

CV-14-427

IN THE ARKANSAS SUPREME COURT

M. KENDALL WRIGHT, et al

PLAINTIFFS-APPELLEES

VS.

Case No. CV-14-427

NATHANIEL SMITH, MD, MPH, et al

DEFENDANTS-APPELLANTS

APPELLEES' RESPONSE TO MOTION FOR [SECOND] ORAL ARGUMENT

Appellees, for their Response to Appellants' Motion for [Second] Oral Argument, state:

1. The case at bar was originally filed on July 1, 2013 in the Pulaski County Circuit Court – the first “*Post-Windsor*”¹ case filed in the United States. At the time it was filed, same-sex marriages were legal and recognized in only thirteen (13) states. As of this date, there are now thirty-six (36) states and the District of Columbia where such marriages are legal and/or recognized. Unlike 70% of the citizens of the United States, the Plaintiffs-Appellees reside in a state that continues to deny them their constitutional rights, even though the Arkansas Constitution provides greater protection of those rights than does the United States Constitution. They cannot afford further delay.

¹ *United States v. Windsor*, 133 S.Ct. 2675 (2013).

2. On October 9, 2014, this Court denied Appellants' Motion to Stay Proceedings. Appellants had asked for the stay because there were petitions for *certiorari* pending before the United States Supreme Court in cases involving the same or similar issues as this case.

3. On October 17, 2014, Appellees filed a Motion to Expedite Appeal due to their continuing irreparable harm sustained as a result of the denial of their constitutional rights. Deprivation of constitutional rights "for even minimal periods of time, unquestionably constitutes irreparable harm." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

4. This Court granted the Motion to Expedite Appeal on October 23, 2014 and immediately scheduled oral arguments for November 20, 2014.

5. Appellants have made an unprecedented request for a *second* oral argument in this matter "for the benefit of Chief Justice Hannah, Justice Wynne, and Justice Wood" (State's Motion for Oral Argument Paragraph 6, Page 3) due to their inability to attend the original oral argument on November 20, 2014. This extraordinary and very unusual request should be denied. It would further delay a decision in this case where the Court has already seen the need for, and granted, expedited treatment.

6. At the Oral Arguments on November 20, 2014 all counsel were informed that Chief Justice Hannah was out of town at a meeting and that he would

have access to viewing the entire proceedings via video. The Court also informed counsel that Chief Justice Hannah would participate in the decision of the case even though he was not personally present for oral argument.

7. Special Justice Robert McCorkindale was specifically appointed by the Governor as a Special Justice to hear “this specific case.” See Exhibit 1, October 1, 2014 letter from Governor to Justice McCorkindale. See also Exhibit 2, October 1, 2014 Official Appointment appointing Justice McCorkindale “for the case styled 14-427, *Nathanial Smith, M.D. et al v. M. Kendall [sic] Wright, et al.*

8. Special Justice McCorkindale was present and participated in the oral argument held on November 20, 2014. Justice McCorkindale was appointed specifically to preside over this case along with the other six Justices that participated in the case. The Attorney General cites no law to the effect that Justice McCorkindale does not remain on the case for which he was appointed through the duration of the case. And such a position would directly contradict the Official Appointment by the Governor (Exhibit 2) and the letter to Justice McCorkindale sent to him by the Governor when the appointment was made (Exhibit 1). Upon information and belief, Special Justice McCorkindale is available to continue to serve in this matter until the Court issues its opinion.

9. Appellants cite no authority for their request. Plaintiffs have been able to find no authority authorizing the procedure Appellants request.

10. Rule 1-7 of the Rules of the Arkansas Supreme Court provides that “where no provision is made by statute or other rule, proceedings in the Court shall be in accordance with existing practice.” No “existing practice” of the Supreme Court provides for holding a second oral argument before different Justices after seven Justices have already heard oral argument, participated in the case, and taken the case under submission. Even in the case of petitions for rehearing, a second round of oral arguments is not permitted. See Arkansas Supreme Court Rules 2-3(i) and 5-1(h).

11. In accordance with “existing practice,” the case should be decided by the Justices who participated in the case. Additional argument should not be allowed. This case has been the subject of intense public interest and passions run strong. Unusual procedures such as Appellants’ request for a second oral argument should be avoided.

12. Appellees respectfully request that this Court deny the State’s Motion for a second Oral Argument and conclude the case on the expedited basis previously ordered by issuing its written opinion.

WHEREFORE, Appellees pray that Appellants’ Motion for [Second] Oral Argument be denied; and for all other appropriate relief.

Respectfully submitted,

Attorneys for Appellees

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CERTIFICATE OF SERVICE

The undersigned counsel hereby states that a true and correct copy of the foregoing document was served upon the following counsel via email on January 27, 2015:

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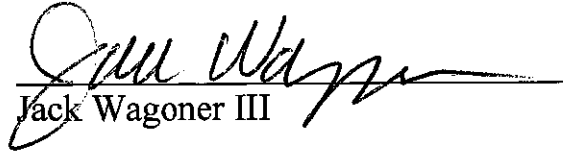
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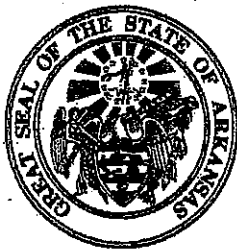
/s/ Cheryl K. Maples

/s/ Jack Wagner, III

CERTIFICATE OF COMPLIANCE

I hereby certify that I have served on opposing counsel and unredacted and, if required, a redacted PDF document that complies with the Rules of the Supreme Court and the Court of Appeals. The PDF documents are identical to the corresponding parts of the paper documents from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.


Jack Wagoner III



STATE OF ARKANSAS
MIKE BEEBE
GOVERNOR

October 1, 2014

RECEIVED
2014 OCT -2 P 2:01
STACEY PECTOL CLERK

The Honorable Robert W. McCorkindale

Re: Nathaniel Smith, M.D., et al v M. Kindall Wright, et al. Arkansas
Supreme Court Case No. 14-427

Dear Judge McCorkindale:

Justice Cliff Hoofman has disqualified himself in the above-styled case. Therefore, I am privileged to appoint you as Special Associate Justice of the Arkansas Supreme Court to participate in this specific case.

I am enclosing your commission and duplicate oath form. The oath must be executed and returned within fifteen (15) days after issuance of the commission. It should be returned to the Governor's Office, State Capitol, Suite 11, Little Rock, Arkansas 72201.

Thank you very much for your willingness to serve in this capacity.

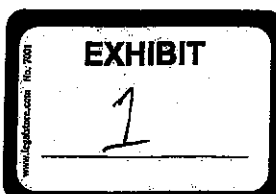
Sincerely,

Mike Beebe

MB:tc/jb

Enclosure

cc: Chief Justice Jim Hannah
Denise Parks, Deputy Clerk



FILED
OCT 02 2014
STACEY PECTOL
CLERK



STATE OF ARKANSAS
MIKE BEEBE
GOVERNOR

OFFICIAL APPOINTMENT

RECEIVED
GENERAL OFFICE
OF THE GOVERNOR
2014 OCT -2 P. 2:01
STACEY PECTOL

Date: October 1, 2014

TO THE SECRETARY OF STATE:

Under the provisions of Section 13 of Amendment 80 to the Arkansas Constitution,

I have, on this date, appointed Robert W. McCorkindale,

whose address is -----

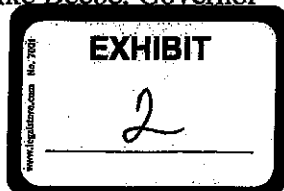
and whose telephone number is

as Special Associate Justice of the Supreme Court of Arkansas

for the case styled 14-427, Nathaniel Smith, M.D., et al v. M. Kindall Wright, et al.

Replaces: Justice Cliff Hoofman who has disqualified himself from this case.

Mike Beebe, Governor



FILED
OCT 02 2014
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CLERK