

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

**SUSAN WATERS and SALLY  
WATERS, et al.,**

**Plaintiffs,**

**v.**

**PETE RICKETTS in his official  
capacity as Governor of Nebraska, et  
al.,**

**Defendants.**

**Case No. 8:14-CV-356**

**STATE DEFENDANTS'  
REPLY BRIEF**

The State Defendants submit this reply brief in support of their pending cross-motion for summary judgment (Filing 72).

On August 11, 2015, the Eighth Circuit issued a published opinion (Filing 78) which decided the State Defendants' arguments on mootness and remanded the case to this Court with directions. The Eighth Circuit's opinion necessarily means the Eighth Circuit had and still retains jurisdiction over the issue of mootness, which confirms the jurisdictional argument the State Defendants previously made to this Court in their consolidated brief concerning the pending summary judgment motions. (Filing 73 at 8-10).

The Eighth Circuit will continue to retain jurisdiction until it issues its mandate, which should occur 21 days from the date of its opinion and judgment in the absence of any further proceedings in the Eighth Circuit. *See* Fed. R. App. P.

41(b) (7 days after the 14-day petition for rehearing period expires). In the interim, the State Defendants are evaluating their options, including whether to seek panel rehearing or rehearing en banc pursuant to Fed. R. App. P. 35 and 40.

Accordingly, the State Defendants respectfully urge the Court to withhold ruling on the pending summary judgment motion and cross-motion until after the Eighth Circuit mandate has been issued.

Submitted August 12, 2015.

**PETE RICKETTS, DOUG PETERSON,  
LEONARD J. SLOUP, and COURTNEY PHILLIPS,  
State Defendants.**

By: DOUGLAS J. PETERSON, NE #18146  
*Attorney General of Nebraska*

By: *s/ David A. Lopez*  
David A. Lopez, NE #24947  
*Assistant Attorney General*

James D. Smith, NE #15476  
*Solicitor General*

David T. Bydalek, NE #19675  
*Chief Deputy Attorney General*

Ryan S. Post, NE #24714  
Danielle L. Jones, NE #25505  
*Assistant Attorneys General*

OFFICE OF THE ATTORNEY GENERAL  
2115 State Capitol  
Lincoln, Nebraska 68509  
(402) 471-2682  
James.Smith@nebraska.gov

Dave.Bydalek@nebraska.gov  
Dave.Lopez@nebraska.gov  
Ryan.Post@nebraska.gov  
Danielle.Jones@nebraska.gov

Attorneys for State Defendants

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2015, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska, using the CM/ECF system, causing notice of such filing to be served upon all parties' counsel of record.

By: s/ David A. Lopez