basis for abeyance will evaporate.

ARGUMENT

I. The Court should deny the motion for abeyance.

A. *The settling appellants have not shown good cause.*

The settling appellants have not demonstrated the good cause required under Federal Rule of Appellate Procedure 26(b) for modification of the briefing schedule. The motion rests on the assumption that the settlements will be consummated and the appeals dismissed. But the State's notice to the district court demonstrates that assumption is far from certain. The settlements are contingent, and their consummation depends on conditions the settling appellants cannot guarantee—conditions that the settling appellants' own motion may undermine.

Moreover, this litigation has been pending for over two decades. The district court held a final hearing in 2024 and entered judgment in December 2025. The State has a compelling interest in the prompt

resolution of these appeals—particularly the appeals of the non-settling defendants, which involve significant issues of pollution currently affecting the Illinois River Watershed. An abeyance of the settling defendants’ cases would inevitably delay resolution of the entire consolidated proceeding. Indeed, the settling defendants themselves have acknowledged that the appellate issues are “common among defendants.”

Ex. 1.

B. The motion was designed to benefit non-settling defendants.

The record makes clear that the settling defendants’ efforts to obtain scheduling relief have been coordinated with the non-settling defendants from the outset. On March 25, Mr. Tucker confirmed that the intended request was for “all defendants.” Ex. 1. When the State objected, Mr. Tucker argued that all defendants “need to be on the same briefing schedule.” *Id.* The non-settling appellants’ “consent” to this motion further confirms the coordinated nature of the effort.

The Attorney General is not willing to risk that an abeyance for the settling defendants will be used as a vehicle to delay the non-settling defendants’ briefing obligations. And the State’s notice to the district court highlights the seriousness of this concern: if the non-settling

defendants obtain scheduling relief as a result of this motion, the State will withdraw from the consent decrees entirely. *Notice*, No. 05-cv-329-GKF-SH, Doc. 3299 (N.D. Okla. Apr. 7, 2026).

C. The settling appellants have already received a substantial extension.

The settling appellants' contention that they face an unreasonably compressed briefing schedule rings hollow. Under the default schedule of Federal Rule of Appellate Procedure 28.1(f), their principal briefs would have been due on March 3, 2026. The State agreed to extend that deadline to April 30. This was an accommodation of nearly two additional months. Having already received that significant extension, the settling appellants cannot credibly claim that the current schedule is unduly burdensome. Moreover, this Court's rules provide that "[e]xtensions of time to file briefs are disfavored," and require a showing that "it will not be possible to file the brief on time, even if the party exercises due diligence and gives priority to preparing the brief." 10th Cir. R. 27.6(A), (D). The settling appellants make no such showing. They do not identify competing litigation that has prevented brief preparation, nor do they demonstrate complexity beyond what was already apparent when they agreed to the April 30 deadline. *See* 10th Cir. R. 27.6(E)(1)–(3).

II. The Court should deny the alternative request for a 60-day extension.

For the same reasons, the Court should deny the settling appellants' alternative request for a 60-day extension. The settling appellants contend that they have spent the past six weeks assuming their appeals would not proceed. That assumption was never reasonable. The consent decrees were always subject to district court approval, and the State's agreement to support scheduling relief was always limited to the settling defendants. The settling appellants chose to pursue a broader strategy—apparently seeking relief for all defendants. That strategy failed.

The settling appellants have had notice of the April 30 deadline since January 30, 2026—a deadline that itself reflected the State's consent to a substantial extension from the default FRAP 28.1(f) schedule. They are represented by sophisticated, well-resourced law firms that have had ample time to prepare. Rather than demonstrating due diligence, the settling appellants concede that they chose not to prioritize briefing. This is the opposite of what this Court's rules require. *See* 10th Cir. R. 27.6(D) (requiring a showing that a timely filing is impossible “even if the party exercises due diligence and gives priority to

preparing the brief”). Settlement negotiations, however promising, do not excuse a party from meeting its briefing obligations or establish the kind of hardship contemplated by this Court’s rules. *See* 10th Cir. R. 27.6(E)(3).

III. The State did not “renege” on any agreement.

The motion’s most inflammatory charge—that the State “renege” on a promise—is refuted by the very evidence the settling appellants submit. The Oklahoma Solicitor General’s March 20 email to Mr. Tucker stated that the State would work with the settling defendants to ensure they received relief from the briefing deadline, *in exchange for* the settling defendants waiting until approximately April 15 to file a motion. The April 15 date served a specific purpose: it would allow the State to monitor whether the non-settling defendants intended to exploit the settlements for their own scheduling advantage.

But the settling defendants did not wait until April 15. And, as the March 25 email chain confirms, the settling defendants expanded their request to include all defendants—the very outcome the State sought to prevent. Indeed, Mr. Tucker’s own response to the Solicitor General’s objection confirms there was no meeting of the minds. Mr. Tucker replied:

“Apparently I misunderstood.” Ex. 1. That candid admission establishes that the parties never had an agreement on the scope of scheduling relief. The settling defendants understood the State’s offer one way; the State understood it another. When the Oklahoma Solicitor General clarified that the State’s support was limited to the settling defendants, Mr. Tucker acknowledged the misunderstanding and then pressed for a broader stay anyway. The State’s position has been consistent: it supports the settlements, but it will not agree to any measure that delays the non-settling defendants’ briefing schedule.

CONCLUSION

For the foregoing reasons, the Court should deny the Emergency Motion to Hold Cases in Abeyance and the alternative request for a 60-day extension of the briefing deadline.

Respectfully submitted,

s/Garry M. Gaskins, II

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CERTIFICATE OF COMPLIANCE

This opposition complies with the typeface requirements of Fed. R. App. P. 27(d) and 32(a) because it was prepared in a proportionally spaced font (Century Schoolbook, 14-point) using Microsoft Word 365.

s/ Garry M. Gaskins, II

GARRY M. GASKINS, II

CERTIFICATE OF DIGITAL SUBMISSION

All required privacy redactions have been made as required by 10th Cir. R. 25.5 and the ECF Manual. Additionally, this filing was scanned with the most updated CrowdStrike antivirus software.

s/ Garry M. Gaskins, II

GARRY M. GASKINS, II

CERTIFICATE OF SERVICE

I certify that on April 7, 2026, I caused the foregoing to be filed with this Court and served on all parties via the Court's CM/ECF filing system. No paper copies are required pursuant to 10th Cir. R. 31.5.

s/ Garry M. Gaskins, II

GARRY M. GASKINS, II

Exhibit 1

Garry Gaskins

From: John Tucker <jtucker@rhodesokla.com>
Sent: Wednesday, March 25, 2026 12:41 PM
To: Garry Gaskins
Subject: [EXTERNAL] Re: 26-5000+, Oklahoma v. Tyson, et al. Mediation

Apparently I misunderstood. Defendants need to be on the same briefing schedule as anything may happen with Judge Frizzell, the appellate issues are common among defendants and it would make no sense for all defendants to submit individual all issue briefs. I ask you think about whether you lose anything of consequence with a stay. Thank you
Sent from my iPhone

On Mar 25, 2026, at 12:09 PM, Garry Gaskins <Garry.Gaskins@oag.ok.gov> wrote:

John:

We vehemently oppose an extension for the non-settling defendants. If that is the ask, then the State objects.

Garry M. Gaskins, II
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From: John Tucker <jtucker@rhodesokla.com>
Sent: Wednesday, March 25, 2026 12:08 PM
To: Garry Gaskins <Garry.Gaskins@oag.ok.gov>
Subject: [EXTERNAL] Re: 26-5000+, Oklahoma v. Tyson, et al. Mediation

Just to confirm it would be all defendants.
Sent from my iPhone