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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION

Jane Doe, by her next friend and parents Helen Doe and James Doe; and Megan Roe, by her next friend and parents, Kate Roe and Robert Roe,

Plaintiffs,

v.

Thomas C. Horne in his official capacity as State Superintendent of Public Instruction; Laura Toenjes, in her official capacity as Superintendent of the Kyrene School District; Kyrene School District; The Gregory School; and Arizona Interscholastic Association Inc.,

Defendants,

Warren Petersen, in his official capacity as President of the Arizona State Senate, and Ben Toma, in his official capacity as Speaker of the Arizona House of Representatives,

Intervenor-Defendants.

Case No. 4:23-cv-00185-JGZ

PLAINTIFFS' REPLY MOTION TO EXTEND FACT DISCOVERY (FIRST REQUEST)

Plaintiffs have moved for a 60-day extension of the fact discovery period, pursuant to LRCiv 7.3, to ensure that all necessary fact discovery can take place before the close of the fact discovery period. Plaintiffs have diligently pursued discovery, this is their first request to extend time, and no Party will suffer any prejudice from an extension. Rather, Plaintiffs will suffer prejudice if discovery is not extended. Intervenor-Defendants' arguments to the contrary are unavailing.

First, Plaintiffs have diligently pursued fact discovery. Since the Rule 26 Conference on August 25, 2023, Plaintiffs have served every request, response, and production in the time allowed under the discovery schedule and the Federal Rules of Civil Procedure—a fact that Intervenor-Defendants do not appear to dispute. Keeping score of the time for each step, as Intervenor-Defendants do, amounts to nothing when Plaintiffs have followed the rules and proceeded diligently and in good faith.

Second, a 60-day extension is necessary and reasonable because significant fact discovery remains outstanding. Contrary to Intervenor-Defendants' assertion, completion of fact discovery by March 8, 2024 is not possible. Defendant Horne is still in the process of collecting and reviewing documents, which he said will take several weeks to produce—a fact Intervenor-Defendants omit. Intervenor-Defendants and Plaintiffs still have a number of discovery disputes between them, which are in the process of being addressed—a fact Intervenor-Defendants also omit. And the Parties have not yet noticed depositions in this matter, let alone scheduled them. Plaintiffs need to see the documents Defendant Horne produces to determine what, if any, depositions, are necessary. Plaintiffs also need to address discovery issues with Intervenor-Defendants before they can determine what, if any, depositions are necessary. Coordinating these depositions, which may involve multiple attorneys in different states and deponents with conflicting existing commitments, will itself take time. Accordingly, by insisting on the March 8 deadline, Intervenor-Defendants are prejudicing Plaintiffs' ability to fully and fairly pursue their claims.

Third, no Party will suffer prejudice from a 60-day extension. The only prejudice Intervenor-Defendants claim—that the State suffers ongoing harm because an Arizona law is preliminarily enjoined—has already been rejected by the Court. ECF No. 127 at 34. Tellingly, Defendant Horne, the Arizona Superintendent of Public Instruction, does not oppose Plaintiffs' motion or allege prejudice to the State if an extension is granted. And even if Intervenor-Defendants *could* somehow demonstrate actual prejudice, which they cannot, any such prejudice is outweighed by the need for fact discovery to complete where serious constitutional and civil rights violations have been committed by the State. In any event, Intervenor-Defendants' cannot claim prejudice from Plaintiffs' allegedly dilatory conduct when it was actually Intervenor-Defendants who waited *eleven weeks* after the Court entered its Scheduling Order to serve their initial discovery requests in this case.

For the foregoing reasons, the Court should grant Plaintiffs' motion to extend fact discovery and adopt the proposed revised schedule set forth in Plaintiffs' Motion to Extend Fact Discovery.

Respectfully submitted this 2nd day of February, 2024.

/s/ Colin M. Proksel
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