

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:08-cv-2321-JLK-KMT

COMMON CAUSE OF COLORADO,  
on behalf of itself and its members;  
MI FAMILIA VOTA EDUCATION FUND; and  
SERVICE EMPLOYEES INTERNATIONAL UNION,  
on behalf of itself and its members,

Plaintiffs,

v.

BERNIE BUESCHER, in his official capacity as Secretary of State for the State of  
Colorado,

Defendant.

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SECRETARY'S REPLY IN SUPPORT OF HIS MOTION FOR  
ENLARGEMENT OF TIME TO FILE REPLY BRIEF

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Defendant Bernie Buescher, in his official capacity as Secretary of State for  
the State of Colorado, by and through undersigned counsel, files this reply in  
support of his motion for enlargement of time to file his reply brief.

Counsel for the Secretary has been in contact this morning with Plaintiffs'  
counsel to clear up any misunderstanding among counsel regarding the  
communications concerning this motion. Counsel have now resolved any such  
misunderstandings. As noted in their response, Plaintiffs' counsel do **not** object to  
the request for extension through Friday, August 14.

Counsel for the Secretary file this reply simply to explain to the Court in additional detail their efforts to comply with D.C.COLOLCivR 7.1(A) before filing their motion yesterday. Counsel for the Secretary initially contacted the Plaintiffs via email at 9:20AM on Tuesday, August 4 to seek a 14-day extension of time. Counsel for the Secretary followed this email with a telephone call to Plaintiffs' counsel (Bradley Heard) on Tuesday afternoon, to ensure that the request had been received. Mr. Heard notified counsel for the Secretary that Plaintiffs' counsel would provide a response in the morning. The following morning, Plaintiffs' counsel agreed to an extension only through Monday, August 10.

Counsel for the Secretary (Mr. Knaizer) called Mr. Heard and asked for a compromise to August 13 or 14. In that conversation, Mr. Knaizer also stated that counsel for the Secretary needed some additional time to complete the brief due to the burdens of the recent discovery production. Mr. Knaizer requested a response by 1PM (MDT) so that the motion could be filed.

At 1PM, Mr. Heard responded by email that there was no consensus among Plaintiffs' counsel for any extension beyond Monday, August 10. Mr. Heard indicated that if there was some other basis for the request, please let him know so Plaintiffs' counsel could consider it. Mr. Heard indicated he was heading into a meeting and was unlikely to be able to respond for a few hours.

As of that time, counsel for the Secretary believed they had already adequately presented both bases for the request (an opportunity to hold settlement conversations, and a request for additional time due to the recent burden of the discovery production). Having received what appeared to counsel for the Secretary as a rejection of the proposed compromise (to August 13 or 14), and having at that time no clear indication that Plaintiffs were willing to reconsider, counsel for the Secretary went ahead and filed the motion hoping to give the Court adequate time to give it meaningful consideration before the reply brief deadline (today, August 6).

After reviewing Plaintiffs' response to this motion and receiving email correspondence from Plaintiffs' counsel this morning, counsel for the Secretary contacted opposing counsel this morning to clear up any miscommunication that occurred yesterday. Counsel for the Secretary did not intend to misrepresent Plaintiffs' position on the motion to the Court. Counsel for the Secretary appreciates Plaintiffs' consent to the request for the extension through Friday, August 14. Counsel for both parties continue to work diligently and cooperatively toward the resolution of the claims in this case.

WHEREFORE, the Secretary respectfully requests the Court grant the Secretary's motion for an enlargement of time, through and including August 14, 2009, in which to file his reply brief in support of his motion to dismiss Plaintiffs' Amended Complaint.

Dated: August 6, 2009.

JOHN W. SUTHERS  
Attorney General

*s/Maurice G. Knaizer*

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## CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2009, I served a true and complete copy of the within REPLY IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT upon all parties by the method indicated below:

<b>Party Type</b>	<b>Attorney</b>	<b>Firm and/or Address</b>	<b>Method</b>
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*s/ Melody Mirbaba*

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AG File:

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