

COLORADO COURT OF APPEALS
101 W. Colfax, Suite 800, Denver, CO 80203

Appeal from District Court, Denver County, Colorado
District Court Judge Michael A. Martinez
Case No. 2011CV4424 *consolidated with*
2011CV4427

Defendants-Appellants: DOUGLAS COUNTY
SCHOOL DISTRICT and DOUGLAS COUNTY
BOARD OF EDUCATION

and

Defendants-Appellants: COLORADO STATE
BOARD OF EDUCATION AND COLORADO
DEPARTMENT OF EDUCATION

and

Intervenors-Appellants: FLORENCE AND
DERRICK DOYLE, on their own behalf and as next
friends of their children, ALEXANDRA and
DONOVAN; DIANA AND MARK OAKLEY, on
their own behalf and as next friends of their child
NATHANIEL; and JEANETTE STROHM-
ANDERSON and MARK ANDERSON, on their own
behalf and as next friends of their child, MAX
v.

Plaintiffs-Appellees: JAMES LARUE; SUZANNE
T. LARUE; INTERFAITH ALLIANCE OF
COLORADO; RABBI JOEL R. SCHWARTZMAN;
REV. MALCOLM HIMSCHOOT; KEVIN LEUNG;
CHRISTIAN MOREAU; MARITZA CARRERA;
SUSAN MCMAHON

and

Plaintiffs-Appellees: TAXPAYERS FOR PUBLIC
EDUCATION, a Colorado non-profit corporation;
CINDRA S. BARNARD, an individual; and MASON
S. BARNARD, a minor child.

▲ COURT USE ONLY



Case Number:
2011CA1856

2011CA1857

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**MOTION OF BECKET FUND FOR RELIGIOUS LIBERTY FOR LEAVE
TO FILE BRIEF AS AMICUS CURIAE**

The Becket Fund for Religious Liberty, by the law firm of Sparks Willson Borges Brandt & Johnson P.C., here by moves the Court pursuant to C.A.R. 29 for leave to appear and file a Brief as Amicus Curiae in support of Defendants-Appellants Douglas County School District and Board of Education in this appeal, and as grounds for leave states as follows:

1. The Becket Fund for Religious Liberty conditionally submits this brief pursuant to Colorado Appellate Rule 29, along with an accompanying motion for leave to file, as amicus curiae in support of Defendants-Appellants, Douglas County School District and Douglas County Board of Education.
2. The Becket Fund for Religious Liberty is a nonpartisan public-interest law firm dedicated to protecting the free expression of all religious traditions, and the equal participation of religious people in public life and benefits. The Becket Fund litigates in support of these principles in state and federal courts throughout the United States, as both primary counsel and amicus curiae.
3. Accordingly, the Becket Fund has been actively involved in litigation challenging a category of state constitutional amendments known as “Blaine Amendments.” Constitutional provisions passed in dozens of states in the

latter half of the 19th Century, Blaine Amendments were birthed out of a shameful period in our national history tarnished by anti-Catholic xenophobic sentiment. They expressed and implemented that sentiment by excluding all government aid from so-called “sectarian” faiths (mainly Catholicism), while allowing those same funds to support a common “nonsectarian” faith, that is, non-denominational Protestantism. As Blaine Amendments are an affront to religious liberty and a robust civil society, the Becket Fund has worked to mitigate their ongoing effects in the present.

4. To that end, the Becket Fund has filed three amicus briefs before the U.S. Supreme Court¹ to document in detail the history of the federal and state Blaine Amendments and has pursued lower court litigation on behalf of children and their parents who have suffered religion-based exclusion from government educational benefits because of Blaine Amendments.² For these reasons, the Becket Fund has both special expertise that can assist this Court in the disposition of this case and a strong interest in its outcome.

¹ See *Mitchell v. Helms*, 530 U.S. 793 (2000); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Locke v. Davey*, 540 U.S. 712 (2004).

² See, e.g., *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245 (10th Cir. 2008); *Council for Secular Humanism v. McNeil*, Case No. 2007-CA-1358 (Fla. Leon County Cir. Ct.).

5. Pursuant to C.A.R. 29 the Brief of the Becket Fund for Religious Liberty is filed at the same time as the Opening Brief of Defendant-Appellants Douglas County School District and Board of Education. Thus, the tendered brief does not exceed 9,500 words pursuant to C.A.R. 28(g).
6. Because of the importance of the issues raised herein, the Becket Fund for Religious Liberty respectfully requests that it be permitted to appear herein as Amicus Curiae, and to file its Brief in support of Defendant-Appellants contemporaneously with the Opening Brief of Defendant-Appellants.

Pursuant to C.A.R. 29, Amicus Curiae the Becket Fund for Religious Liberty conditionally files the accompanying Brief of Amicus Curiae simultaneously with its motion for leave.

WHEREFORE, the Becket Fund for Religious Liberty respectfully requests that the Court grant it leave to file its Brief as Amicus Curiae in support of Defendant-Appellants, that the Court accept this Brief of Amicus Curiae which is conditionally filed with this motion for leave, and that the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

s/ Scott W. Johnson 

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2012, I electronically filed the foregoing with the Clerk of Court using Lexis/Nexis File and Serve and caused an electronic copy of the foregoing to be served upon the following:

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