

Case No. 17-1344
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

303 CREATIVE LLC and LORIE SMITH,
Plaintiffs-Appellants,

v.

AUBREY ELENIS, et al.,
Defendants-Appellees,

On appeal from the United States District Court
for the District of Colorado
The Honorable Chief Judge Marcia S. Krieger
Case No. 1:16-cv-02372-MSK-CBS

**PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE OPENING BRIEF**

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Appellants 303 Creative LLC and Lorie Smith respectfully request a 14-day extension of time to file their opening brief. This motion is unopposed.

1. Appellants' opening brief is currently due on December 4, 2017. A 14-day extension would make this opening brief due on December 18, 2017.

2. This extension is justified because Appellants' counsel also represent Petitioners Jack Phillips and Masterpiece Cakeshop which is currently scheduled for oral argument before the United States Supreme Court on December 5, 2017. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, No. 16-111 (U.S. filed Jul. 22, 2016). In particular, Appellants' counsel Ms. Waggoner is lead counsel for Mr. Phillips and Masterpiece Cakeshop and will be arguing on behalf of petitioners on December 5, 2017. Appellants' counsel Mr. Scruggs, Mr. Cortman, Mr. Gray, and Ms. Anderson also represent Mr. Phillips and Masterpiece Cakeshop and through November and early December are heavily involved in preparation of the reply brief due November 22, 2017, analysis of the ninety-five *amicus* briefs filed in the case, and participation in the numerous moot courts scheduled in November and

early December to prepare for the December 5th argument. The United States Supreme Court case deadlines were set before the appellate briefing deadlines in this case.

3. Appellants' counsel also have many other litigation deadlines in November and December. For example, Appellants' counsel will be filing a reply brief at the United States Supreme Court in the coming weeks in support of the petition for certiorari in *State v. Arlene's Flowers, Inc.*, 389 P.3d 543 (Wash.), *petition for cert. filed*, No. 17-108 (U.S. July 14, 2017); have deadlines in *Harley v. Masterpiece Cakeshop, Ltd.*, No. 1:17-cv-01666 (D. Colo. filed July 10, 2017), including an opposition to a motion to stay due on November 9, 2017, and a reply brief in support of Defendants' motion to dismiss due on November 17, 2017; and have deadlines in *Telescope Media Group v. Lindsey*, No. 0:16-cv-04094, 2017 WL 4179899 (D. Minn. Sept. 20, 2017), *appeal docketed*, No. 17-3352 (8th Cir. Oct. 30, 2017), including designations of record, appendix, and statement of issues due on November 13, 2017, and an opening appellate brief due on December 19, 2017.

4. Currently, Appellees' response brief is due January 3, 2018. If the deadline for Appellants' opening brief is moved to December 18, 2017

as requested, Appellees' response brief would be due on January 17, 2018.

5. This is Appellants' first request for an extension.

6. Counsel for Appellants and Appellees have conferred, and both parties agree that this motion is unopposed.

For these reasons, Appellants respectfully request that this Motion for Extension of Time to file their Opening Brief be granted.

Dated: November 3, 2017

Respectfully submitted,

s/ Jonathan A. Scruggs

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this motion contains 444 words, excluding the parts exempted under Fed. R. App. P. 32(f).

2. This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a 14-point proportionally spaced Century Schoolbook typeface using Microsoft Word 2013.

3. All required privacy redactions have been made pursuant to 10th Cir. R. 25.5.

4. Paper copies are not required for this motion.

5. This motion has been scanned for viruses with the most recent version of a commercial virus scanning program, Traps version 4.1, and is free of viruses according to this program.

Date: November 3, 2017

s/ Jonathan A. Scruggs

Jonathan A. Scruggs

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2017, a true and accurate copy of the foregoing document was electronically filed with the Court using the CM/ECF system, which will send notification of such filing to the following:

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