

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil No. 08-CV-2321-JLK

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,

vs.

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

Defendant.

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR ENLARGEMENT OF
TIME TO FILE REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS
AMENDED COMPLAINT**

1. In an effort to avoid unnecessary squabbling over this motion, Plaintiffs will not formally oppose Defendant's request for an eight-day extension to file his reply brief until August 14, 2009. However, Plaintiffs are troubled by Defendant's failure to abide by the clear obligations imposed by D. Colo. L.R. 7.1(A) and the Court's Rule 7.1A Admonition. As set forth below, Plaintiffs' counsel had agreed to a shorter extension of time and asked whether there were other bases for the requested extension other than that identified by Defendant's counsel. When an additional explanation was provided, Plaintiff's counsel responded in writing that he would contact Defendant's counsel. Rather than wait for that follow-up communication and fulfil their duty to confer, Defendant's counsel chose to file this motion. Defendant's representation that "Plaintiffs object to an enlargement of time to either August 13 or 14th" was therefore premature. Had Plaintiffs ultimately not agreed to

the additional four days' extension, Defendant could have filed this very same motion as late as midnight tomorrow, August 6, without incurring any additional prejudice under the rules.

2. Additional clarifications are necessary in light of Defendant's motion. First, Plaintiffs *agreed* to a four-day extension of time (until Monday, August 10, 2009) within hours of receiving Defendant's initial request for a 14-day extension of time. When Defendant's counsel initially requested the extension, they articulated no reason other than an alleged need to consider settlement correspondence from Plaintiffs.¹ Plaintiffs' counsel promptly informed Defendant's counsel that they believed a reply brief should be filed before engaging in settlement discussions, a position that was similar to Defendant's own position that settlement discussions should not take prior to the filing of Plaintiffs' opposition to the pending motion to dismiss. Accordingly, Plaintiffs' counsel explained that a delay in filing the reply would only delay settlement negotiations. Nevertheless, as a professional courtesy, Plaintiffs agreed to a reasonable and brief extension of time, as the parties consistently have done throughout this case, and further explicitly informed Defendant's counsel that if there were a reason for the requested extension other than the timing of settlement negotiations, Defendant's counsel should provide that reason and Plaintiff's counsel would be willing to further consider the request for an extension. When Defendant's counsel subsequently articulated another basis for the requested extension, counsel for Plaintiff, Bradley Heard, replied that he would be in touch. However, Defendant proceeded to file this motion, less than an hour after his counsel's last communication.

¹ Plaintiffs object to Defendant's introduction of confidential settlement communications in this court filing, but nevertheless will respond to the extent necessary to clarify their position with respect thereto.

Despite Defendant's ill-advised rush to file this motion for extension, and suggestion that the motion was contested before completion of the meet and confer process, Plaintiffs, as a matter of professional courtesy, will not oppose Defendant's request.

Dated: August 5, 2009

Respectfully submitted by:

/s Myrna Pérez
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CERTIFICATE OF SERVICE

I, Myrna Pérez, certify that on August 5, 2009, I electronically filed Plaintiffs' Response to Defendant's Motion for Enlargement of Time with the Clerk of the Court for the United States District of Colorado. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system upon:

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