

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-02372-MSK-CBS

303 CREATIVE LLC, a limited liability company; and
LORIE SMITH,

Plaintiffs,

v.

AUBREY ELENIS, Director of the Colorado Civil Rights
Division, in her official capacity;
ANTHONY ARAGON,
ULYSSES J. CHANEY,
MIGUEL “MICHAEL” RENE ELIAS,
CAROL FABRIZIO,
HEIDI HESS,
RITA LEWIS, and
JESSICA POCOCK, as members of the Colorado Civil Rights
Commission, in their official capacities, and
CYNTHIA H. COFFMAN, Colorado Attorney General, in her official capacity;

Defendants.

DEFENDANTS’ UNOPPOSED MOTION FOR EXTENSION OF TIME

Pursuant to D.C. COLO. LCivR 6.1, Defendants request a four-day extension—until August 6, 2018—to submit supplemental briefing ordered by the Court regarding the effect of three recent U.S. Supreme Court decisions on Plaintiffs’ case.

Defendants certify, pursuant to D.C. COLO. LCivR 7.1(a), that undersigned counsel conferred with Plaintiffs’ counsel regarding the relief sought in this motion.

Plaintiffs do not object to the extension as long as it would apply to both sides' supplemental briefs.

1. On September 1, 2017, this Court issued an Order granting in part Defendants' Motion to Dismiss and denying Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment. (ECF #52.) The denial of Plaintiffs' motions was expressly "WITH LEAVE TO RENEW after a final ruling has been issued by the United States Supreme Court in *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n.*" (*Id.* at 13.)

2. Plaintiffs timely filed a Notice of Appeal from the Court's Order, (ECF #53), and the appeal was docketed as Case No. 17-1344 in the Tenth Circuit (ECF #55).¹

3. Defendants moved to dismiss the appeal for lack of appellate jurisdiction, arguing that this Court's Order was not an appealable final judgment. The Tenth Circuit did not rule on Defendants' motion, but instead referred the jurisdictional issue to the merits panel. Briefing has now concluded, the appeal is pending, and oral argument has been set for September 25, 2018.

¹ With some limited exceptions, "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *United States v. Madrid*, 633 F.3d 1222, 1226 (10th Cir. 2011) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)).

4. On June 4, the U.S. Supreme Court issued a final ruling in *Masterpiece Cakeshop*. 138 S. Ct. 1719 (2018).

5. On July 6, the Tenth Circuit ordered the parties to “file simultaneous supplemental briefs addressing the effect of *Masterpiece Cakeshop* ... on this appeal.” The parties were directed to address both jurisdictional and merits issues and to file their supplemental briefs by August 6.²

6. On July 12, this Court likewise ordered the parties to submit supplemental briefing regarding the impact of *Masterpiece Cakeshop*, *NIFLA*, and *Janus* on Plaintiffs’ case. (ECF #63.) The Court ordered that the supplemental briefs be filed within 21 days, which would be August 2. (*Id.*)

7. Because the supplemental briefing ordered by this Court and by the Tenth Circuit is substantially the same, Defendants request that this Court grant an extension of time until August 6 so that they can coordinate the supplemental briefing in this Court and the Tenth Circuit.

8. This is Defendants’ first request for an extension of time to respond to the Court’s order for supplemental briefing.

² On July 13, the Tenth Circuit broadened its supplemental briefing order to include two other recent Supreme Court cases, *National Institute of Family Life Advocates v. Becerra (NIFLA)*, 138 S. Ct. 2361 (June 26, 2018) and *Janus v. American Federation of State, County, & Municipal Employees, Counsel 31*, 138 S. Ct. 2448 (June 27, 2018).

THEREFORE, Defendants respectfully request that they be granted a four-day extension, until August 6, 2018, to file the supplemental brief ordered by this Court.

Respectfully submitted this 30th day of July, 2018.

s/ Jack D. Patten, III

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CERTIFICATE OF SERVICE

I certify that I served the foregoing DEFENDANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME upon all parties herein by e-filing with the CM/ECF system maintained by the court or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 30th day of July, 2018, addressed as follows for the individuals identified below. A copy is also being served contemporaneously on Defendants pursuant to D.C. COLO. LCivR 6.1(c).

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