

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

303 CREATIVE LLC, a limited
liability company, et al.,

Plaintiffs - Appellants,

v.

AUBREY ELENIS, Director of the
Colorado Civil Rights Division, in her
official capacity, et al.,

Defendants - Appellees.

No. 19-1413

On Appeal from the United States District Court
for the District of Colorado

D.C. No. 16-cv-02372-MSK-CBS

**DEFENDANTS-APPELLEES' UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE ANSWER BRIEF**

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Defendant-Appellees Aubrey Elenis, Charles Garcia, Dr. Ajay Menon, Richard Lewis, Kendra Anderson, Sergio Cordova, Dr. Miguel Rene Elias, Jessica Pocock, and Phil Weiser (collectively “Colorado”), respectfully request an additional 30 days to file their answer brief and state as follows:

1. Defendant-Appellees answer brief is currently due on February 21, 2020. If this motion is granted, the answer brief will be due on March 23, 2020.

2. Plaintiffs-Appellants do not oppose the requested extension.

3. This is Defendant-Appellees’ first request for an extension.

Plaintiffs-Appellants previously requested and received a 30-day extension of time to file the opening brief.

4. The opening brief is 60 pages in length and contains numerous constitutional arguments.

5. Amici have filed eight amicus briefs in support of Plaintiffs-Appellants. Though some of the briefing is duplicative, the nearly 200 pages of amicus briefing requires substantial time to review and analyze.

6. The numerous amicus filings and lengthy opening brief prevent the state parties from filing a brief under the normal schedule, even if counsel exercises due diligence and gives priority to preparing the brief.

7. In addition, other litigation presents a scheduling conflict. Mr. Olson, one of the counsel of record for Defendants-Appellees and Solicitor General of Colorado, will present oral argument at the United States Supreme Court on February 26 in *Lomax v. Ortiz-Marquez*, No. 18-8369. The Supreme Court did not set the argument date until November 26, 2019, after this Court granted the unopposed extension to Plaintiffs-Appellants. Counsel will not receive the reply brief in *Lomax* until February 14, 2020, requiring intense efforts during the last half of February to prepare for argument.

8. The United States Supreme Court also recently granted a petition for certiorari in *Colorado Department of State v. Baca*, No. 19-518, which is expected to be argued in the April 2020 sitting. Briefing and arguing that complex case by then requires substantial effort.

9. Associated counsel cannot prepare this brief for timely filing or relieve counsel of the demands of the Supreme Court cases. This case

involves a closely watched issue defending the constitutionality of Colorado law that requires the significant involvement of Colorado's Solicitor General.

Defendant-Appellees respectfully request an additional 30 days to file their answer brief, to and including March 23, 2020.

Respectfully submitted this 5th day of February, 2020.

PHILIP J. WEISER
Colorado Attorney General

s/ Eric R. Olson

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 792 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook.

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

Paper copies are not required for this motion.

This motion has been scanned for viruses with the most recent version of a commercial virus scanning program, Crowdstrike Windows Sensor, version 5.23.10504.0 and is free of viruses according to this program.

Dated February 5, 2020

/s Skip Spear

Skippere S. Spear

Senior Assistant Attorney General

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within
**DEFENDANTS-APPELLEES' UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE ANSWER BRIEF** upon all parties
herein this 5th day of February, 2020, by using the CM/EFC system
which will send notification of such filing to the following:

SEE ATTACHED CERTIFICATE OF SERVICE

s/ Sally Ott

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