

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN SCHWARTZ, in his official
capacity as Treasurer of the State
of Nevada,

Appellant,

v.

HELLEN QUAN LOPEZ, individually and
on behalf of her minor child, C.Q.;
MICHELLE GORELOW, individually and
on behalf of her minor children A.G.
and H.G.; ELECTRA SKRYZDLEWSKI,
individually and on behalf of her
minor child, L.M.; JENNIFER CARR,
individually and on behalf of her
minor children, W.C., A.C., and E.C.;
LINDA JOHNSON, individually and on
behalf of her minor child, K.J., and
SARAH SOLOMON AND BRIAN
SOLOMON, individually and on behalf
of their minor children, D.S. and K.S.,

Respondents.

Supreme Court No. 69611

District Court No. 15-OC-00207-1B
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**EXPEDITED MOTION TO SET
REPLY BRIEF DEADLINE TO
CONFORM TO *AMICI*
EXTENSION
(FIRST REQUEST)**

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I. INTRODUCTION

Unsurprisingly, the important legal issues involved in this appeal have attracted the attention of numerous groups. As a general matter, Appellant Treasurer Dan Schwartz has no objection to the participation of all interested parties as amici curiae, and most amici have timely filed their briefs so as to not affect the expedited briefing schedule in this case. Unfortunately, however, some amici groups have requested, and been granted, an extension of the due date for filing their proposed brief that will put the filing of that brief *after* Appellant's reply brief is currently due to be filed. In order to avoid this prejudice, and because Respondents' amici have requested and been granted an extension that has already extended the expedited briefing schedule in this case, Appellant respectfully asks that the Court move the due date for Appellant's reply brief from its current deadline of April 11, 2016, to April 29, 2016.

Appellant filed a motion for an expedited briefing schedule in this appeal, which this Court granted. Consistent with that schedule, Appellant filed his opening brief on March 4, 2016, and Respondents filed their answering brief on March 28, 2016. Under Rule 29(f), amicus briefs are due seven business days after the brief of the party being supported. Consistent with that rule, and with the expedited briefing schedule ordered by this Court, Nevada families supporting Appellants filed their amici brief on March 15, 2016. Likewise, three amici groups in support of Respondents filed their briefs on or before April 5, 2016. Under the expedited briefing schedule, Appellant's reply brief is currently due April 11, 2016.

At least one group of proposed amici in support of Respondents, however, has requested and been granted an extension of time up to April 20, 2016—nine days after Appellant’s reply brief is due—to file their motion for leave to file an amicus brief and their proposed brief. Under this new, extended schedule, Appellant will not have the opportunity, as contemplated by the rules of this Court, of responding to all arguments of amici in the reply brief. For this reason, and also because the expedited briefing schedule has already been effectively extended by amici, Appellant respectfully requests that the due date for the reply brief be moved to, and including, April 29, 2016. No extension of time would have been required but for the delayed appearance of amici, and any earlier due date for the reply brief will prejudicially deprive Appellant of sufficient time to respond (Respondents had almost two weeks to file their brief after amici in support of Appellant filed their brief). Therefore, good cause exists to grant Appellant’s Motion and he respectfully requests action by April 11, 2016.¹

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Appellant Seeks this Court’s Expedition of the Appeal.

This appeal arises from a constitutional challenge to Nevada’s new Education Savings Account (“ESA”) Program. The ESA law generally provides a means for

¹ Out of an abundance of caution, Appellant may request a telephonic 14-day extension if the Court does not rule upon this Motion prior to April 11, 2016. Because this Motion is filed prior to any telephonic extension, such an extension should not bar the Court from granting this Motion. *Cf.* NRAP 26(b)(1)(B) (prohibiting further extensions absent extraordinary and compelling circumstances).

Nevada parents with children enrolled in a public or charter school to choose a different option to meet their children's educational needs. The ESA Program was enacted as Senate Bill 302 and approved by Governor Sandoval on June 2, 2015.

On September 9, 2015, Respondents filed their complaint, alleging that the ESA Program violates Article XI, Sections 2, 3, and 6 of the Nevada Constitution. They subsequently moved the District Court for a preliminary injunction. On January 6, 2016, the District Court held a hearing on Respondents' preliminary injunction motion, and on January 11, 2016, it issued an order enjoining implementation of the ESA Program. The District Court rejected Plaintiffs' Section 2 and Section 3 claims, but concluded that Plaintiffs had shown a likelihood of success and irreparable harm on their Section 6 claim. Appellant seeks reversal of that order in this appeal.

This appeal was docketed on January 20, 2016. The next day, January 21, 2016, Appellant filed a Motion to Expedite Appeal. On February 12, 2016, the Court granted the Motion and ordered that (1) the opening brief be due in 21 days; (2) the answering brief be due 21 days after the opening brief; and (3) the reply brief be due 10 days after the date on which the answering brief is filed. As a consequence of requesting an expedited schedule, Appellant significantly shortened his time to file his opening brief by 99 days. *See* NRAP 31(a)(1)(A).

B. Proposed Amici Complicate the Briefing Schedule.

After Appellant timely filed his opening brief, Respondents timely filed their answering brief on March 28, 2015. Pursuant to Nevada Rule of Appellate Procedure 29(f), all amicus briefs or motions for leave to file amicus briefs in

support of Respondents were due on April 6, 2016, seven days after Respondents filed their answering brief.

On March 31, 2016, the National School Board Association (“NSBA”) and Nevada Association of School Boards (“NASB”) sought, and obtained, a 14-day extension of time to file their motion for leave to file an amicus brief in support of Respondents. They ultimately filed their motion on April 4, 2016, however, and provided a copy of their proposed amicus brief to Appellant on April 5, 2016—before the NRAP 29(f) deadline. Additionally, after confirming that other amici intended to file their briefs by the deadline, April 5, 2016, and therefore would not delay the expedited proceedings in this case, Appellant consented to two additional amici groups filing briefs. In sum, all of the parties in this case, as well as four different amici groups, were able to file their respective briefs within the timeframe allowed by the rules and without disturbing the expedited briefing schedule.

But on April 5, 2015, the due date for amici briefs in support of Respondents, the Southern Poverty Law Center, NAACP, and Mexican American Legal Defense and Educational Fund (collectively “SPLC”) informed Appellant that they had received an extension of time up to April 20, 2016, to file their motion and proposed amicus brief. Consequently, SPLC’s motion for leave to file an amicus brief and proposed brief is presently due nine days after the deadline for the Treasurer’s reply brief. This belated appearance has both stymied the accelerated briefing schedule and necessitated Appellant’s present request to move the reply due date in order to ensure that Appellant can properly respond to any arguments presented by amici. Counsel for Appellant asked Respondents’ counsel

whether they oppose moving the reply date to April 29, 2016. Respondents' counsel have not responded whether they oppose or not.

III. ARGUMENT

A motion for extension of time to file a brief may be made on or before the deadline. NRAP 31(b)(3). The Motion must set forth the current deadline, the number of previous extensions (including any denials), the reasons or grounds for the requested extension, and the length of the requested extension. NRAP 31(b)(3)(A)(i)-(v).

Here, Appellant's reply brief is currently due on April 11, 2016. He has not requested, or been denied, any earlier extension of this deadline. Quite the opposite, Appellant has made every effort to expedite this appeal to remove the cloud of uncertainty hanging over the ESA program and provide certainty as quickly as possible to the thousands of families put in limbo by challenges to Nevada's ESA Program. This Motion is only necessary as a result of the late appearance of the SPLC amici and the extension they obtained. Given the importance of the issues at stake, Appellant should be afforded the opportunity to respond to the arguments raised by all amici and he will be unable to do so without moving the current reply due date.

Accordingly, Appellant respectfully requests that the Court move the deadline for Appellant's reply brief up to, and including, April 29, 2016.

Appellant also requests that no further extension of time be granted to any party or amici in this appeal so that Nevada's families may have a resolution of this appeal as expeditiously as possible.

Respectfully submitted,

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Dated: April 6, 2016.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **EXPEDITED MOTION TO SET REPLY BRIEF DEADLINE TO CONFORM TO *AMICI* EXTENSION (FIRST REQUEST)** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on April 6, 2016.

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