IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-51132

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CITY OF AUSTIN,

Defendant-Appellee

v.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 975, *et al.*,

Proposed Intervenors-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

OPPOSITION OF THE UNITED STATES TO APPELLANTS' EMERGENCY MOTION TO STAY AND TO EXPEDITE APPEAL

VANITA GUPTA
Acting Assistant Attorney General

DENNIS J. DIMSEY
JENNIFER LEVIN EICHHORN
Attorneys, Department of Justice
Civil Rights Division, Appellate Section
Ben Franklin Station, P.O. Box 14403
Washington, DC 20044-4403
(202) 305-0025

CERTIFICATE OF INTERESTED PERSONS
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INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 975, *et al.*,
Proposed Intervenors-Appellants

In addition to those persons identified in appellants' Certificate of Interested Persons in their Emergency Motion, the undersigned counsel certifies that the following persons have an interest in the outcome of this case:

Vanita Gupta, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice

Dennis J. Dimsey, Deputy Chief, Appellate Section, Civil Rights Division, U.S. Department of Justice

Jennifer Levin Eichhorn, Attorney, Appellate Section, Civil Rights Division, U.S. Department of Justice

s/ Jennifer Levin Eichhorn
JENNIFER LEVIN EICHHORN
Attorney

INTRODUCTION

On October 9, 2014, eleven appellants – the International Association of Firefighters, Local 975 (AFA), and ten firefighters of the City of Austin Fire Department (appellants) – filed an emergency motion to stay district court proceedings pending this appeal from the denial of their motion to intervene. Those proceedings include the fairness hearing scheduled for October 29, 2014, at which the district court will consider whether to approve a proposed consent decree between the United States and the City of Austin (City) that resolves this litigation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq*. (Title VII). Appellants also seek to expedite their appeal of the district court's orders denying their motion to intervene in this litigation and their motion for reconsideration.

As a result of arms-length negotiations, the United States and the City (the Parties) developed a proposed consent decree that: (a) requires the City to change its hiring procedures to be compliant with Title VII; (b) identifies interim hiring procedures to allow the City to address its current firefighter shortage; and (c) provides specific relief to qualified claimants. R. 5-1.[1] Appellants now seek to derail a comprehensive process that was set in motion by the district court's order

[1] "R. __:__" refers to the document number on the district court docket sheet and the document's original page number. "Mot. __" refers to the original page number of appellants' emergency motion and not the pagination recorded by this Court.

of June 13, 2014 (R. 13), which provisionally approved the proposed decree and scheduled the fairness hearing. Notice of the scheduled fairness hearing has been published in an Austin newspaper and sent to approximately 4000 individuals, at a cost to the City of approximately $40,000. R. 40:6. Appellants, while aware of the proposed decree's procedures, waited more than three months before seeking to postpone the fairness hearing. R. 39 (motion filed September 17, 2014). Appellants' unwarranted delay undermines the asserted "emergency" nature of their motion. As we show below, appellants have failed to satisfy any of the conditions necessary for a stay pending appeal. Nor have they demonstrated the requisite "good cause" to warrant expediting their appeal. Accordingly, this Court should deny appellants' motion.

FACTS AND PROCEDURAL HISTORY

1. United States' Investigation, Pre-Suit Negotiations, And Expiration Of The City And Union's Collective Bargaining Agreement

In April 2013, the United States began an investigation into whether the City's selection procedures for entry-level firefighter (fire cadet) used in 2012 and 2013 discriminated against African-American and Hispanic applicants in violation of Title VII. The United States reviewed thousands of pages of material provided by the City, retained experts to assess the 2012 and 2013 examinations' adverse impact and validity, and had extensive discussions with the City and its experts. R. 5:13-19. The United States concluded that the City had violated Title VII with

respect to the 2012 hiring process because (1) its pass/fail use of the cognitive-behavioral examination and (2) its rank order certification of applicants based on the applicants' written examination and other performance scores had an adverse impact on the African-American and Hispanic applicants and were neither job-related nor consistent with business necessity. R. 5:4-6, 15-18. The United States also concluded that the City's 2013 hiring process had a disparate impact on African-American and Hispanic applicants and would violate Title VII if used as planned. R. 5:6-8, 19. The City decided not to select candidates based on the 2013 eligibility list. In the fall of 2013, the Parties began settlement discussions.

AFA and the City had had a collective bargaining agreement (CBA) – entered into in December 2009 – that, among other things, addressed (a) the selection procedure for fire cadets and (b) incumbent seniority. R. 16-2:16, 23, 34-36. But that CBA expired, by its terms, on October 1, 2013. R. 16-2:60. Accordingly, the City was no longer required to implement the CBA after that time. Notwithstanding the expiration of the CBA, after the Parties had reached a tentative agreement on the major terms of a settlement, counsel for the United States and one of its experts met twice with AFA representatives to hear their settlement-related concerns and attempt to resolve them; the Parties subsequently changed the settlement terms in several respects to address AFA's concerns. R. 5:30-34.

2. The Proposed Consent Decree And Fairness Hearing Process

In early June 2014, the Parties executed a proposed consent decree that, if approved by the district court on its terms, will resolve the United States' allegations against the City. The proposed decree (a) requires the City to develop an entry-level fire cadet selection procedure that complies with Title VII and is approved by the United States; (b) permits the City to use its 2013 hiring process to hire up to 90 fire cadets to address its current firefighter shortage; and (c) provides specific relief to qualified claimants. R. 5-1:9-17, 21-28.

On June 9, 2014, the United States filed its Complaint, and the Parties jointly moved for provisional approval of the proposed decree and for a fairness hearing. R. 1, 3-5. The purpose of the fairness hearing is to allow the district court to evaluate the legality and fairness of the proposed decree, and to provide individuals an opportunity to present objections. See 42 U.S.C. 2000e-2(n). On June 11, 2014, the district court granted the Joint Motion for Provisional Entry of the Consent Decree. R. 9.[2]

3. Appellants' Motion To Intervene

On June 13, 2014, appellants moved to intervene. R. 16, 17. Appellants raised five bases for intervention as of right: (1) contractual rights regarding entry-

[2] This Order scheduled the initial fairness hearing for July 8, 2014. R. 9. On June 13, 2014, the district court issued an Order that re-scheduled the fairness hearing for October 29, 2014, in keeping with the procedures set forth in the proposed decree regarding notice and submission of objections. R. 13.

level hiring under the expired CBA; (2) contractual seniority rights under the expired CBA; (3) state law rights to collectively bargain; (4) the asserted preclusive effect of this case on a potential suit by the United States Equal Employment Opportunity Commission (EEOC) against the AFA; and (5) the safety of incumbent firefighters working for the Austin Fire Department. R. 16:6-9. Appellants also sought permissive intervention. R. 16:10. The Parties separately opposed this motion. R. 24, 27. In their reply brief, appellants raised a new argument based on statutory seniority rights (R. 31), which the Parties opposed. R. 36, 37.

4. The District Court's Opinion Denying Intervention

On September 15, 2014, the district court denied appellants' motion, holding that they did not meet the criteria for intervention as of right or permissive intervention. R. 38. Citing this Court's precedent, the district court held that appellants did not have a "direct, substantial, legally protectable interest in the action, meaning 'that the interest be one which the *substantive* law recognizes as belonging to or being owned by the applicant.'" R. 38:2-3 (citation omitted). Absent an existing collective bargaining agreement, the district court explained, appellants did not have a cognizable interest under Federal Rule of Civil Procedure 24. R. 38:3-4 (citing *Stallworth* v. *Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977)). The court rejected appellants' reliance on precedent that addressed

employees' rights to intervene based on an *existing* collective bargaining agreement. R. 38:3-4.

The district court also held that even if it were to consider the expired terms of the CBA, appellants had not identified a protected interest, since nothing in the proposed decree violated the terms of the CBA. R. 38:4. The district court explained that the CBA permitted the City to change its hiring process if it was deemed to violate Title VII. R. 38:4. Moreover, the proposed consent decree does "not alter, eliminate or even address the terms or conditions of employment of any incumbent * * * firefighter; nor does it affect any statutory seniority provisions." R. 38:4. The district court also rejected appellants' assertion that the proposed decree would have a preclusive effect on future litigation by the EEOC against the AFA, or impair the safety of the community and fellow firefighters. R. 38:4. In sum, "the AFA's *speculative* interests in safety, seniority, and promotion standards, as well as the AFA's fear of the preclusive effect on future litigation, are insufficient to establish a direct and substantial interest required for intervention under Rule 24." R. 38:4. The court also denied permissive intervention based on the reasons stated above, and "weighing the undue delay and prejudice that would result [from] allowing AFA's intervention in this cause." R. 38:4.

5. The District Court's Denial Of Appellants' Motion For Reconsideration And Request For A Stay

On September 17, 2014, appellants filed a motion for reconsideration and, alternatively, a stay of the fairness hearing. R. 39. Appellants repeated arguments in their original motion, and supported their argument regarding current firefighters' seniority rights with exhibits. R. 39:3-5. The Parties opposed reconsideration, emphasizing that appellants produced material that was previously available to them. R. 40, 41.

On October 8, 2014, the district court denied both reconsideration and a stay of the fairness hearing. R. 44. Treating the appellants' motion as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), the district court first stated the narrow grounds for relief: "to correct manifest errors of law or fact or to present newly discovered evidence." R. 44:1-2 (quoting *Templet* v. *HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (citation omitted)). The district court concluded that AFA had failed to identify any change in controlling law or fact. R. 44:2-3. The court again rejected appellants' assertion that the consent decree affected collective bargaining rights. R. 44:2. "The AFA's dissatisfaction with the City's collective-bargaining position does not grant AFA a legally-protectable interest in this case." *Ibid.* The district court also concluded that AFA's argument that the proposed decree allegedly interferes with individual appellants' seniority rights for promotions was "not based on new evidence, and

* * * remains insufficient to establish a direct and substantial interest required for intervention." R. 44:3. The court also held AFA had failed to establish it would suffer irreparable harm without a stay. *Ibid.*

Appellants filed a notice of appeal on October 8, 2014. R. 45.

ARGUMENT

I

APPELLANTS DO NOT MEET ANY OF THE NECESSARY CRITERIA FOR A STAY PENDING APPEAL

A. Standard Of Review

This Court reviews a district court's denial of a stay pending appeal for abuse of discretion. See *United States* v. *Transocean Deepwater Drilling, Inc.*, 537 F. App'x 358, 360 (5th Cir. 2013) (citing *Beverly* v. *United States*, 468 F.2d 732, 740 n.13 (5th Cir. 1972)); *Planned Parenthood of Greater Tex. Surgical Health Servs.* v. *Abbott*, 734 F.3d 406, 410 (5th Cir. 2013).

B. Criteria For A Stay

The standard for issuance of a stay pending appeal is well-established, and requires this Court to consider four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Abbott, 734 F.3d at 410 (citation and internal quotation marks omitted). "A stay is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Ibid.* (quoting *Nken* v. *Holder*, 556 U.S. 418, 427 (2009)).

C. Appellants Have Not Shown A Strong Likelihood Success On The Merits

This Court has held that where, as here, employees do not have an existing collective bargaining agreement, and cannot show that a proposed settlement will conflict with any existing rights under state law, neither employees nor the union has the legally protected interest that is required for intervention as of right. See, *e.g.*, *United States* v. *City of New Orleans*, 540 F. App'x 380, 381 (5th Cir. 2013); *Stallworth* v. *Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977). Thus, appellants cannot show a strong likelihood that they will succeed on the merits of their appeal of the district court's denial of intervention.

In *New Orleans*, this Court recently rejected a union's motion to intervene in police misconduct litigation resolved by a proposed consent decree that required the city to modify various employment procedures. See 540 F. App'x at 381. The Court held that, notwithstanding the union members' property interest in their jobs under the civil service system, they lacked a sufficient interest to intervene because the proposed decree did not modify any rights protected by the civil service system.

In *Stallworth*, 558 F.2d at 262, proposed intervenors alleged that a consent order interfered with their seniority rights under a contract with the defendant, Monsanto Company. This Court ruled it had insufficient evidence to resolve whether a contract existed, and ordered a remand. *Id.* at 268. The Court stated that, if "no contract exists between the appellants and Monsanto, * * * they would not be entitled to intervene as of right" due to lack of sufficient interest. *Id.* at 269.[3]

Appellants have simply failed to come to grips with the fact that the collective bargaining agreement – on which they so heavily rely – no longer exists. Nor, as we explain below, have appellants shown any legally significant adverse effect on their rights under state and local law.

1. AFA Has Not Established Any Violation Of Its State Right To Bargain Entry-Level Firefighter Testing Procedures

AFA first claims (Mot. 7-8) that the proposed decree violates its "statutory right" to "collectively bargain over the hiring process." This claim is without merit.

While state law recognizes that a union may participate in the development of an entry-level firefighter hiring process based on an agreement with an

[3] Certainly, employees who are not, and have never been, party to a collective bargaining agreement or employment contract may establish a sufficient right to intervene to protect their rights based on other sources of authority, including state law. But in *Stallworth*, proposed intervenors sought intervention based solely on their asserted contract with Monsanto. 528 F.2d at 262.

employer, the law does not establish a legally protectable right to an agreement that provides for such participation. The statutory right is the opportunity to bargain over whether the union can participate in developing the hiring process. See Tex. Loc. Gov't Code Ann. 174.006(c) (West 2014). A municipality *may*, through a collective bargaining agreement, negotiate with a union over entry-level firefighter selection procedures – as the City has done in the past with AFA. *Ibid.*; R. 16-2. But nothing in state law *requires* a municipality to collectively bargain with a union over firefighter selection procedures, rather than to follow the requirements of state law.

AFA's argument also ignores the plain language of the proposed decree. The proposed decree does not specify new selection procedures, but instead requires only that the City replace the challenged employment practices with Title VII-compliant practices that also are approved by the United States. R. 5-1:13-16. Moreover, nothing in the proposed decree either forecloses the City from collectively bargaining with AFA for a new agreement that succeeds the expired CBA, or negotiating with AFA in developing new hiring practices. Indeed, AFA acknowledges that "the proposed decree does *not* literally foreclose collective bargaining" over the terms of an entry-level firefighter examination, but instead complains that the City is not currently willing to negotiate this issue. Mot. 8 (emphasis added). As the district court correctly held, however, AFA's complaints

regarding the City's bargaining strategy do not establish a sufficient interest to warrant its intervention in this litigation. R. 44:2.

2. AFA Does Not Have A Sufficient Interest To Defend The Expired CBA

AFA further asserts (Mot. 9-10) that its "contractual" interest in defending the terms of the expired CBA establishes a strong likelihood of proving an adequate interest under Rule 24. This argument is baseless.

AFA has cited no law that establishes an ongoing interest under Rule 24 that is based on a CBA *after the CBA has expired*, nor is the United States aware of any. Once the CBA expired on October 1, 2013, the City was under no obligation to use the selection procedures AFA claims it has an interest to defend. R. 16-2:60.

Moreover, AFA's claim that the proposed decree "overrid[es]" CBA terms that they "bargained for" ignores important facts. R. 16-1:6-8. First, the City hired candidates – including all ten individual appellants – through the 2012 selection procedure identified in the expired CBA. R. 16-1:18-20. Second, the City was not *required* to hire any candidates under the 2013 selection process. R. 16-2:36. Thus, the proposed decree does not overturn the results of the selection procedures identified in the CBA.

AFA's further assertion (Mot. 9-10) that it should be entitled to intervene because the City "refuses to" defend the CBA also is groundless. This Court has

held that a proposed intervenor does not establish a sufficient interest, or inadequate representation, "based merely on conclusory allegations" that public defendants "are not aggressively defending the suit," or are not asserting the same arguments it would. *United States* v. *Franklin Parish Sch. Bd.*, 47 F.3d 755, 757-758 (5th Cir. 1995); see also *Saldano* v. *Roach*, 363 F.3d 545, 556 (5th Cir.), cert. denied, 543 U.S. 820 (2004). A city's decision not to "defend" an expired CBA cannot properly be deemed an adequate basis to warrant the union's intervention in a case of this nature.

AFA also asserts (Mot. 9), without citation or other basis, that the United States "delayed" its investigation in order to preclude AFA's participation in this litigation. The United States began its investigation in April 2013, and its efforts during the investigative stage were comprehensive and concerted. See pp. 2-3, *supra*. The United States initiated negotiations with the City in the fall of 2013, around the time the CBA, by its own terms, expired. The United States has been diligent throughout this litigation, and nothing in the record provides any basis to hypothesize that the United States waited until after the CBA expired to conclude its investigation.

3. Appellants' Limited Statutory Seniority Benefit Is Insufficient To Establish An Interest Supporting Intervention

Appellants assert (Mot. 10-11) that they have a statutory interest in protecting their seniority rights in the Fire Department's promotional process.

They assert in this regard that "[t]he proposed decree provides for retroactive seniority – giving some priority hires more seniority than current firefighters, including the individual intervenors." Mot. 10. This claim is without merit.

As the United States explained below, "[b]efore the retroactive seniority awards could possibly manifest themselves in a priority hire's advantage over an incumbent in the promotional [process], among other things: the Austin Fire Department must make priority hires; promotional vacancies must arise; both priority hires and incumbents must compete for the same promotions; priority hires must prevail over incumbents; and retroactive seniority must be the basis for displacing an incumbent in the promotional process." R. 41:3-4.[4] Given the requisite confluence of these factors, the district court correctly concluded that the potential impact the proposed decree will have on an appellants' seniority is "speculative" and "insufficient to establish a direct and substantial interest required for intervention under Rule 24." R. 38:4 (citing *Texas* v. *United States Dep't of Energy*, 754 F.2d 550, 552 (5th Cir. 1985) (asserted interest too speculative to warrant intervention, since impact on proposed intervenors' interest depended, in part, on resolution of litigation); see also *New Orleans Pub. Serv., Inc.* v. *United Gas Pipe Line Co.*, 732 F.2d 452, 463-464 (5th Cir.) (asserted interest must be

[4] Fifteen claimants who will be priority hires will have the same seniority commission date as the individual appellants (July 28, 2013), while the remaining 15 priority hires will have a seniority commission date that is only eight weeks earlier (June 2, 2013). R. 5-1, App. A:3; R. 16-1:18-20; R. 47-11:1-2.

"direct, substantial, legally protectable," and "one which the *substantive* law recognizes" as belonging to the intervenor) (citation omitted), cert. denied, 469 U.S. 1019 (1984). Appellants' reliance on *Edwards* v. *City of Houston*, 78 F.3d 983, 991-992, 1004 (5th Cir. 1996), is inapposite, because that proposed decree reserved 106 remedial promotion *positions* to claimants, which barred intervenors from competing for those positions. Here, appellants have an opportunity to compete for promotions, and seniority is only one of many factors to be considered.

When appellants raised this contention again in their motion for reconsideration, the district court properly deemed the motion one to alter or amend judgment under Federal Rule of Civil Procedure 59(e). Relying on *Templet* v. *HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004), the district court correctly observed that "Rule 59(e) serves the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." R. 44:2 (citation, alterations and internal quotation marks omitted). The court held that "AFA's motion for reconsideration fails to raise an intervening change in controlling law or argument warranting reconsideration to prevent manifest injustice." R. 44:2. The court went on to say that, "[a]lthough the AFA raises new arguments regarding current firefighters' seniority rights, such arguments are not based on new evidence, and they remain insufficient to establish a direct and

substantial interest required for intervention." R. 44:2-3.[5] The district court was undoubtedly correct in concluding that AFA's argument in this regard was insufficient to "warrant[] reconsideration to prevent manifest injustice." R. 44:2.

4. Appellants' Challenge To The Merits Of The Consent Decree Do Not Establish A Strong Showing Of A Likelihood Of Success In Establishing A Substantial Interest For Intervention

In addition, appellants assert (Mot. 13-18) that the United States failed to show that the 2012 and 2013 selection procedures violate Title VII, and therefore there is no basis for the proposed consent decree. Appellants' challenge to the evidence of discrimination, however, is irrelevant to whether they have the requisite interest to support intervention as of right under Rule 24. Rather, the issue is whether appellants claim a sufficient interest in the "subject of the action." Fed. R. Civ. P. 24(a)(2).

Even if the evidentiary basis for the proposed decree were a proper consideration for purposes of intervention, there is ample evidence of the City's vulnerability under Title VII regarding the 2012 and 2013 selection practices. R. 5:4-8, 14-19; pp. 2-3, *supra*. Appellants' assertion (Mot. 17-18) that the United States did not identify the source of the disparate impact in the 2012 selection process ignores the evidence that the 2012 written examination and the rank

[5] Moreover, these objections were never raised in the two meetings the United States had with AFA representatives prior to finalizing the proposed decree for submission to the district court. R. 5:30-34.

ordering both had a statistically significant impact on African Americans and Hispanics. R. 5:5-6, 15-17. Given the City's exigent hiring needs, and as an element of the negotiations, the United States agreed that the City may use the 2013 selection process for the limited purpose of hiring 90 cadets. R. 5:19. This interim procedure does not negate the evidence of the 2013 written examination's disparate impact. R. 5:19.

For these reasons, appellants have failed to demonstrate that the district court erred in concluding that they lack a legally sufficient interest to warrant intervention of right in this litigation. It follows, therefore, that they have not made a strong showing of a likelihood of success on the merits of that claim, as required for a stay pending appeal.

D. Appellants Have Not Established Irreparable Injury To Themselves Or The Absence Of Harm To The Parties And The Public Interest To Warrant A Stay

Appellants also fail to satisfy the other criteria necessary to warrant a stay pending appeal in this case. Appellants assert (Mot. 18-19) that they will suffer irreparable injury due, in large part, to the City's *current* negotiating positions for a new collective bargaining agreement. As the district court correctly held, however, the City's negotiating strategy has no bearing on whether the appellants will suffer irreparable injury if intervention is denied. R. 44:2-3. Indeed, nothing in the proposed decree precludes or even addresses the City's negotiation strategy.

Appellants' assertion that they "cannot brief issues or present evidence" at the upcoming fairness hearing (Mot. 19) is incorrect and belied by the record. Each appellant submitted to the Claims Administrator an identical 30-page memorandum with approximately 170 pages of attachments, including an expert declaration, in support of the objections to the proposed consent decree.[6] The district court will determine what evidence, if any, it will accept from non-parties at the fairness hearing. In addition, entry of the consent decree prior to resolution of their appeal on the merits will not irreparably harm the appellants. If appellants ultimately are successful in this appeal, the Court may issue a ruling that appropriately protects their interests on remand.

Moreover, delay of the fairness hearing will substantially harm the United States, the City, hundreds of individuals who will benefit from the proposed decree, and the public at large. First, the Parties, represented by experienced counsel, have determined that resolution of this matter without further litigation is in their best interests. Second, a postponement of the hearing would prejudice the Parties by not only rendering notice of the hearing obsolete and the associated costs of approximately $40,000 lost, but would also require considerable

[6] The sole difference among the objections is each appellant's contact information. Appellants' objections (and all others) have been filed with the district court. R. 48-57 (Exhibit L to the Parties' joint memorandum to support entry of the consent decree); see, *e.g.*, R. 49:50-251 (objection by appellant Daniel Hatcherson; Bates No. 378-579).

expenditures of time and money to send additional notices to the same approximately 4000 individuals and the public regarding the cancellation of the hearing and a new fairness hearing date. Third, staying the fairness hearing necessarily means delaying relief to meritorious claimants, even though the City has already agreed to pay $780,000 and award 30 priority hires. Finally, staying the fairness hearing pending this appeal will adversely affect the public interest in redressing discriminatory employment practices by public entities in a timely manner.[7]

For these reasons, appellants' motion for a stay pending appeal should be denied.

II

APPELLANTS HAVE NOT ESTABLISHED "GOOD CAUSE" FOR EXPEDITED BRIEFING IN THIS CASE

Fifth Circuit Rule 27.5 allows this Court to expedite an appeal "for good cause." Appellants, however, have established no basis for "good cause," other than their interest in halting the district court's consideration (and potential approval) of the proposed consent decree prior to this Court's review of their

[7] The district court also denied permissive intervention based on appellants' lack of adequate interest, and because their participation would cause undue delay and prejudice to the parties. R. 38:4. Indeed, "[a] court may deny permissive intervention even when the requirements of Rule 24(b) are met." *New Orleans*, 540 F. App'x at 381. Appellants have not shown why this ruling was an abuse of discretion.

appeal of denial of intervention. See Mot. 20. For the same reasons a stay is not warranted, the motion to expedite this appeal should be denied.

CONCLUSION

This Court should deny appellants' motion for a stay of the district court proceedings pending this appeal and their motion for an expedited appeal.

Respectfully submitted,

VANITA GUPTA
Acting Assistant Attorney General

s/ Jennifer Levin Eichhorn
DENNIS J. DIMSEY
JENNIFER LEVIN EICHHORN
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 305-0025

CERTIFICATE OF SERVICE

I certify that on October 20, 2014, I electronically filed the foregoing OPPOSITION OF THE UNITED STATES TO APPELLANTS' EMERGENCY MOTION TO STAY AND TO EXPEDITE APPEAL with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I further certify that on October 20, 2014, I served an identical copy of the foregoing OPPOSITION by first-class mail, postage prepaid, and by electronic mail, on the following counsel of record:

B. Lee Crawford, Jr.
City of Austin Law Department
301 West 2d Street, 4th Floor
P.O. Box 1546
Austin, Texas 78767-1546
lee.crawford@austintexas.gov

s/ Jennifer Levin Eichhorn
JENNIFER LEVIN EICHHORN
Attorney