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Court: CO Court of Appeals

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Current Date: May 23, 2012

Case Number: 11CA1856

Case Name: James Larue, et al. v. Colorado Board of Education, et al.

**EFILED Document
CO Court of Appeals
11CA1856
Filing Date: May 23 2012 10:25AM MDT
Transaction ID: 44430723**

Court Authorizer

Comments:

All answer briefs are now due July 13, 2012.

By the Court
pb/sa



By Order of the Colorado Court of Appeals:

GRANTED, with any amendments or comments as indicated below or on the attachment.

DATE OF ORDER: **May 23, 2012**
COMMENTS ON ATTACHMENT

COURT OF APPEALS, STATE OF COLORADO
101 W. Colfax Ave., Room 800, Denver, CO 80203

Appeal from District Court, Denver County Colorado
The Honorable 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,

vs.

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 Nos.: 11CA1856
11CA1857

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JOINT MOTION FOR ENLARGEMENT OF TIME

Plaintiffs-Appellees James LaRue et al. and Taxpayers for Public Education et al., pursuant to C.A.R. 26(b), move the Court for an enlargement of time until July 13, 2012 to file their answer briefs. This is their first request for an

enlargement. The LaRue and Taxpayer Plaintiffs-Appellees do not anticipate seeking any further enlargements. A 30-day enlargement of the current June 4 deadline would make answer briefs due on July 4, 2012; however, several counsel for the LaRue and Taxpayer Plaintiffs-Appellees have scheduled family vacations during the week of the Independence Day holiday. Therefore, Plaintiff-Appellees request an enlargement until the following week, specifically until July 13, 2012.

Counsel for the District, State, and Intervenors (collectively, the Appellants) indicated that the Appellants would agree to an enlargement until June 29, 2012 but would oppose an enlargement until July 13, despite the fact that the Appellants had over four months from the time the record was first certified to complete their own opening briefs.

The LaRue and Taxpayer Plaintiffs-Appellees have good cause for obtaining an enlargement. As the Appellants themselves have acknowledged, this appeal raises numerous complex legal issues. *See* Appellants' Unopposed Motion for Enlargement at 2 (Dec. 27, 2011). In their three opening briefs that total approximately 150 pages, the Appellants challenge the District Court's conclusions with respect to numerous Colorado constitutional provisions, the Public School Finance Act (including a standing challenge), C.R.S. 22-54-101 *et seq.*, and the

Contract Schools Statute, C.R.S. § 22-32-122. They also raise a multitude of issues under the First and Fourteenth Amendments to the federal Constitution and argue at length about the legislative history of the Colorado (and other states') constitutions. Several of the federal constitutional issues raised by the Appellants were not briefed below and therefore require additional time to address in response. The two amicus briefs filed on behalf of the Appellants present additional legal issues of both Colorado and federal constitutional law. Collectively, the opening briefs and amicus briefs total more than 200 pages of briefing to which the LaRue and Taxpayer Appellees must respond.

Moreover, the Appellants have had over eight months since the District Court issued its opinion on August 12, 2012, and more than four months since this Court set the initial briefing schedule for this appeal, to develop their strategy and draft their opening briefs. They also have had a copy of the briefing and exhibits since the time of trial, and they received a copy of the record from the Court of Appeals on or about December 8, 2011. *See* Joint Motion to Correct the Record at 2. This Court's December 8, 2011 Order set the due date of opening briefs for January 17, 2012. *See* Order at 2 (Dec. 8, 2011). The parties filed a joint motion to correct the

record on December 18, 2011, in order to address duplicative and extraneous exhibits. *See* Joint Motion to Correct the Record at 2.

On December 27, 2011, three weeks into their allotted time for preparing appeal briefs, the Appellants requested a two-week enlargement, arguing that they had good cause for the extension due to the record being corrected and also given “*the number and complexity of the legal issues presented.*” Unopposed Motion for Enlargement at 2 (Dec. 27, 2011) (emphasis added). The LaRue and Taxpayer Appellees agreed to the extension, which the Court granted. *See id.*; Order at 1 (Dec. 30, 2011).

On January 24, more than six weeks after the Court set the briefing schedule on appeal, the Appellants requested a second two-week enlargement, to which the LaRue and Taxpayer Plaintiffs-Appellees again agreed. *See* Second Unopposed Motion for Enlargement at 2 (Jan. 24, 2012). On January 31, the Court stayed the appeal and vacated the opening brief due dates in order for the District Court to correct the record. *See* Order at 1 (Jan. 31, 2012). The Appellants thus obtained months of additional time, in addition to the two enlargements, during which they could formulate their appeal strategy and develop their arguments. On March 5, 2012, the Court reset the due date for opening briefs to April 16, 2012. In all, the

District, State, and Intervenor Appellants had more than four months from the Order setting the initial briefing schedule to prepare their opening briefs. Given the ample time afforded to Appellants to prepare the opening briefs, and their two requests for enlargements, the Appellants have no basis to argue that the LaRue and Taxpayers' requested enlargement is excessive or would unduly delay this appeal.

To the contrary, given the number, complexity, and importance of the issues presented in this appeal, and the fact that a 30-day extension would fall on the July 4th holiday, when several attorneys have scheduled family vacations, there is good cause to grant an enlargement until July 13, 2012. The LaRue and Taxpayer Appellees therefore respectfully request an order GRANTING this joint motion for an enlargement of time to July 13, 2012 within which to file answer briefs.

Respectfully submitted this 17th day of May, 2012.

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s/ Michael S. McCarthy

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2012, a true and correct copy of the foregoing **JOINT MOTION FOR ENLARGEMENT OF TIME** was filed and served via LexisNexis File & Serve on the following:

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