UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

SEXUAL MINORITIES UGANDA,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	**3:12-CV-30051-MAP**
	:	
v.	:	**JUDGE MICHAEL A. PONSOR**
	:	
SCOTT LIVELY,	:	**MAGISTRATE JUDGE**
	:	**KATHERINE A. ROBERTSON**
Defendant.	:	
	:	**ORAL ARGUMENT REQUESTED**
		Leave to file granted on July 6, 2016

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT SCOTT LIVELY'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

"The summary judgment stage is the put up or shut up moment in litigation." *Jakobiec v. Merrill Lynch Life Ins. Co.*, 711 F.3d 217, 226 (1st Cir. 2013). Through effusive rhetoric and optimistic surmise, Plaintiff Sexual Minorities Uganda ("SMUG") obtained permission from this Court to embark on a three-year transatlantic fishing expedition, which generated almost 40,000 pages of documents, tens of thousands of air miles, thousands of pages of deposition transcripts from over a dozen witnesses, and hundreds (if not thousands) of hours of work from SMUG's imposing army of no fewer than fourteen lawyers. The singular objective of SMUG's titanic mission was to find in the murky and treacherous waters of "international law" some – indeed *any* – connection between Defendant Scott Lively ("Lively") and the fourteen incidents of "persecution" allegedly perpetrated in Uganda, by and against Ugandans whom Lively has never even met. Disclaiming any concern for the ultimate destination of its groundbreaking lawsuit, SMUG sought to delay for as long as possible its inevitable impact with the inconvenient and immovable icebergs that stood in its way – the Constitution and the facts. The goal, according to SMUG, was never about the outcome but about the "advocacy" along the way, meaning the sufficiently severe punishment of opposing viewpoints with expensive litigation so that no one else, including Lively, would dare speak their conscience ever again.

SMUG's complaint survived dismissal because SMUG alleged a fantastic story of Lively, criminal mastermind, expertly manipulating the sovereign Parliament and homophobic illuminati of Uganda to hunt down Uganda's gays for violence, intimidation, and sport. But when it came time to "put up" the evidence for its farfetched fairytale, SMUG was instead forced to admit – over and over again, by and through each and every last one of its testifying officers and directors – that SMUG came to this Court with nothing, and that SMUG's expansive expedition has revealed nothing. Rarely do a plaintiff's own witnesses sing such an uninterrupted and uniform chorus of

hundreds of "I don't knows" in response to *the same* unsurprising questions about the who, what, when and where of a supposed "conspiracy," that it takes over *thirty pages* to merely *summarize* them. But here, SMUG's witnesses did precisely that, testifying repeatedly and unambiguously that they and SMUG "don't know" of "*any* connection" whatsoever between Lively and the fourteen persecutory incidents or their alleged perpetrators. Leaving no room for creative word games about what "any connection" means, SMUG's witnesses admitted, time and time again, that SMUG has no knowledge of any "communications," let alone "agreements," between Lively and the alleged perpetrators; that SMUG has no knowledge of "*any assistance at all*" provided by Lively to the alleged perpetrators; and that SMUG has no knowledge of "any facts that would show that Scott Lively was responsible" for any of these fourteen incidents.

And then, there's David Kato. Ever since the tragic and truly regrettable 2011 death of SMUG's co-founder, SMUG's leaders have made him the centerpiece of their worldwide claims of persecution, unashamedly claiming – at international fundraisers and through media channels as diverse as the *New York Times* and *Pink News* – that Kato was killed "because of his work," two years after Lively fomented unprecedented levels of homophobia and hysteria in Uganda. Even in this litigation, SMUG implied in no uncertain terms that Kato was killed because of Lively's speech, and, on the day that SMUG's lawsuit was filed, SMUG's advocates in Springfield paraded and planted a life-size coffin with Kato's picture in front of Lively's ministry. Under oath at their depositions, however, SMUG's officers admitted that they have all known since 2011 – a year before filing this lawsuit – that Kato was killed by a homosexual acquaintance over a sexual dispute, and most certainly not "because of his work" or because of anything that Lively has ever said. Caught in a sanctionable misrepresentation, SMUG's lawyers have tried to maintain, incredibly, that they only included the allegations about Kato in the Amended Complaint for

context, not to insinuate that Kato was killed because of homophobia but simply to let the Court know why Kato would not be in the courtroom. SMUG, however, eviscerated that implausible explanation by testifying, under oath, that SMUG itself believes (along with any objective reader) that the allegations in paragraphs 10, 221 and 222 of its Amended Complaint did, in fact, wrongly suggest that Kato was killed because of his LGBT status and advocacy, at a time when SMUG knew otherwise. This gross deception alone is worthy of a dismissal sanction.

SMUG's deception and evidentiary failures, however, are the least of the problems for its "groundbreaking" lawsuit. Before the Court can even get to the "merits" of SMUG's claims, the Court must grant summary judgment on numerous jurisdictional, constitutional and legal grounds which sink SMUG's ship.

First, as shown in Section II, SMUG's claims are precluded by the jurisdictional presumption against extraterritoriality, because SMUG has no knowledge of any wrongful domestic conduct by Lively whatsoever, and SMUG also does not allege any domestic injury. SMUG admits that it has no knowledge of any action taken by Scott Lively in the United States directed towards assisting any of the specific persecutory acts it alleges, and SMUG further admits that it has no knowledge of any action taken by Lively in the United States to deprive any Ugandan person of fundamental rights based on sexual orientation and gender identity. These admissions conclusively establish that SMUG's claims do not "touch and concern" the United States, thereby depriving this Court of subject-matter jurisdiction.

Second, as demonstrated in Section III, SMUG's claims are barred by the act of state doctrine, because they would require this Court to inquire into the legality of official acts of the sovereign government of Uganda and its officials, which this Court cannot do.

Third, Section IV demonstrates that this Court lacks subject-matter jurisdiction over SMUG's claims under the Alien Tort Statute because SMUG has no evidence that Lively has violated any universally accepted and clearly defined international legal norms.

Fourth, as shown in Section V, even if this Court had jurisdiction over SMUG's claims, those claims are firmly foreclosed by the First Amendment, because Lively's alleged conduct is core political speech and is neither incitement nor integral to the commission of any crime. Moreover, the First Amendment precludes the imposition of guilt by association against Lively, and SMUG cannot in any way show that Lively personally agreed to employ the illegal means of the fourteen persecutory acts it alleges. Lively's interactions with the Ugandan government are not only legal, but also immune from liability under the *Noerr-Pennington* doctrine.

Fifth, SMUG lacks standing to bring this action because it has no evidence of any concrete and particularized injury, it cannot demonstrate any causal connection between its non-existent injuries and Lively, and its claimed injuries are not redressable by this Court in any event. These additional jurisdictional bars are discussed in Section VI.

Sixth, all of SMUG's claims sound in tort and require SMUG to prove damages as an essential element. But, as demonstrated in Section VII, SMUG has no admissible and competent evidence of any damages. SMUG withheld its damages computation from Lively during the entire period of fact discovery, because SMUG swore under oath that it needed an expert to calculate them. SMUG then utterly failed to disclose any expert witness on damages. Instead SMUG tried to sneak in its damages computation through a lay witness more than four months after close of fact discovery, but its lay witness could not answer a single question about SMUG's damages because those purported damages had been calculated by a financial expert whom SMUG did not

disclose. SMUG has utterly deprived Lively of any meaningful opportunity to probe and rebut SMUG's damages in discovery.

Seventh, as shown in Section VIII, all of SMUG's tort claims also fail as a matter of law because SMUG has no competent or admissible evidence as to causation, another indispensable element. SMUG's own witnesses have repeatedly disclaimed any knowledge of any facts connecting Scott Lively to any of the persecutory acts alleged by SMUG.

Eighth, SMUG's claims also fail as a matter of law because SMUG has no competent evidence to prove any of their other essential elements, besides damages and causation. This is demonstrated in Section IX.

Finally, Section X shows that SMUG's state law claims fail as a matter of law because the Court lacks diversity jurisdiction; because the Court should not exercise supplemental jurisdiction; and because the claims are time barred. SMUG has admitted that it believed as of March 7, 2009 at the latest that Lively was persecuting and injuring it, and SMUG considered suing Lively at that time, but it did not file this lawsuit until March 14, 2012, more than three years later and outside of the applicable statute of limitations.

In sum, SMUG came to this Court with nothing, found nothing, and should be given nothing. Lively's motion for summary judgment should be granted.

MATERIAL FACTS OF RECORD AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

Pursuant to L.R. D. Mass. 56.1, Lively identifies the following material facts of record as to which there is no genuine issue to be tried:

LIVELY'S BACKGROUND AND CHRISTIAN VIEWS ABOUT HOMOSEXUALITY.

1. Scott Lively is an American pastor and pro-family activist. (Declaration of Scott Lively ("Lively Decl.,") ¶ 4, attached hereto as **MSJ Exhibit A**). In his teenage and young adult

years, Lively was an alcoholic and drug addict, whose life was eventually changed radically by his faith in Jesus Christ. (*Id*. at ¶ 5).

2. Lively believes that the purpose of life is to be conformed to the character of Jesus Christ, through a life-long series of challenges uniquely designed for each person by God Himself. (*Id*. at ¶ 6(a)). He believes that same-sex attraction is a challenge faced by many, and is no more or less immoral than the temptation to steal or to commit adultery. (*Id*. at ¶ 6(b)).

3. In Lively's Christian worldview, what distinguishes homosexuality (the indulgence of same-sex attraction) from other sins is that some of those who practice it have created a social and political movement to normalize and legitimize it, sometimes referred to, variously, as the "homosexual movement," "homosexual agenda," "gay movement," or "gay agenda." (*Id*.)

4. Lively believes that it is his Christian duty to oppose the gay agenda, because it is counter to Judeo-Christian civilization as God designed it for the benefit of mankind. (*Id*. at ¶ 6(f)).

5. However, Lively draws a clear distinction between the gay movement and those persons who struggle with same-sex attraction and homosexual conduct. (*Id*.). Lively believes it is his Christian duty to love as individuals all persons who identify as homosexual or commit the sin of homosexuality. (*Id*.) Lively does not believe that homosexuals should be singled out for condemnation, and certainly never for threats or violence. (*Id*. at ¶ 6(d)). Lively is firmly opposed to any violence against, or ridicule, ostracism or vilification of, any person, including any person who identifies as homosexual. (*Id*. at ¶ 6(i)). Lively abhors the idea of forcibly "outing" persons who want to keep their consensual, adult sexual activities private and discrete. (*Id*. at ¶ 6(j)).

6. Lively believes the law should allow consenting adults to make wrong choices in their private sexual conduct. (*Id*. at ¶ 6(g)). To encourage traditional man-woman marriage, which he believes to be the best and most optimal societal arrangement for the raising of children, Lively

would favor misdemeanor criminalization of any sexual act outside of marriage, including adultery, fornication, and homosexual conduct. (*Id*.) Lively, however, would urge for very modest penalties for such conduct in the letter of the law, and even more relaxed and minimal application of such laws to preserve the ability of all individuals to live their lives privately and discretely. (*Id*.)

7. Lively is opposed to the government spying on people, barging into bedrooms, or otherwise intruding into private sexual conduct between consenting adults. (*Id*. at ¶ 6(h)).

8. Lively is firmly opposed to any attempt to criminalize or punish any form of "status" or sexual "identity" or "orientation," separate and apart from sexual conduct. (*Id*. at ¶ 6(k)).

9. While Lively would be in favor of prohibiting the promotion of homosexual conduct to children and youth, he would be against prohibiting homosexual persons or organizations from using legal means and the democratic process to advocate for changes to laws they oppose. (*Id*. at ¶ 6(l)).

SMUG HAS NO KNOWLEDGE THAT LIVELY DID ANYTHING UNLAWFUL DURING HIS 2002 TRIPS TO UGANDA.

10. In March 2002, Lively accepted a last-minute invitation to fill-in for a speaker at a conference in Kampala organized by Stephen Langa, covering the subject of "The Threat of Pornography and Obscenity in Uganda." (Lively Decl., ¶ 8) (Declaration of Stephen Langa ("Langa Decl.") ¶ 4, attached hereto as **MSJ Exhibit B**).

11. While Lively may have referenced homosexuality in passing at the March 2002 conference, the focus of the conference was pornography and obscenity, not homosexuality. (Lively Decl., ¶ 9; Langa Decl., ¶ 5).

12. At Langa's invitation, Lively returned to Uganda in June 2002, to do several public speaking events focusing on pornography, obscenity, abstinence, God's design for marriage and family, and Christian living. (Lively Decl., ¶¶ 10-13; Langa Decl., ¶¶ 6-9).

13. As with the prior trip, in June 2002 Lively touched briefly upon homosexuality as one of many topics, but the focus of the trip was pornography, obscenity, abstinence and Christian living, not homosexuality. (Lively Decl., ¶ 14; Langa Decl., ¶ 10).

14. During either of his 2002 visits to Uganda, Lively did not discuss the concepts of "promotion of homosexuality" or "recruitment" of youth into homosexuality. (Lively Decl., ¶ 15; Langa Decl., ¶ 11). Lively also did not discuss or advocate strategies on the criminalization of "promotion of homosexuality." (*Id*.)

15. SMUG is aware that Lively visited Uganda in 2002 to speak at a conference. (Deposition of Plaintiff Sexual Minorities Uganda Pursuant to Fed. R. Civ. P. 30(b)(6), through its designee Pepe Onziema ("Onziema"), 204:7-10). SMUG does not know, and has no evidence about, what was said at the conference. (*Id*. at 206:10-207:8; 209:12-15) (*See also*, Deposition of SMUG's Executive Director Frank Mugisha ("Mugisha"), 140:4-141:10; 148:14-149:17; Deposition of SMUG's Chairman of the Board, Samuel Ganafa ("Ganafa"), 118:6-21).

16. SMUG also does not know, and has no evidence about, what Lively might have discussed with Stephen Langa or Martin Ssempa in 2002. (Onziema 209:16-24).

17. At its deposition, SMUG could not identify any specific statements made by Lively in Uganda in 2002. (Onziema 209:25-210:9) (*See also*, Ganafa 162:13-16; 201:5-203:5).

18. SMUG also could not identify what evidence it could or would present at trial to show what Lively said in Uganda in 2002. (Onziema 210:10-211:21).

19. The only thing that SMUG knows today about Lively's visit to Uganda in 2002 is what may be contained on a recording of a TV show appearance by Lively and Ugandan Pastor Martin Ssempa following the June 2002 conference. (Onziema 204:11-24). SMUG claimed that it did not have a copy of this video at the time of its deposition (*id*. at 205:12-14), but produced it subsequently, after the close of fact discovery.

20. The 2002 TV show was about pornography's role in the sexual revolution. (Lively Decl. ¶ 13; Langa Decl. ¶ 9). The show did not focus on the gay agenda. (*Id*.) During the 2002 TV show, Lively did not discuss the criminalization of homosexuality, nor the criminalization of the "promotion of homosexuality," nor the toughening or changing of laws dealing with homosexuality. (*Id*.)

LIVELY HAD NO SUBSTANTIVE CONTACT WITH UGANDA OR UGANDANS BETWEEN JUNE 2002 AND MARCH 2009, AND SMUG HAS NO KNOWLEDGE THAT LIVELY DID ANYTHING UNLAWFUL IN THIS TIMEFRAME.

21. SMUG has no knowledge of anything Lively did or said in or toward Uganda between June 2002 and March 2009. (Onziema 216:5-13; Ganafa 203:6-13).

22. Between June 2002 and March 2009, Lively did not have substantive contact with Uganda or Ugandans. (Lively Decl. ¶¶ 16-18; Langa Decl. ¶¶ 12-15). Lively had a brief social meeting with Langa when Langa visited the United States in 2005 or 2006 – they went to a museum (with Lively's wife), and did not engage in any ministry, advocacy or other public activities. (Lively Decl. ¶ 17; Langa Decl. ¶ 12).

23. Beyond the social visit with Langa, Lively's only other contact with Uganda prior to March 2009 was through a handful of sporadic emails with Langa and a representative of Martin Ssempa, all of which are attached as Exhibits 1, 2, 3, and 4 to the Lively Declaration. (Lively Decl. ¶¶ 18(a)-(e); Langa Decl. ¶¶ 13-15). In these communications, Lively, Langa and Ssempa's

representative discussed the timing and logistics of a conference on homosexuality in Uganda, which was eventually scheduled for March 5-7, 2009. (*Id*.)

24. Other than providing Langa with a cursory and general outline of his presentation for the upcoming seminar in late February 2009, Lively's communications with Langa and Ssempa's representative did not involve substantive discussions of strategies, polices or laws regarding homosexuality. (Lively Decl. ¶¶ 18(a)-(e), 19, and Exhibits 1-4; Langa Decl. ¶¶ 13-15, and Exhibit 1).

SMUG CLAIMS THAT "HOMOPHOBIA," "PERSECUTION," AND ATTEMPTS TO CRIMINALIZE "PROMOTION OF HOMOSEXUALITY" AND "RECRUITMENT" OF CHILDREN INTO HOMOSEXUALITY WERE PREVALENT IN UGANDAN SOCIETY BETWEEN 1999 AND MARCH 2009, AND SMUG HAS NO KNOWLEDGE OF ANY FACTS LINKING ANY OF IT TO LIVELY.

25. SMUG is aware that in 1999, the President of Uganda "launched a fierce attack on homosexuality and said gays should be sent to jail." (Onziema 173:4-12; Mugisha 226:4-18; Ganafa 114:9-115:9). SMUG is not aware of any facts showing that Lively influenced this "fierce attack." (Ganafa 115:10-14).

26. SMUG's Chairman of the Board acknowledged that in 2002 "homophobic sentiment," "abuse" and "fear" were already prevalent in Ugandan society, such that homosexuals were experiencing denial of health services. (Ganafa 19:8-20:13; 22:5-23).

27. In 2002, it was already "not possible, according to the laws of Uganda, to register a homosexual organization." (Ganafa 24:14-16).

28. SMUG does not doubt that Ugandan press and media were reporting in 2003 stories about gay people "preaching homosexuality" to youth. (Onziema 172:14-173:3; Mugisha 227:7-18).

29. "Homophobia" and "Persecution" were present in Uganda in 2004, and SMUG's co-founder, Victor Mukasa, does not know of any connection between Lively and the "homophobia" and "persecution." (Deposition of SMUG co-founder Victor Mukasa ("Mukasa"), 96:2-98:5).

30. SMUG is aware that, in 2004, a Ugandan radio station was fined for featuring openly gay guests who said homosexuality is an acceptable way of life, which led Uganda's information minister to declare that "we are not going to give [homosexuals] the opportunity to **recruit** others." (Onziema 173:4-175:11) (emphasis added) (Mukasa 133:8-134:12).

31. SMUG is aware that, in 2005, Uganda's Media Council banned the performance of a play because it was "a **promotion** of homosexuality, lesbianism, and worship of the female sex organ." (Onziema 175:12-176:24) (emphasis added) (*See also*, Mugisha 229:6-230:20). The Ugandan government was discussing its opposition to the "promotion of homosexuality" in 2005. (Ganafa 120:3-121:3). SMUG has no knowledge of any connection between Lively and this incident or related statements. (Onziema 176:25-177:4; Mugisha 230:8-20; Ganafa 121:7-10).

32. SMUG agrees that, "as of 2006 persecution of homosexuals was not new in Uganda." (Onziema 182:4-13; Ganafa 127:3-8; Mukasa 123:21-124:8).

33. SMUG agrees that, in 2006, Uganda was already engaged in "an active campaign of legislative overkill" against LGBTI rights "to silence an emerging community." (Ganafa 127:24-128:23; Mukasa 126:4-127:3). SMUG has no knowledge of "any connection between Scott Lively and any of those things." (Ganafa 128:24-129:3) (*See also*, Mukasa 127:4-8).

34. SMUG is aware that, in 2006, Muslim leaders in Uganda were publically calling for the arrest of those engaged in homosexual conduct. (Onziema 184:17-186:4; Ganafa 121:11-

122:8; Mukasa 119:1-120:7). SMUG is not aware of "any connection between [those] statements and Scott Lively." (Onziema 186:5-10) (*See also*, Ganafa 123:11-17; Mukasa 120:4-121:10).

35. According to SMUG, in 2007 the Ugandan President's attitude towards LGBTI persons was "consenting to kill them." (Deposition of SMUG Research and Documentation Manager Richard Lusimbo ("Lusimbo"), 257:9-258:12). SMUG has no knowledge that Lively informed the Ugandan President's attitude towards LGBTI people in 2007. (*Id*. at 258:13-20).

36. SMUG is aware that, in an opinion column in 2007, a former minister of justice and constitutional affairs wrote that "[h]omosexuality, lesbianism, and the like are a morally corrupting influence on the youth." (Onziema 177:5-178:9 and Deposition Exhibit F; Ganafa 145:7-146:12; 146:17-23). SMUG has no knowledge of any communication or connection between that author or statement and Scott Lively. (Onziema 178:10-13; Mugisha 232:3-9; Ganafa 146:13-16; 146:24-147:5).

37. SMUG is aware that, in 2007, the Nigerian Parliament was considering a bill that would have "**criminalize[d] advocacy** or associations supporting the rights of lesbian and gay people." (Onziema 186:11-188:17 (emphasis added); Mukasa 193:6-21). SMUG is not aware of "any connection between Scott Lively and the Nigerian bill." (Onziema 189:6-9) (*See also*, Mukasa 194:4-195:14).

38. SMUG is aware that, in 2008, Ugandan newspapers were writing that homosexuals "want to **recruit** our children through sex education programs," and calling upon "[a]ll Ugandans and Africans … to **stop the homosexual agenda**." (Onziema 178:14-179:21) (emphasis added).

39. Indeed, SMUG has "no doubt" that "ideas such as the promotion of homosexuality, or homosexual recruitment of children, or the idea of stopping the homosexual agenda appeared

in Ugandan media in 2008." (Onziema 179:22-180:3). The idea of recruitment of children into homosexuality was being talked about in Uganda in September of 2008. (Ganafa 150:6-10).

40. SMUG acknowledges that it is possible for Ugandans to formulate their own ideas on LGBTI advocacy – both pro and con – without having those ideas "pumped into them by people from the west." (Ganafa 144:10-145:6) (*See also*, Mukasa 121:6-10).

IN 2007, SMUG CONDUCTED A VISIBLE, 45-DAY "LET US LIVE IN PEACE" MEDIA CAMPAIGN, WHICH TRIGGERED "ANGRY RESPONSE," "A LOT OF BACKLASH," AND CALLS FOR LEGISLATIVE ACTION, AND SMUG HAS NO KNOWLEDGE OF ANY FACTS LINKING ANY OF IT TO LIVELY.

41. In the summer of 2007, SMUG conducted a visible, 45-day public relations campaign it called "Let us Live in Peace." (Onziema 155:18). The campaign triggered backlash from both the government and citizens of Uganda. (Onziema 155:19-23; Mukasa 95:17-96:20). "There was a lot of backlash that [SMUG] did not anticipate." (Onziema 201:7-19). "There [was] an angry response to the event. Churches and mosques preached and rallied against it." (Onziema 217:5-219:22 and Deposition Exhibit 5G[1] at p. 6).

42. Among the immediate backlash was a statement in August 2007 by Ethics and Integrity Minister Nsaba Buturo that "[t]he government will not tolerate anyone who **lures others into lesbianism** and homosexuality. It should not be allowed to pursue an agenda of **indoctrinating our children** to homosexuality." (Onziema 198:8-199:23 and Deposition Exhibit ZZZ) (emphasis added) (*See also*, Ganafa 133:5-25). These statements were disseminated widely in Ugandan media. (Onziema 199:24-200:8). As of August 2007, the idea of homosexual

[1] SMUG initially designated Exhibit 5G as "CONFIDENTIAL" under the Protective Order. (*See* Confidentiality Order, dkt. 106). However, at its deposition SMUG acknowledged that the report had been shared publicly. (Onziema 232:6-18). Lively objected to the designation (*id*. at 232:24-233:4), and SMUG did not move the Court to retain the designation. Accordingly, the document is no longer confidential under the Protective Order. (*See* Confidentiality Order, dkt. 106, ¶ 9, p.7).

"recruitment of children" "was part of the public discussion in Uganda." (Ganafa 134:2-6; 157:12-158:3). **SMUG has no knowledge of any connection between Scott Lively and these statements**. (Onziema 200:9:19; Ganafa 134:7-19).

43. A few weeks after SMUG's media campaign, SMUG publicly expressed its "serious concern" that Ugandan minister Buturo had said in a newspaper interview that "the government was considering changing the laws so that **promotion of homosexual conduct itself becomes a crime**." (Onziema 191:14-193:7 and Deposition Exhibit XX) (emphasis added) (*See also*, Ganafa 136:10-138:6; Mukasa 205:17-206:19). Thus, in 2007 the Ugandan government was already engaged in attempting to criminalize "promotion of homosexual conduct," and SMUG was actively advocating against those efforts. (Ganafa 134:2-6; 138:3-6). **SMUG has no knowledge of any communications between Lively and Buturo, or "any assistance at all provided by Scott Lively to Minister Buturo in connection with making these statements."** (Onziema 408:10-409:15) (emphasis added) (*See also*, Ganafa 134:7-15; Mukasa 206:2-7).

44. SMUG's leaders, including co-founder David Kato, Programs Director Pepe Onziema, Chairman of the Board Sam Ganafa and Research and Documentation Manager Richard Lusimbo did **not** attribute the 2007 backlash to Scott Lively. (Onziema 156:15-157:11; Ganafa 134:7-20; 157:8-11; Lusimbo 262:7-262:15). In fact, **SMUG does not have "any knowledge of any facts that would show that Scott Lively was involved in any backlash against SMUG or the LGBTI community following the 2007 campaign**." (Onziema 202:6-10) (emphasis added).

45. Instead, SMUG attributed the backlash to the fact that, in 2007, "95 percent of Ugandans are against homosexuals and homosexuality" (Onziema 220:4-10, and Deposition Exhibit 5G at p. 6).

46. SMUG also attributed the backlash to the fact that, as of 2007, "myths such as [homosexuals] are **recruiting** others into homosexuality" were prevalent in Ugandan society. (Onziema 220:19-221:9, and Deposition Exhibit 5G at p. 6) (emphasis added). SMUG noted the prevalence of these arguments in a report it submitted to the Ugandan government. (*Id*.)

SMUG HAS NO KNOWLEDGE THAT LIVELY DID ANYTHING UNLAWFUL DURING HIS MARCH 5-7, 2009 VISIT TO UGANDA.

47. Lively returned to Uganda for his third and final trip during March 5-7, 2009, at the invitation of Stephen Langa, to be one of several speakers at a conference on homosexuality. (Langa Decl. ¶¶ 13, 15).

48. Langa's purpose in holding the conference was "to provide correct information on homosexuality and expose homosexual lies, agenda and propaganda." (Langa Decl. ¶ 13 and Exhibit 1).

49. Langa's purpose was not to change Ugandan laws on homosexuality, and none of his pre-conference communications with Lively discussed governmental strategies, policies or laws regarding homosexuality, except to inform Lively in a passing reference on the week before the conference that homosexuality was illegal in Uganda. (Lively Decl. ¶ 19; Langa Decl. ¶ 15).

50. When he agreed to speak at the March 2009 conference, Lively did not contemplate Ugandan law regarding homosexual conduct, and had no intention of influencing new Ugandan law on homosexuality. (Lively Decl. ¶ 19).

51. Prior to arriving in Uganda, Lively had no knowledge of any desire or effort to change Ugandan laws on homosexuality. (Lively Decl. ¶ 19).

52. If Lively had known prior to the March 2009 conference that anyone intended to use his participation to advance a law containing the death penalty for homosexual conduct, he would not have participated in the conference. (Lively Decl. ¶ 33).

53. On the day after he arrived in Uganda, Lively gave an informal talk to a few members of the Ugandan Parliament, which lasted about an hour. (Lively Decl. ¶ 20; Langa Decl. ¶ 15).

54. SMUG does not know how many Members of Parliament were present at the talk given by Lively. (Onziema 414:9-19; Mukasa 314:2-8). No one at SMUG has knowledge of a four-hour meeting between Lively and Members of Parliament, as alleged in paragraph 78 of SMUG's Amended Complaint. (Mugisha 189:18-190:19; Mukasa 314:9-13).

55. SMUG has no admissible evidence about what Lively said to Members of Parliament, because SMUG's entire knowledge about that event comes from the alleged hearsay report of a "commentator or the news anchor" in a news broadcast that SMUG can't remember specifically, and which SMUG has not produced in this litigation. (Onziema 414:20-416:11) (*See also,* Mugisha 188:19-189:17; Ganafa 204:10-19; Mukasa 313:21-314:1).

56. **Less than ten (out of 385) Members of Parliament were present for Lively's talk**, although there were a few other people present. (Declaration of Principal Research Officer for the Parliament of Uganda, Charles Tuhaise ("Tuhaise Decl.,"), ¶ 4, attached hereto as **MSJ Exhibit C**).

57. After he arrived in Uganda, but before he gave the talk at Parliament, Lively learned from Langa that some members of Parliament were contemplating a new law, but neither Lively nor Langa knew the details or timing of the legislative proposal. (Lively Decl. ¶ 20; Langa Decl. ¶ 16).

58. With this in mind, Lively urged the handful of Parliament members present and the others in the audience that they should liberalize Uganda's criminal ban on homosexuality, and

that they should focus on voluntary counseling and education instead of incarceration for those who violate the law. (Lively Decl. ¶ 20; Langa Decl. ¶ 16; Tuhaise Decl. ¶ 4).

59. Lively also told his audience that those struggling with homosexuality do not deserve to be jailed, as under the existing law, but deserve the chance to overcome homosexual conduct through voluntary counseling and education. (Lively Decl. ¶ 20; Langa Decl. ¶ 16; Tuhaise Decl. ¶ 4).

60. At the same meeting, Lively also urged tolerance, restraint and respect for persons struggling with homosexuality in any new law dealing with homosexual conduct. (Tuhaise Decl. ¶ 4).

61. At the meeting at Parliament, Lively did not advocate for tougher criminal punishments for homosexual conduct; did not advocate for the death penalty for any form of homosexual conduct or sexual crimes; and did not advocate for the punishment of life imprisonment for any form of homosexual conduct of sexual crimes. (Lively Decl. ¶ 21; Langa Decl. ¶ 16).

62. The Principal Research Officer of Uganda's Parliament, Charles Tuhaise, disagreed with Lively's view, because Tuhaise was of the opinion that Uganda's laws against homosexual conduct, and the criminal punishments prescribed, should be strengthened, not relaxed. (Tuhaise Decl. ¶ 5).

63. Tuhaise had not met Lively up to this point, and Tuhaise's views on homosexual conduct and the law were not informed from, or based upon, Lively's views, opinions, speeches and writings, but were instead based upon Tuhaise's own experience in and observations of Ugandan society. (Tuhaise Decl. ¶¶ 3, 6). Tuhaise is personally aware that many members of Parliament share his views. (*Id*. at ¶ 7).

64. Following his talk at Parliament, Lively attended the conference itself, where he was one of three speakers. (Lively Decl. ¶ 23 and Exhibit 6.).

65. Lively estimates that there were thirty to forty people present for his lectures. (Lively Decl. ¶ 23). SMUG estimates the number of attendees to be closer to seventy. (Onziema 394:24-395:9). At least five of the attendees were SMUG personnel. (Onziema 372: 15-19).

66. The two speakers before Lively, Caleb Brundidge and Don Schmierer, talked about healing, love and caring for people who identify as homosexual. (Lively Decl. ¶ 24).

67. In Lively's lectures at the conference, he presented his views, opinions and research regarding homosexuality. (Lively Decl. ¶ 25 and Exhibit 6). Lively repeatedly cautioned his audience that he does not hate anyone or want violence against anyone; that there is a clear distinction between homosexual people and the homosexual movement; and that they have a responsibility to treat people as fellow human beings, and creations of God, who deserve our respect, even if we disagree with everything the people do or say. (Lively Decl. ¶¶ 25(a)-(b) and Exhibit 6).

68. Specifically when discussing Lively's views regarding variance from "gender normalcy" and the "very few" people who experience extreme dysfunction, Lively again cautioned and emphasized that "I don't want anybody to get the wrong idea . . . I don't want to dehumanize these people. They are human beings suffering extreme forms of dysfunction." (Lively Decl. ¶¶ 25(d) and Exhibit 6).

69. Lively had been made aware by Langa in advance of the conference that people who support expansion of LGBTI rights would be in attendance. (Langa Decl. ¶ 15). Lively was also informed that the conference would be recorded, and he observed several attendees who

appeared to be recording his lectures, which he did not mind. (Lively Decl. ¶ 23 and Exhibit 4, p. 2).

70. Lively had an open and cordial exchange of opposing viewpoints and differing ideas with the people in the audience who supported expansion of homosexual rights and who disagreed with his views. (Lively Decl. ¶ 26, and Exhibit 6).

71. Bishop Christopher Senyonjo – a highly visible local religious figure who openly advocates for homosexual rights in Uganda, and who was excommunicated by the Anglican Church of Uganda – was in attendance, and was allowed to freely express his viewpoints, some of which were quite contrary to Lively's. (Lively Decl. ¶ 26, and Exhibit 6). In the end, the Bishop thanked Lively for being there and for expressing his views, saying that the Bishop was "very, very grateful" for becoming "more educated in this area." (*Id*.) The Bishop said that "we may have different views, be we need to learn from each other." (*Id*.)

72. In connection with the March 2009 conference, Lively also spoke to several church, university, and school assemblies, met with local Christian leaders, and made several media appearances. (Lively Decl. ¶ 27). When discussing homosexuality, Lively repeated his message that those involved in homosexual conduct should be treated with dignity and respect because they are fellow human beings made in the image of God. (*Id*.)

LIVELY'S ONLY CONTRIBUTION TO THE ANTI-HOMOSEXUALITY BILL OF 2009 AND THE ANTI-HOMOSEXUALITY ACT OF 2014 WAS TO REPEATEDLY URGE THEIR MODERATION AND THE DRASTIC REDUCTION OF CRIMINAL PENALTIES, TO MAKE THEM EVEN LOWER THAN EXISTING LAW.

73. Lively does not recall meeting or speaking with member of Parliament David Bahati during Lively's talk at Parliament, or at any other time during any of his visits to Uganda. (Lively Decl. ¶ 22).

74. The Principal Research Officer of Uganda's Parliament, who is personally familiar with the inception, drafting and debate of Uganda's Anti-Homosexuality Bill of 2009 ("AHB"), and with the passage, enactment and annulment of Uganda's Anti-Homosexuality Act of 2014 ("AHA"), believes that the notion that Scott Lively introduced the concepts of homosexual recruitment of children, or promotion of homosexuality to children, or homosexual abuse of children into a Ugandan society previously unaware of such things is false and ridiculous. (Tuhaise Decl. ¶ 14).

75. In 2008, **almost one year prior to the March 2009 conference**, some members of Parliament perceived a need to toughen Uganda's law against homosexual conduct, based upon a number of serious problems they were hearing about from Ugandan citizens and Ugandan media, including rising sex tourism, the abuse and "recruiting" of young boys by wealthy males from outside Uganda, the "promotion" of homosexual practices to youths through literature, money and gifts, and the knowing and intentional spread of HIV/AIDS through unprotected homosexual contacts. (Tuhaise Decl. ¶ 15). Based upon these reports, some members of Parliament began the process of drafting the AHB in 2008. (*Id*. at ¶ 16).

76. The members of Parliament did not consult Scott Lively, or any of his speeches or writings, in concluding that there was a need for the AHB, or in developing or drafting any of its provisions. (Tuhaise Decl. ¶ 13).

77. Neither Stephen Langa nor Martin Ssempa were involved in the initial drafting of the AHB. (Tuhaise Decl. ¶ 17; Langa Decl. ¶ 21). They only became involved in late-April 2009. (*Id*.)

78. By the time Langa and Ssempa became involved with the AHB, the draft was already in progress, and it already included the opening principles, the discussion of the need to protect children and youth from sexual abuse, the death penalty for aggravated offenses, the prohibition on the

promotion of homosexuality, and the reporting requirements for persons in authority. (Tuhaise Decl. ¶ 17; Langa Decl. ¶ 21). Those provisions did not originate with either Langa or Ssempa. (*Id*.)

79. Six weeks after the March 2009 conference, Martin Ssempa forwarded the draft AHB to Lively, and requested his comments. (Lively Decl. ¶¶ 30-31; Langa Decl. ¶ 22). This was the first time Lively saw the draft AHB, and it was already constituted to include the opening principles, the discussion of the need to protect children and youth from sexual abuse, the death penalty for aggravated offenses, the prohibition on the promotion of homosexuality, and the reporting requirements for persons in authority. (Lively Decl. ¶ 31; Langa Decl. ¶ 22).

80. Lively had no involvement whatsoever in the drafting of the AHB up to that point. (Lively Decl. ¶ 31).

81. Lively was appalled at seeing the AHB, because it and its draconian penalties were not at all consistent with his beliefs or advocacy. (Lively Decl. ¶ 31). Lively suggested drastic reductions in the proposed penalties (to even lower levels than under existing law), proposed two new provisions focusing on education and counseling, and issued a blanket admonition to reconsider the approach of the AHB to focus on counseling instead of punishment. (Lively Decl. ¶ 31 and Exhibit 10; Langa Decl. ¶ 22).

82. Langa, Tuhaise, members of Parliament and other Ugandans disagreed with Lively's suggestions for moderation, leniency, reduction of criminal punishments to even lower levels than under existing laws, and emphasis on education and counseling. (Tuhaise Decl. ¶¶ 19, 21; Langa Decl. ¶ 23).

83. Lively's suggestions were ultimately rejected, and not included in the final AHB. (Tuhaise Decl. ¶¶ 19, 22; Langa Decl. ¶ 23).

84. The AHB that was introduced in Parliament in October 2009 contained no input from Lively, and contained none of Lively's suggestions and modifications. (Tuhaise Decl. ¶ 22).

85. After the AHB was introduced in October 2009, and until the AHA was ultimately passed by the Parliament four years later in December 2013, Lively continually pleaded with Langa, Ssempa, Tuhaise and others to moderate the proposed law, to remove the death penalty, and to focus on education and counseling rather than jail sentences. (Lively Decl. ¶¶ 32(a)-(j) and Exhibits 11-20; Langa Decl. ¶ 22; Tuhaise Decl. ¶ 20).

86. Langa, Tuhaise, members of Parliament and other Ugandans continued to disagree with Lively and rejected his proposals. (Langa Decl. ¶¶ 23-24; Tuhaise Decl. ¶ 21; Lively Decl. ¶¶ 32(a)-(j) and Exhibits 11-20).

87. Tuhaise and members of Parliament appreciated Lively's interest, but dismissed his views as being based on his experience in the United States. (Tuhaise Decl. ¶ 21). Tuhaise and members of Parliament believed that they, as Ugandans, knew better than Lively, an American, what was best for Uganda and Ugandans. (*Id*.)

88. The AHA passed by Parliament in December 2013 contained no input from Lively, and contained none of Lively's suggestions or modifications. (Tuhaise Decl. ¶ 23; Langa Decl. ¶ 24).

89. The AHB was the subject of many vigorous democratic debates in the Ugandan Parliament, with many lawmakers speaking both in favor and against the bill. (Tuhaise Decl. ¶ 9). Lively was not involved in or present for any of those debates. (*Id*. at ¶ 11).

90. Uganda's members of Parliament are smart, strong-willed, independent, and fully capable of considering legislative proposals, thinking and speaking for themselves, and debating proposals in a democratic process. (Tuhaise Decl. ¶ 11).

91. Indeed, members of Parliament made substantial modifications to the AHB that was initially proposed, before they passed it as the AHA. (Tuhaise Decl. ¶ 12).

92. As with any other law, the AHA that was ultimately passed by Parliament in December 2013 was no longer the product of any individual member of Parliament, but the joint product of a democratically elected legislature, accountable to the sovereign people of Uganda. (Tuhaise Decl. ¶ 12).

93. As with any other law, the enactment of the AHA was the exclusive work of Uganda's sovereign Parliament. (Tuhaise Decl. ¶ 11).

94. The AHB was invalidated by Uganda's Constitutional Court in August 2014, and Uganda's Attorney General did not appeal the decision. (Tuhaise Decl. ¶ 9).

95. No person was convicted or punished under the AHA while it was in effect. (Tuhaise Decl. ¶ 10).

SMUG HAS NO KNOWLEDGE THAT LIVELY DID ANYTHING UNLAWFUL WITH RESPECT TO THE AHA OR AHB.

96. SMUG is not aware of any evidence of any meeting between Lively and member of Parliament David Bahati, ever. (Onziema 362:15-18).

97. SMUG's only knowledge about Lively's participation in the drafting of the 2009 Anti-Homosexuality Bill comes from what SMUG read or saw in alleged media reports. (Onziema 365:14-22). SMUG does not remember any sources that might have been cited in these "media reports." (Onziema 365:9-13).

98. SMUG does not know who wrote the first draft of the 2009 Anti-Homosexuality Bill. (Onziema 427:25-428:3).

99. SMUG does not know any "specific contribution" that Lively made to the 2009 Anti-Homosexuality Bill. (Onziema 428:18-22).

100. SMUG's Chairman does not know of anything that Lively did between the introduction of the 2009 Anti-Homosexuality Bill and its passage four years later. (Ganafa 188:22-189:2).

101. SMUG's Chairman, "one of the backbones of [the LGBTI] movement" in Uganda (Ganafa 62:2-63:4), is "not sure" whether Lively is responsible for the 2013 passage of the Anti-Homosexuality Bill/Act. (Ganafa 189:3-8).

SMUG HAS NO KNOWLEDGE OF ANY INVOLVEMENT OR ASSISTANCE PROVIDED BY LIVELY IN ANY OF THE FOURTEEN SPECIFIC INSTANCES OF PERSECUTION ALLEGED BY SMUG.

102. SMUG claims that 14 specific instance of "persecution" took place in Uganda between Lively's first visit in 2002 and 2016. Eight of these events are discussed in SMUG's Amended Complaint (dkt. 27, ¶¶ 165-228), and six additional events are identified in SMUG's Response to Lively Interrogatory 2, and supplements thereto. (SMUG Second Supplemental Response to Lively Interrogatory 2, pp. 2-7, redacted copy attached hereto as **MSJ Exhibit D**).

103. Lively had no knowledge, provided no support for, and did not otherwise participate whatsoever in, whether directly or indirectly, any event or incident of persecution alleged by SMUG. (Lively Decl. ¶¶ 34(a)-(m)).

104. **The June 18, 2012 Raid**. SMUG claims that Ugandan police raided a "skills-building workshop for LGBTI rights advocates" on June 18, 2012 (hereinafter the "June 18, 2012 Raid"). (Amended Complaint, dkt. 27, ¶¶ 165-175). SMUG has no knowledge of any direct assistance offered by Lively to the Ugandan police with respect to the June 18, 2012 Raid. (Onziema 294:2-295:11; Mugisha 196:2-15). Nor does SMUG know of any communication between Lively and anyone on the Ugandan police force with respect to this incident. (Onziema 295:16-20; Ganafa 207:3-6). Nor does SMUG know of any communications or agreements about

this incident between Scott Lively and "the antigay leaders in Uganda," to wit Martin Ssempa, Steven Langa, Nsaba Buturo or Simon Lokodo. (Onziema 296:13-297:18). Nor does SMUG know of any communications about this incident between the Ugandan police and Martin Ssempa, Steven Langa, Nsaba Buturo or Simon Lokodo. (*Id*. at 298:9-25). SMUG has no knowledge of any agreement between Scott Lively and the Ugandan police with regard to the raiding of any workshop, including this specific incident. (*Id*. at 299:8-300:6). In sum, SMUG has no knowledge of "any facts that would show that Scott Lively was in any way connected with that raid." (Ganafa 206:16-25) (*See also*, Mukasa 315:11-316:8).

105. **The February 14, 2012 Raid**. SMUG claims that Simon Lokodo and the Ugandan police raided an LGBTI conference on February 14, 2012 (hereinafter the "February 14, 2012 Raid." (Amended Complaint, dkt. 27, ¶¶ 176-185). SMUG does not know of any communication between Lively and Ugandan police or any of the individuals allegedly involved in that event. (Onziema 301:18-302:3; 303:10-304:5). SMUG does not know of any agreement between Scott Lively and Simon Lokodo or the Ugandan police. (Onziema 304:6-19). SMUG has no knowledge of "any assistance provided by Scott Lively to Simon Lokodo or the Ugandan police in connection with [this] event." (Onziema 304:25-305:6). No one at SMUG has "any knowledge of any involvement by Scott Lively in that raid." (Mugisha 202:9-15). SMUG is not "aware of any facts that would show that Scott Lively was responsible for" the February 14, 2012 Raid. (Ganafa 208:10-14) (*See also*, Mukasa 316:9-317:8).

106. **The June 4, 2008 Arrests**. SMUG claims that Ugandan police arrested three LGBTI rights activists on June 4, 2008, charged them with trespass, and released them after two days. (hereinafter the "June 4, 2008 Arrests") (Amended Complaint, dkt. 27, ¶¶ 186-193). SMUG is not aware of any communication between Scott Lively and the Ugandan police or Ugandan

leaders about these arrests. (Onziema 305:21-306:7). SMUG is not aware of any agreements between Scott Lively and the Ugandan police regarding these arrests. (Onziema 306:8-12). SMUG does not know of "any assistance at all provided by Scott Lively to the Ugandan police in connection with the [June 4, 2008 Arrests]." (Onziema 306:18-22). SMUG is not "aware of any facts that would show Scott Lively was responsible for" the June 4, 2008 Arrests. (Ganafa 209:24-210:3) (*See also*, Mukasa 317:9-318:8; Lusimbo 100:9-25).

107. **The Threats to Criminalize Health Services for LGBTI Persons**. SMUG claims that on July 11, 2012, Minister Lokodo "told a news conference that he intends to investigate" a health clinic opened by SMUG to service LGBTI people (hereinafter the "July 11, 2012 Threat to Criminalize Health Services"). (Amended Complaint, dkt. 27, ¶¶ 194-198). No adverse action was ever taken against SMUG's clinic, by the police or any other part of the Ugandan government. (Onziema 309:20-310:8). SMUG has no knowledge of any communication between Lively and Minister Lokodo or other Ugandan leaders regarding Lokodo's alleged intent to investigate the clinic. (Onziema 308:2-14). SMUG has no knowledge of any agreement between Lively and Minister Lokodo regarding any investigation or intent to investigate the clinic. (Onziema 308:15-20). SMUG has no knowledge of "any assistance at all provided by Scott Lively to Minister Lokodo in connection with investigating the clinic." (Onziema 309:5-9) (*See also*, Mugisha 209:23-210:18). SMUG does not have "knowledge of any facts that would show that Scott Lively is responsible for Minister Lokodo's statement or investigation of the clinic." (Ganafa 210:21-25) (*See also*, Mukasa 318:14-319:19; Lusimbo 101:22-102:6).

108. **The 2007 Crack-Down**. SMUG alleges that, as a result of a media campaign it conducted in August 2007, it experienced a general backlash and "crack-down" in Uganda

(hereinafter the "2007 Crack Down"). (Amended Complaint, dkt. 27, ¶¶ 199-208). According to SMUG, the 2007 Crack Down consisted of:

a. Deputy Attorney General Fred Ruhindi called upon government agencies to take appropriate action because homosexual was illegal in Uganda. (Amended Complaint, dkt. 27, ¶ 200). However, SMUG has no knowledge of any communication between Lively and Ruhindi or other Ugandan leaders regarding Ruhindi's call for appropriate action to taken. (Onziema 312:5-17). SMUG has no knowledge of any agreement between Lively and Ruhindi regarding the 2007 Crack Down. (Onziema 312:18-23). SMUG has no knowledge of "any assistance provided by Scott Lively to Ruhindi." (Onziema 313:5-9). SMUG is not "aware of any facts that would show that Scott Lively was responsible for what the deputy attorney general said." (Ganafa 211:14-17) (*See also*, Mukasa 319:20-320:12).

b. Minister Buturo stated that government was "considering changing the law so that promotion itself becomes a crime." (Amended Complaint, dkt. 27, ¶ 201). However, SMUG does not know of any communication or meeting between Lively and Buturo prior to this alleged statement. (Onziema 313:23-314:11). SMUG is not aware of any communication between Lively and either Martin Ssempa, Steven Langa, or Simon Lokodo regarding changing the law to outlaw promotion of homosexuality in 2007. (Onziema 315:23-316:5). SMUG is aware of no agreement between Lively and Buturo regarding changing the laws so that promotion of homosexuality became a crime in 2007. (Onziema 315:4-10). SMUG has no knowledge of "any assistance at all provided by Scott Lively to Minister Buturo in connection with changing the laws to make promotion a crime in 2007." (Onziema 315:17-22).

c. Martin Ssempa held an anti-gay rally. (Amended Complaint, dkt. 27, ¶¶ 202-204). However, SMUG has no knowledge of any communications between Scott Lively and

Martin Ssempa between their last meeting in 2002 and the 2007 anti-gay rally. (Onziema 319:20-25). SMUG has no knowledge of any agreement between Lively and Ssempa concerning the anti-gay rally or any of the related events. (Onziema 320:2-8). SMUG has no knowledge of "any assistance at all provided by Scott Lively to Martin Ssempa in connection with the actions and events" surrounding the anti-gay rally. (Onziema 320:15-20).

d. The Ugandan Broadcasting Council suspended a radio station manager for interviewing a lesbian activist. (Amended Complaint, dkt. 27, ¶ 205). However, SMUG has no knowledge of any communication between Lively and the Ugandan Broadcasting Council or Ugandan leaders regarding the suspension. (Onziema 321:20-322:7). SMUG has no knowledge of any agreement between Lively and the Ugandan Broadcasting Council. (Onziema 322:8-11). SMUG has no knowledge of "any assistance at all provided by Scott Lively to the Ugandan Broadcasting Council in suspending" the radio station manager. (Onziema 323:3-7).

e. The Ugandan tabloid *Red Pepper* published the names and photos of LGBTI activists. (Amended Complaint, dkt. 27, ¶ 206). However, SMUG has no knowledge of any communications between Lively and the tabloid or Ugandan leaders regarding the outing. (Onziema 323:17-324:3). SMUG has no knowledge of any agreement between Lively and the tabloid regarding the outing. (Onziema 324:4-10). SMUG has no knowledge of "any assistance at all provided by Scott Lively to the Red Pepper in connection with the" publication. (Onziema 324:17-21) (*See also*, Mugisha 216:2-17; Mukasa 320:13-321:2).

f. In sum, **SMUG does not have "any knowledge of any facts that would show that Scott Lively was involved in any backlash against SMUG or the LGBTI community following the 2007 campaign**." (Onziema 202:6-10) (emphasis added).

109. **The July 20, 2005 Raid**. SMUG alleges that, on July 20, 2005, local Ugandan authorities raided the home of Victor Mukasa, a founding member of SMUG, seized documents and files, and arrested his house guest and took her to the police station where she was "touched and fondled" before being released the same day (hereinafter the "July 20, 2005 Raid"). (Amended Complaint, dkt. 27, ¶¶ 209-214). Mukasa has no knowledge of any involvement whatsoever by Lively in the July 20, 2005 Raid. (Mukasa 252:6-19; 321:3-11). SMUG also has no knowledge of any communications between Lively and the Ugandan authorities allegedly involved in this event or other Ugandan leaders. (Onziema 327:11-24). SMUG has no knowledge of any agreement between Lively and the Ugandan authorities regarding this incident. (Onziema 327:25-328:8). SMUG has no knowledge of "any assistance at all provided by Scott Lively to the Ugandan authorities to carry out the events" surrounding the July 20, 2005 Raid. (Onziema 328:16-21) (*See also,* Mugisha 217:5-16). SMUG is not "aware of any facts that would show that Scott Lively was responsible for [the July 20, 2005] Raid." (Ganafa 212:6-9) (*See also,* Lusimbo 103:14-104:8).

110. **The Tabloid Outings**. SMUG alleges that Ugandan tabloids frequently published lurid stories about, and the photos and addresses of, LGBTI persons (hereinafter the "Tabloid Outings"). (Amended Complaint, dkt. 27, ¶¶ 215-225; SMUG Second Supplemental Response to Lively Interrogatory 2, pp. 4-6). SMUG has no knowledge of "any assistance that Scott Lively has provided in connection with [the Tabloid Outings]." (Onziema 334:17-22) (*See also,* Mugisha 221:17-222:4; Lusimbo 104:19-105:10; 122:7-123:17). SMUG does not have "knowledge of any facts that would show that Scott Lively was responsible for any of these" Tabloid Outings. (Ganafa 212:23-213:11; 217:22-218:6).

111. **Discrimination by Private Actors**. SMUG alleges that the criminalization of homosexuality in Uganda along with discriminatory government policies, media outings and

public statements against homosexuals contributes to discrimination by private actors in housing, employment, health and education (hereinafter "Private Discrimination"). (Amended Complaint, dkt. 27, ¶¶ 226-228). SMUG is not aware of any communication between Lively and any private actor regarding discriminating against LGBTI persons in housing, employment, health or education. (Onziema 336:5-10). SMUG is not aware of any such communications between Lively and Martin Ssempa, Steven Langa, Nsaba Buturo, Simon Lokodo or George Oundo. (Onziema 336:19-26; 337:13-17). SMUG has no knowledge of "any assistance at all provided by Scott Lively to private actors to carry out discrimination against LGBTI persons in Uganda in the areas of housing, employment, health or education." (Onziema 337:24-338:6). SMUG is not "aware of any instances of discrimination" in "housing," "employment," "healthcare," or "education" "that Scott Lively is responsible for." (Ganafa 214:9-215:8). In any event, SMUG does not represent individual persons who allegedly suffered Private Discrimination (Onziema 136:19-22; 136:23-137:2), and is not looking to recover damages for any such individual persons. (Onziema 338:7-339:4).

112. **The August 4, 2012 Raid**. SMUG alleges that Ugandan police raided an August 4, 2012 gay pride parade, after being informed that there was an illegal gay wedding in progress, and arrested several of the participants, who were released after two hours (hereinafter the "August 4, 2012 Raid"). (SMUG Second Supplemental Response to Lively Interrogatory 2, p. 3) (Lusimbo 108:4-110:21). SMUG has no knowledge of any communication between Lively and the police or Ugandan leaders regarding this incident. (Onziema 340:6-19; Lusimbo 109:11-15). SMUG has no knowledge of "any assistance at all provided by Scott Lively to the police in raiding and arresting persons at the 2012 pride gathering." (Onziema 341:2-6). SMUG is not "aware of any facts that

would show that Scott Lively was responsible for" the August 4, 2012 Raid. (Ganafa 215:25-216:4).

113. **The Passage and Enactment of the Anti-Homosexuality Bill**. SMUG alleges that the Ugandan Parliament passed an Anti-Homosexuality Act on December 20, 2013, which was signed into law by the Ugandan President on February 24, 2014, and invalidated by a Ugandan Court on August 1, 2014 (hereinafter the "AHA Passage and Enactment"). (SMUG Second Supplemental Response to Lively Interrogatory 2, p. 3). SMUG has no knowledge of any communications between Scott Lively and members of Parliament or Ugandan leaders regarding the passage of the AHA in 2013. (Onziema 341:20-342:6). SMUG has no knowledge of any communication between Lively and the President of Uganda in connection with the signing of the law. (Onziema 342:17-21). SMUG has no knowledge of "any involvement by Scott Lively in the passage of the AHA by parliament or the signing of the AHA into law by the President." (Lusimbo 116:9-21). SMUG has no knowledge of "any assistance at all provided by Scott Lively to the Ugandan Parliament" or "any assistance at all provided by Scott Lively to the Ugandan president" in connection with the AHA Passage and Enactment. (Onziema 342:12-16; 343:3-7). **SMUG has no knowledge of anyone who was charged or convicted for any violation of the AHA while it was in effect**. (Onziema 343:22-344:12; Ganafa 218:23-219:5). No one "in Uganda received any legal punishment under the Anti-Homosexuality Act that was signed in 2014." (Ganafa 219:7-10). "The presence of the anti-homosexuality law has not prevented … SMUG from continuing its activities and claiming its space in the global human rights realm with its centrality on liberating LGBT persons in Uganda." (Onziema 475:9-476:17).

114. **Investigation of the Refugee Law Project**. SMUG alleges that in 2014, the Refugee Law Project at Makerere University was investigated in connection with the passage of

the AHA (hereinafter "RLP Investigation"). (SMUG Second Supplemental Response to Lively Interrogatory 2, pp. 3-4). SMUG has no knowledge of any communication between Lively and any member of the Ugandan government or Ugandan leaders regarding this investigation. (Onziema 347:17-348:3). SMUG has no knowledge of "any assistance at all provided by Scott Lively to the Ugandan government in investigating RLP." (Onziema 348:10-14) (*See also*, Mugisha 136:19-24). SMUG is not "aware of any facts that would show that Scott Lively is responsible for [the RLP] Investigation." (Ganafa 216:8-17).

115. **The Walter Reed Clinic Raid**. SMUG alleges that, on April 3, 2014, Ugandan police raided a U.S.-funded clinic in Kampala and arrested one staff member (hereinafter the "Walter Reed Clinic Raid"). (SMUG Second Supplemental Response to Lively Interrogatory 2, p. 4). SMUG has no knowledge of any communication between Lively and the Ugandan police or Ugandan leaders regarding this raid. (Onziema 350:3-15). SMUG has no knowledge of "any assistance at all provided by Scott Lively to the Ugandan police in connection with the Walter Reed Clinic" Raid. (Onziema 350:22-351:3) (*See also*, Mugisha 138:21-139:20; Lusimbo 121:15-21). SMUG does not have "knowledge of any facts that would show that Scott Lively is responsible for" the Walter Reed Clinic Raid. (Ganafa 217:16-21).

116. **Surveillance of LGBTI Organizations**. SMUG alleges that, following the enactment of the AHA, SMUG and some of its member organizations were put under surveillance and threatened with closure (hereinafter the "Surveillance of LGBTI Organizations"). (SMUG Second Supplemental Response to Lively Interrogatory 2, p. 4). SMUG has no knowledge of any communication between Lively and anyone conducting surveillance of SMUG or its member organizations or Ugandan leaders. (Onziema 351:11-23). SMUG has no knowledge of "any

assistance at all provided by Scott Lively to any person conducting surveillance of SMUG or any of its member organizations." (Onziema 352:6-10).

117. **The 2014 Arrests**. Lastly, SMUG alleges that, in 2014, four individuals were arrested and charged with violations of Penal Code 145, a law that has been on the books in Uganda for several decades (hereinafter the "2014 Arrests"). (SMUG Second Supplemental Response to Lively Interrogatory 2, pp. 6-7). Charges against three of the four individuals were dismissed. (*Id*.) SMUG is not aware of any communications between Lively and the Ugandan police, or local council authorities, or Ugandan leaders regarding these arrests. (Onziema 353:2-21; 356:24-357:12). SMUG has no knowledge of "any assistance provided by Scott Lively to either the Ugandan police or any local council authorities or even any private citizens" in connection with the 2014 Arrests. (Onziema 353:22-354:5; 357:19-24). SMUG is not "aware of any facts that would show that Scott Lively was responsible for [the 2014 Arrests]." (Ganafa 219:11-24) (*See also*, Lusimbo 123:21-125:6).

SMUG HAS NO KNOWLEDGE OF ANY "CONSPIRACY" OR AGREEMENT BETWEEN LIVELY AND ANY OTHER PERSON TO CRIMINALIZE "STATUS" OR "IDENTITY," OR TO OTHERWISE DEPRIVE PERSONS OF FUNDAMENTAL RIGHTS ON THE BASIS OF THEIR SEXUAL ORIENTATION OR GENDER IDENTITY.

118. At no time when Lively travelled to Uganda in 2002 or 2009, or at any time before, during, in between or after such travels, did Lively ever enter into any campaign, agreement, conspiracy, or enterprise with Langa, Ssempa, Buturo, Bahati or any other person to effect, incite or facilitate: "persecution," in Uganda, including the specific incidents of persecution alleged by SMUG; nor the criminalization or punishment of any form of sexual "identity" or "orientation" or "status" or existence of any LGBTI or other person in Uganda. (Lively Decl. ¶¶ 37(a)-(e)).

119. SMUG claims that Stephen "Langa has worked in concert with Lively and other co-conspirators named in [SMUG's Amended] Complaint on a campaign to systematically persecute LGBTI individuals and deny them fundamental human rights." (Amended Complaint, dkt. 27, ¶ 94).

120. The only activities of this alleged "campaign" that SMUG's Rule 30(b)(6) designee could identify are: a) "They've written and delivered petitions to Parliament;" b) "They've held rallies and sermons riling Ugandans against homosexuality;" c) "They've taunted and humiliated LGBT individuals in public spaces;" and d) "they've used the media to continue to call … the public's attention to promotion of homosexuality." (Onziema 385:14-24; 387:5-19).

121. SMUG has no knowledge of any participation by Lively in the writing of petitions to the Ugandan Parliament regarding LGBTI persons. (Onziema 401:10-19).

122. SMUG has no knowledge of any participation by Lively in any rallies or sermons regarding homosexuality in Uganda apart from the 2009 conference. (Onziema 401:23-402:3).

123. SMUG has no knowledge of any participation by Lively in the taunting or humiliation of LGBTI persons in public spaces in Uganda. (Onziema 402:7-11).

124. SMUG has no knowledge of anything Lively personally has done to use the Ugandan media to call public attention to the promotion of homosexuality. (Onziema 403:2-7).

125. SMUG's Executive Director, Frank Mugisha, who is in charge of the day-to-day operations of SMUG, testified under oath that he is not aware of any "unlawful agreement that Lively entered into with other people to deprive people of rights based on sexual orientation or gender identity," and **there is not anyone at SMUG "who has knowledge of what's described in the Amended Complaint as an unlawful agreement between Scott Lively and others to**

deprive persons of their fundamental rights on the basis of their sexual orientation and gender identity." (Mugisha 145:7-146:6) (emphasis added).

126. SMUG's Chairman of the Board, one of the "backbones" of the LGBTI movement in Uganda, has no knowledge of any unlawful agreement that Lively entered into with anyone to deprive persons of fundamental rights on the basis of their sexual orientation and gender identity. (Ganafa 200:20-201:4).

127. **Apart from Lively's alleged drafting of the 2009 Anti-Homosexuality Bill, which SMUG claims to have read about in unspecified "media reports," SMUG has no knowledge of any agreement between Lively and another person to deprive persons of fundamental rights on the basis of their sexual orientation and gender identity**. (Onziema 365:23-366:5).

128. SMUG does not believe that Lively has coerced or forced SMUG to do anything. (Onziema 374:22-375:2).

LIVELY HAS NEVER HAD ANY INTENT TO CRIMINALIZE "STATUS" OR "IDENTITY," OR TO OTHERWISE "PERSECUTE" ANYONE ON THE BASIS OF THEIR SEXUAL ORIENTATION OR GENDER IDENTITY.

129. At no time when Lively travelled to Uganda in 2002 or 2009, or at any time before, during, in between or after such travels, did Lively ever have any intention to effect, incite or facilitate: "persecution," in Uganda, including the specific incidents of persecution alleged by SMUG; nor the criminalization or punishment of any form of sexual "identity" or "orientation" or "status" or existence of any LGBTI or other person in Uganda. (Lively Decl. ¶¶ 37(a)-(e)).

SMUG HAS NO KNOWLEDGE OF ANY WRONGFUL CONDUCT BY LIVELY IN THE UNITED STATES

130. Lively did not engage in any conduct in the United States (or anywhere else in the world) in connection with any campaign, agreement, conspiracy, enterprise, or other effort to

effect, incite or facilitate any "persecution" in Uganda, including the specific incidents of persecution alleged by SMUG. (Lively Decl. ¶¶ 35(a)-(e)).

131. Lively did not engage in any conduct in the United States (or anywhere else in the world) in connection with any campaign, agreement, conspiracy, enterprise, or other effort to effect, incite or facilitate the criminalization or punishment of any form of sexual "identity" or "orientation" or "status" or existence of any LGBTI or other person in Uganda. (Lively Decl. ¶¶ 35(c)-(d)).

132. SMUG has no knowledge of anything Scott Lively did or said in the United States between 2002 and March 2009. (Onziema 216:14-217:4).

133. SMUG has no knowledge of anything Lively did in the United States directed to helping the Ugandan police carry out the June 18, 2012 Raid. (Onziema 300:7-12).

134. SMUG has no knowledge of anything Lively did in the United States directed to helping Simon Lokodo or the Ugandan police carry out the February 14, 2012 Raid. (Onziema 304:20-24).

135. SMUG has no knowledge of any action by Scott Lively in the United State directed towards assisting the Ugandan police with the June 4, 2008 Arrests. (Onziema 306:13-17).

136. SMUG has no knowledge of anything Scott Lively did in the United States directed towards assisting Minister Lokodo with the July 11, 2012 Threat to Criminalize Health Services. (Onziema 308:23-309:4).

137. SMUG has no knowledge of any action taken by Scott Lively in the United States directed towards assisting the 2007 Crack Down, including: towards assisting Deputy Attorney General Fred Ruhindi with his call for appropriate action (Onziema 312:24-313:4); or towards assisting Minister Buturo with changing the laws to make promotion of homosexuality a crime

(Onziema 315:11-16); or towards assisting Martin Ssempa with his anti-gay rally (Onziema 320:9-14); or towards assisting the Ugandan Broadcasting Council to suspend a radio station manager (Onziema 322:21-323:2); or towards assisting the outing of homosexuals by a Ugandan tabloid (Onziema 324:11-16).

138. SMUG has no knowledge of any action taken by Scott Lively in the United States directed towards helping the Ugandan authorities carry out the July 20, 2005 Raid. (Onziema 328:9-15).

139. SMUG has no knowledge of anything that Scott Lively did in the United States towards assisting with the Tabloid Outings in Uganda. (Onziema 334:23-335:5).

140. SMUG has no knowledge of any actions taken by Scott Lively in the United States to assist Private Discrimination or to reinforce discrimination by private actors in housing, employment, health or education in Uganda. (Onziema 337:18-23).

141. SMUG has no knowledge of any actions taken by Scott Lively in the United States directed towards helping the police carry out the August 4, 2012 Raid. (Onziema 340:20-25).

142. SMUG has no knowledge of any action taken by Scott Lively in the United States directed towards aiding the Ugandan Parliament in the AHA Passage and Enactment. (Onziema 342:7-11). SMUG also has no knowledge of any action taken by Scott Lively in the United States directed towards helping the Ugandan President sign the AHA into law. (Onziema 342:22-343:2). **SMUG does not have "any knowledge of any action ever taken by Scott Lively in the United States directed towards getting the AHA enacted in Uganda."** (Onziema 343:8-16) (emphasis added).

143. SMUG has no knowledge of any action taken by Scott Lively in the United States directed towards helping the Ugandan government initiate the RLP Investigation. (Onziema 348:4-9).

144. SMUG has no knowledge of any action taken by Scott Lively in the United States directed towards assisting the Ugandan police with the Walter Reed Clinic Raid. (Onziema 350:16-21).

145. SMUG has no knowledge of any action taken by Scott Lively in the United States directed towards assisting the Surveillance of LGBTI Organizations. (Onziema 351:24-352:5).

146. SMUG has no knowledge of any action taken by Scott Lively in the United States directed towards assisting the Ugandan police or local council authorities or Ugandan citizens in the 2014 Arrests. (Onziema 354:6-13; 357:13-18).

147. SMUG has no knowledge of any action taken by Lively in the United States in connection with the drafting of the 2009 Anti-Homosexuality Bill. (Onziema 366:6-10).

148. **SMUG has no knowledge of any action taken by Scott Lively in the United States to deprive any Ugandan person of fundamental rights based on sexual orientation or gender identity**. (Onziema 366:11-16).

SMUG IS ABLE TO ENGAGE IN PUBLIC ADVOCACY IN UGANDA, ENJOYS THE PROTECTION OF THE POLICE AND THE LAW, AND IS ABLE TO SEEK REDRESS IN UGANDAN COURTS AGAINST ANY ALLEGED WRONGDOERS.

149. The Ugandan President's attitude towards LGBTI people has changed, from "consenting to kill them" in 2007, to now acknowledge that LGBTI people are present in Uganda and should not be persecuted. (Lusimbo 257:9-258:5.) SMUG attributes this change to the ability of the local and international LGBTI community to advocate for change in Uganda. (*Id*.)

150. SMUG is "no longer afraid of anything." (Onziema 149:13-150-16).

151. SMUG's leaders and their friends are able to go out in public places in Uganda, identify themselves as members of the LGBTI community in public places, and freely post pictures of themselves and their friends on their social media accounts. (Lusimbo 209:17-219:24 and Deposition Exhibit W).

152. According to SMUG's leaders, LGBTI "activists sometimes arrange large parties where hundreds of LGBT people participate." (Lusimbo 245:16-246:17). They are able to rent bars in Kampala for such parties. (*Id*.) Police officers come on their own to such parties to "ensure that the guests can enter and leave the place safely," not to "raid and close down [the] parties." (*Id*.)

153. The Ugandan Police Force does not monitor what goes on in people's bedrooms, and does not arrest consenting adults for homosexual activity. (Lusimbo 227:22-228:13; 229:9-16). If an individual police offer acts errantly or abusively, the Ugandan Police Force has established a human rights team as well as a hotline for LGBTI members to call in case they are arrested arbitrarily. (Lusimbo 228:14-22). The Ugandan police leadership has assured SMUG's members that it will protect their human rights. (Lusimbo 232:24-233:6).

154. Uganda's highest ranking police officer, the Inspector General of Police ("IGP"), is against the calls of the Minister of Ethics of Integrity for the police to disrupt the seminars of LGBTI organizations. (Lusimbo 243:9-21). **The IGP has given SMUG's leaders his personal cell phone number, responds to their text messages, and provides assistance if any issues arise**. (Lusimbo 243:15-244:17).

155. SMUG agrees that security concerns for LGBTI persons in Uganda do not arise from abusive police officers, but rather from "being disowned by the family, poverty, false accusations resulting from private rivalries, fear of being outed by neighbors or colleagues and

discrimination regarding education, health and job opportunities." (Lusimbo 230:18-231:7). SMUG has no information or knowledge that Lively is involved in or responsible for any such acts. (Lusimbo 231:8-24).

156. After 2012, no LGBTI workshops were disrupted by government authorities in 2013, 2014 or 2015. (Lusimbo 244:18-245:9).

157. SMUG is able to meet with Ugandan members of Parliament and politicians to advance its goals, and met with 43 such individuals by August 2013. (Onziema 486:5-17).

158. SMUG's Chairman of the Board had been promoted in management positions by the large company that employs him, and experienced no adverse employment actions after being outed or coming out as a homosexual. (Ganafa 34:8-35:10; 70:5-21). When a manager at work attempted to harass Ganafa, the company sided with Ganafa and the manager was fired. (Ganafa 275:2-275:22).

159. SMUG believes that the Ugandan judiciary is independent from the forces advocating against SMUG. (Ganafa 232:3-233:21). **SMUG has won all but one of the cases it has brought to vindicate the rights of its members**, and the one case it lost in the trial court is now on appeal. (Mugisha 199:20-200:18; Ganafa 263:2-16; 232:23-233:10).

160. SMUG's co-founder, Victor Mukasa, and his house guest won a civil rights lawsuit against the Ugandan police in connection with the July 20, 2005 Raid, and the house guest was awarded 10 million Ugandan shillings in damages. (Mukasa 249:9-250:22).

161. SMUG successfully challenged the Anti-Homosexuality Act of 2014 in a Ugandan court, and the law was invalidated. (Lusimbo 198:18-23).

162. The Ugandan President has indicated that he will not sign any new anti-gay law. (Ganafa 264:2-14).

163. SMUG has been able to hold gay Pride parades in Uganda in 2013, 2014 and 2015. (Lusimbo 111:14-114:15). SMUG received police protection for these events, and they took place uninterrupted. (*Id.*) SMUG has no knowledge of any interference or attempted interference by Lively with any Pride parades. (*Id*. at 114:16-24).

164. "**The presence of the anti-homosexuality law has not prevented … SMUG from continuing its activities and claiming its space in the global human rights realm with its centrality on liberating LGBT persons in Uganda**." (Onziema 475:9-476:17) (emphasis added).

SMUG HAS GROSSLY MISREPRESENTED AND EXPLOITED THE TRAGIC DEATH OF DAVID KATO, IN THIS LAWSUIT AND IN ITS INTERNATIONAL ADVOCACY, AND SMUG NOW AGREES THAT SUCH CONDUCT IS WRONG.

165. Since 2011, SMUG has been aware that its co-founder, David Kato, was killed by Sidney Nsubuga Enoch, a homosexual acquaintance of Kato's who publicly confessed to killing Kato over a sexual dispute. (Onziema 161:4-162:9; 203:23-204:6). SMUG's Research and Documentation manager, who is responsible for investigating incidents of violence against LGBTI persons, believes that Sidney Nsubuga Enoch "is in fact the person who killed David Kato." (Lusimbo 106:5-15). "SMUG has no evidence that David Kato was killed as a result of his LGBT activism." (Onziema 163:15-18). SMUG's Programs Director testified that "what we've established was that SMUG has no evidence that David was killed for his work with SMUG." (*Id*. at 180:20-22). In fact, SMUG had no such evidence in 2012 when it filed this lawsuit, nor later when it filed its Amended Complaint. (*Id*. at 163:19-164:2; 443:10-23). (*See also*, Ganafa 189:15-190:14; Mukasa 310:1-9).

166. SMUG agrees that "it would be wrong for SMUG to suggest that [Kato] was killed as a result of his advocacy." (Onziema 169:8:12). Nevertheless, SMUG agrees that the allegations in paragraphs 10, 221, and 222 of its Amended Complaint do, in fact, suggest that Kato was killed

because his LGBTI status and advocacy were revealed in an Ugandan tabloid. (*Compare* Onziema 170:8-171:9 *with* Amended Complaint, dkt. 27, ¶¶ 10, 221-222).

167. In fact, in addition to the allegations in its Amended Complaint, SMUG has internationally promoted the idea that David Kato was killed "because of this work." (Mugisha 240:15-242:19 and Deposition Exhibit I).

168. In spite of the fact that it lacks any evidence that David Kato's murder was a hate crime, SMUG has complained publicly that Ugandan "law enforcement has not admitted that [Kato's] death was a hate crime." (Onziema 449:7-451:3) (Lusimbo 258:21-260-11).

169. SMUG's Chairman agrees that it is not in the best interests of SMUG for SMUG leadership to publicly claim that David Kato was killed because of his advocacy work, as SMUG's Executive Director did in the *New York Times*, because this is "divergent" from what actually happened and what was established in Ugandan courts. (Ganafa 193:17-194:2).

SMUG'S STATED GOALS FOR THIS LAWSUIT, AND THE INJUNCTIVE RELIEF SMUG SEEKS FROM THIS COURT.

170. "It's [SMUG's] goal to make sure that [Lively] does not continue to influence society to hate us for being who we are." (Onziema 154:3-8).

171. SMUG wants this Court to enjoin Lively from selling or giving away his books in Uganda. (Onziema 435:19-436:7).

172. SMUG wants this Court to enjoin Lively from going to Uganda and preaching at Martin Ssempa's church that homosexuality is a sin, that God offers forgiveness to those who repent, but that unrepentant homosexuals are destined for hell. (Onziema 436:8-15).

173. SMUG wants this Court to enjoin Lively from going to Uganda to speak to a group of high school students about what Lively perceives to be the many and serious health hazards of homosexual conduct. (Onziema 436:23-437:5).

174. SMUG wants this Court to enjoin Lively from going to Uganda to train lawyers on how to use the law to oppose the legalization of same-sex marriage. (Onziema 437:6-13).

175. SMUG wants this Court to enjoin Lively from going to Uganda to lobby the Ugandan Parliament not to legalize same-sex marriage. (Onziema 437:14-19).

176. SMUG wants this Court to enjoin Lively from going to Uganda to lobby the Ugandan Parliament not to extend non-discrimination laws to cover sexual orientation and gender identity. (Onziema 438:4-10).

SMUG'S COMPLETE FAILURE TO SUBSTANTIATE ANY DAMAGES DURING FACT AND EXPERT DISCOVERY

177. SMUG's Chairman of the Board, who is "supposed to approve the budgets," is "not aware" of any damages that SMUG has suffered. (Ganafa 181:25-185:12). As the Chairman of the Board and a described "backbone of the LGBT movement in Uganda," Ganafa was not able to identify even one way that Lively has damaged SMUG monetarily. (Ganafa 185:2-12).

178. Nevertheless, SMUG does seek damages, but "SMUG only seeks damages for harm it suffered as an organization." (SMUG Fifth Supplemental Response to Lively Interrogatory 4, p. 2, attached hereto as **MSJ Exhibit E**). SMUG does not claim damages for any of its members. (*Id*.)

179. SMUG only seeks damages it alleges to have suffered in Uganda. (*Id*. at pp. 2-3). SMUG alleges no injuries in the United States, and seeks no damages for any injuries in the United States. (*Id*.)

180. Throughout the entire period of fact discovery in this case, SMUG refused to provide its damages calculation to Lively, maintaining instead that its damages would be calculated by an expert and disclosed with its expert reports after the close of fact discovery:

a. "Plaintiff has not yet finalized its computation of damages, but will provide this information to Defendant as soon as expert reports are delivered and damages are computed." (SMUG Initial Disclosures served December 10, 2013, p. 5, relevant part attached hereto as **MSJ Exhibit F**).

b. "Plaintiff will provide its computation of damages as soon as expert reports are delivered and damages are computed." (First Supplement to SMUG Initial Disclosures, served December 20, 2013, p. 3, attached hereto as **MSJ Exhibit G**).

c. "SMUG … is undertaking to quantify the damages it has suffered to date and will disclose to Defendant such information once it is complete." (SMUG Supplemental Response to Lively Interrogatory 4, MSJ Exhibit E, p. 3).

d. "the specific amount of damages will be calculated by an expert witness and reflected in an expert report" (SMUG Second Supplemental Response to Lively Interrogatory 4, MSJ Exhibit E, p. 3).

181. Believing that it would need an expert witness to calculate its damages in this case, SMUG in fact retained an expert witness for that purpose. (Onziema 236:2-10). SMUG retained this expert witness because its damages calculations "required a person with specialized financial knowledge in order to make the calculation." (*Id.* at 239:2-7).

182. However, SMUG neither disclosed an expert witness nor provided an expert witness report on damages prior to its expert witness designation and report deadline. (Onziema 236:11-17). SMUG does not know why it did not timely disclose an expert witness on damages. (*Id.*).

183. SMUG's Rule 30(b)(6) deposition took place over two consecutive days, on November 10 and 11, 2015. On the first day, the witness designated by SMUG to testify on the

topic of damages unambiguously reaffirmed under oath that "an expert witness is required to prepare SMUG's damages calculations for this case," (Onziema 239:16-20), and that there is no one at SMUG that could have made the actual calculations without consulting with a financial expert because "SMUG does not have that exact expertise to do the calculations." (*Id*. at 240:7-12).

184. On the evening after the first day of testimony, SMUG's designee discussed this specific subject with SMUG's attorneys. (Onziema 281:6-283:24). Based specifically and entirely upon that conversation with SMUG's attorneys, the testimony of SMUG's designee changed on the second day, such that now there **was** someone within SMUG who could theoretically (but did not actually) perform the damages calculations – SMUG's in-house accountant. (*Id*.) SMUG's designee did not speak with SMUG's in-house accountant to confirm that the accountant could indeed perform the calculations, but nonetheless testified – based only upon what SMUG's attorneys had told the designee – that the accountant could do the task. (*Id*. at 283:13-24).

185. Notwithstanding its repeated insistence, under oath, throughout the entirety of fact discovery, that an expert was required to calculate its damages, SMUG provided for the first time its purported damages calculations (via a two-page worksheet attached to a supplemental interrogatory response), four months after the close of fact discovery, four days after SMUG's expert disclosure deadline, and only 2 business days prior to its Rule 30(b)(6) deposition. (Onziema 234:10-17).

186. The calculations on SMUG's worksheet were performed by the expert financial firm that SMUG had retained, not SMUG's in-house accountant, because no one at SMUG had the expertise to perform the calculations themselves. (Onziema 237:25-238:7; 240:7-12; 244:21-23).

187. The financial figures from which SMUG's undisclosed outside expert purportedly calculated SMUG's damages were available to SMUG many years prior – as far back as 2007. (Onziema 242:14-244:9). "There is no reason" why SMUG could not have provided those figures sooner. (*Id*.).

188. On the second day of testimony, SMUG's designee testified that SMUG could have performed its own damages calculations several years prior, but was too busy to do so, or "it probably was an oversight." (Onziema 284:12-288:9).

189. Also, according to SMUG, there was no reason why SMUG could not have performed its damages calculations for the years 2007 to 2013 in July of 2014. (Onziema 290:2-8).

190. SMUG did not designate its in-house accountant to testify on SMUG's behalf on the subject of damages. (Onziema 279:7-18).

191. The only witness SMUG did designate and produce for deposition on the subject of damages was not able to answer a single question about how SMUG's purported damages were calculated. (Onziema 271:14-277:25; 280:4-21). Specifically, SMUG's damages designee could not explain how the financial figures from its 2007 documents were used to come up with its calculated damages for 2007, nor for any other year between 2007 and 2014. (*Id*.) "That's why we engaged an accountant to help with the calculation." (*Id*. at 280:19-21).

SMUG DOES NOT REPRESENT IN THIS LAWSUIT THE LGBTI COMMUNITY AT LARGE.

192. SMUG does not know the membership requirements for individuals who belong to its member organizations. (*Id*. at 106:4-8).

193. SMUG believes that there are "absolutely more" than 415,000 LGBTI persons in Uganda. (Onziema 105:4-12). Of these, only 500 or so are members of organizations represented

by SMUG. (*Id*. at 104:5-105:3). Thus, "SMUG's organizations include just a small fraction," about one-tenth of one percent, "of the total LGBTI population in Uganda." (*Id*. at 105:24-106:3).

194. SMUG does not represent all LGBTI persons in Uganda in this lawsuit. (Onziema 136:19-22). It does not represent the LGBTI community at large in Uganda. (*Id*. at 136:23-137:2). SMUG agrees that not all LGBTI persons in Uganda speak with one voice. (Onziema 491:21-492:8).

AS OF MARCH 7, 2009 AT THE LATEST, SMUG BELIEVED THAT IT WAS BEING PERSECUTED AND HARMED BY LIVELY, AND WAS CONSIDERING SUING HIM.

195. SMUG's Program Director has been aware of Lively's 2002 visit to Uganda since the visit took place in 2002. (Onziema 367:5-17).

196. SMUG had five representatives in attendance during Lively's speeches at the March 5-7, 2009 Conference in Uganda. (Onziema 372: 15-19).

197. SMUG knew everything that Lively said at the March 2009 conference at the moment he said it. (*Id*. at 372:20-373:2).

198. Upon hearing Lively's speeches during the March 2009 conference, SMUG believed that it was being persecuted and harmed by Lively. (*Id*. at 373:3-14).

199. SMUG was considering suing Lively "since he came here [to Uganda] in March 2009." (Onziema 151:10-18).

200. SMUG did not file this lawsuit until March 14, 2012. (Compl., dkt. 1).

LAW AND ARGUMENT

I. THE SUMMARY JUDGMENT STANDARD.

"Faced with a defendant's motion for summary judgment, a plaintiff must come forward with some evidence showing a genuine dispute of material fact if he wants to get in front of a jury. A plaintiff's failure to produce any evidentiary proof concerning one of the essential elements of

his claim is grounds for summary judgment." *Jakobiec*, 711 F.3d at 226 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). Once a party has properly supported its motion for summary judgment by demonstrating "an absence of evidence to support the non-moving party's case," *Celotex*, 477 U.S. at 325, the "burden shifts to the non-moving party, who 'may not rest on mere allegations or denials of his pleading, but must set forth specific facts showing there is a genuine issue for trial.'" *Barbour v. Dynamics Research Corp.*, 63 F.3d 32, 37 (1st Cir. 1995) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *see also Hootstein v. Collins*, 928 F. Supp. 2d 326, 335 (D. Mass. 2013) (Ponsor, J.) ("[N]on-movant cannot rest upon mere allegations; rather, it must set forth specific, provable facts demonstrating that there is a triable issue."). The factual issue must be both "material" (affects the outcome of the litigation) and "genuine" (a reasonable jury could return a favorable verdict for the nonmovant). *Anderson*, 477 U.S. at 248; *see also Hootstein*, 928 F. Supp. 2d at 335. Summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

Although the Court is "obliged to review the record in the light most favorable to the nonmoving party, and to draw all reasonable inferences in the nonmoving party's favor," *LeBlanc v. Great Am. Ins. Co.*, 6 F.3d 836, 841 (1st Cir. 1993), the Court is to "ignore 'conclusory allegations, improbable inferences, and unsupported speculation.'" *Prescott v. Higgins*, 538 F.3d 32, 39 (1st Cir. 2008) (quoting *Medina-Muñoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990)). Neither "effusive rhetoric" nor "optimistic surmise" will establish a genuine issue of material fact. *Cadle Co. v. Hayes*, 116 F.3d 957, 960 (1st Cir. 1997); *see also Lawton v. State Mut. Life Assur. Co. of Am.*, 101 F.3d 218, 223 (1st Cir. 1996) (nonmovant obligated to offer "more than steamy rhetoric and bare conclusions"). Instead, the "party opposing summary judgment must

present definite, competent evidence to rebut the motion, or the district court is obligated to grant the motion in favor of the moving party." *Mendez-Laboy v. Abbot Lab.*, 424 F.3d 35, 37 (1st Cir. 2005) (internal quotations and citations omitted). "The nonmovant must 'produce specific facts, in suitable evidentiary form' sufficient to limn a trial-worthy issue. Failure to do so allows the summary judgment engine to operate at full throttle." *Lawton*, 101 F.3d at 223 (internal citation omitted); *see also Mack v. Great Atl. & Pac. Tea Co.*, 871 F.2d 179, 181 (1st Cir. 1989) (holding that "[t]he evidence illustrating the factual controversy cannot be conjectural or problematic; it must have substance in the sense that it limns differing versions of the truth which a fact finder must resolve"). This court must grant a motion for summary judgment "if it determines there are no genuine issues to be resolved at trial because there is not 'sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.'" *Hootstein*, 928 F. Supp. 2d at 335 (quoting *Anderson*, 477 U.S. at 249-50); *see also Lawton*, 101 F.3d at 222 ("The proper province of summary judgment 'is to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required.'") (citation omitted).

II. THE COURT LACKS SUBJECT-MATTER JURISDICTION OVER SMUG'S CLAIMS BECAUSE SMUG HAS NO KNOWLEDGE OF ANY WRONGFUL DOMESTIC CONDUCT BY LIVELY OR ANY DOMESTIC INJURY TO SMUG.

A. The Court Lacks Subject-Matter Jurisdiction Over SMUG's International Law Claims Under The Alien Tort Statute Because SMUG Has No Evidence Of Any Wrongful Domestic Conduct By Lively.

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868). This rule "'springs from the nature and limits of the judicial power of the United States' and 'is inflexible and without exception.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) (quoting *Mansfield, C. & L. M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884)).

On April 17, 2013, a "seismic shift" altered the Alien Tort Statute, 28 U.S.C. § 1350 ("ATS") landscape, and it was "an earthquake that has shaken the very foundation of [SMUG's] claims against [Lively]." *Giraldo v. Drummond Co., Inc.*, 2:09-CV-1041-RDP, 2013 WL 3873960, *1 (N.D. Ala. July 25, 2013), *aff'd sub nom. Doe v. Drummond Co.*, 782 F.3d 576 (11th Cir. 2015). The Supreme Court decided *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013), in which it held that the ATS does not "reach conduct occurring in the territory of a foreign sovereign." *Id*. at 1664. Because "the ATS … is strictly jurisdictional," the Court held that it does not provide federal courts with jurisdiction over international law claims in which "all of the relevant conduct took place outside the United States." *Id*. at 1664, 1669. The Supreme Court made clear that "even where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application." *Id.* at 1669.

Prior to *Kiobel*, the Supreme Court held in *Morrison v. Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869 (2010), that neither the U.S. citizenship of a defendant, nor the mere fact that **some** conduct occurs in the United States, such as preparatory acts, is sufficient to overcome the extraterritorial bar, because "it is a rare case of prohibited extraterritorial application that lacks all contact with the territory of the United States," and "the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case." *Id*. at 2884 (italics in original). According to the *Morrison* Court, the determinative question is not whether "some domestic activity" took place, but whether **the conduct that was the "focus of congressional concern"** took place domestically. *Id*. (emphasis added).

The "focus of congressional concern" in the ATS is conduct violating the law of nations. 28 U.S.C. § 1350. Accordingly, *Kiobel* and *Morrison* together require this Court to dismiss SMUG's ATS claims for lack of subject-matter jurisdiction, unless SMUG shows "relevant

conduct" on the part of Lively in the United States – that is, conduct of [Lively] which is … either a direct violation of the law of nations or … constitutes aiding and abetting another's violation of the law of nations. *Mastafa v. Chevron Corp.*, 770 F.3d 170, 185 (2d Cir. 2014). "[N]either the U.S. citizenship of [Lively], nor [his] presence in the United States, is of relevance for jurisdictional purposes." *Id*. at 188. Lively's "citizenship is pertinent only insofar as it relates to [his] alleged U.S. conduct." *Id*. at 190.

Numerous post-*Morrison* and post-*Kiobel* courts have dismissed ATS claims brought against **U.S. citizens**, **even where there was significant domestic conduct alleged**, because that conduct was not undertaken with the knowledge and purpose of facilitating crimes against humanity abroad. *See e.g.*, *Mastafa*, 770 F.3d at 191-194 (dismissing ATS claims against U.S. corporation headquartered in New York, even though it allegedly engaged in significant financial transactions in the U.S. related to the alleged torture of victims in Iraq, because the U.S. conduct itself was not taken with the purpose of facilitating the torture); *Balintulo v. Ford Motor Co.*, 796 F.3d 160, 167-171 (2d Cir. 2015), *cert. denied sub nom. Ntsebeza v. Ford Motor Co.*, No. 15-1020, 2016 WL 561746 (U.S. June 20, 2016) (affirming dismissal of ATS claims against U.S. entities alleged to have developed specialized vehicles and software in the U.S. which were used by South African actors to implement apartheid in South Africa, because the alleged domestic conduct, although very significant, was not taken with the purpose of facilitating the commission of international law crimes by actors in South Africa); *Drummond*, 782 F.3d at 597-600 (affirming summary judgment on ATS claims for crimes against humanity against U.S.-based corporate officers alleged to have made funding policy decisions in the U.S. that ultimately assisted crimes against humanity by paramilitaries in Colombia, because the actual planning and execution of the alleged crimes themselves took place in Colombia); *Cardona v. Chiquita Brands Int'l, Inc.*, 760 F.3d 1185, 1189 (11th Cir. 2014), *cert. denied,* 135 S. Ct. 1842, 1189-91 (2015) (reversing order denying motion to dismiss ATS torture claims against U.S. entity alleged to have engaged in U.S.

conduct, because the torture occurred outside of the U.S.).

Under the foregoing authorities, and in light of SMUG's own admissions, there is no doubt that this Court lacks subject-matter jurisdiction over SMUG's ATS claims. SMUG can no longer argue, as it did without proof at the motion to dismiss stage, that Lively masterminded, orchestrated and puppeteered widespread criminal abuses in Uganda from "homophobia central" in Springfield, Massachusetts, because SMUG and its witnesses have admitted under oath, readily, repeatedly and unambiguously that: (a) SMUG has no knowledge of **anything** Lively did or said in the United States between 2002 and March 2009 (MF ¶ 132)[2]; (b) SMUG has no knowledge of **anything** Lively did or said in the United States directed to helping Ugandans in carrying out any of the fourteen persecutory incidents in suit (MF ¶¶ 133-146); (c) SMUG has no knowledge of **any** action taken by Lively in the United States in connection with the drafting of the 2009 AHB (MF ¶ 147); (d) SMUG does not have "**any** knowledge of **any** action **ever** taken by Scott Lively in the United States directed towards getting the [2014] AHA enacted in Uganda" (MF ¶ 142); and, most fatally for SMUG's ATS claims, (e) SMUG has no knowledge of **any** action taken by Scott Lively in the United States to deprive any Ugandan person of fundamental rights based on sexual orientation or gender identity. (MF ¶ 148).

At some point, crafty arguments of counsel must give way to the facts, especially when those facts are so clearly and indisputably related by SMUG itself and all of its witnesses, under oath. If even substantial and significant conduct in the United States, by United States citizens, is insufficient to confer ATS jurisdiction because it was not in violation of international law, or because it was not taken with the specific purpose of facilitating crimes against humanity, then

[2] For brevity and clarity, in the argument section of this brief each factual assertion is supported by a pinpoint cite to the relevant paragraphs in Lively's Statement of Material Facts of Record as to Which There Is No Issue To Be Tried ("MF"), *supra*, which in turn contain the exhaustive pinpoint cites to the record materials.

how could **no conduct whatsoever** in the United States ever be sufficient? It can't. If this Court could retain jurisdiction over SMUG's claims in this case, on this clear record, then *Kiobel* and *Morrison* have no meaning. Summary judgment on all of SMUG's ATS claims (Counts I, II and III) should be granted.

B. The Court Lacks Subject-Matter Jurisdiction Over SMUG's International Law Claims Under The Alien Tort Statute Because SMUG Has No Evidence Of Any Domestic Injury.

This Court also lacks subject-matter jurisdiction over SMUG's international law claims under the ATS because SMUG has no evidence of any **domestic injury**. In a recent decision adopting and extending *Kiobel*, the Supreme Court applied the presumption against extraterritoriality to bar a cause of action against a U.S. company brought by the European Community and 26 member states under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), because the private RICO plaintiffs failed to establish any "*domestic* injury." *RJR Nabisco, Inc. v. European Community*, No. 15-138, 2016 WL 3369423, at *15-19 (U.S. June 20, 2016) (emphasis in original). This conclusion would provide little fanfare in the case at bar if the Court's "**domestic** injury" requirement was tied to express language in the RICO statute—but it is clearly not so tied. Instead, the Court recognized a "domestic injury" requirement after citing the same foreign policy concerns discussed in *Kiobel*, and leaning heavily on *Kiobel*'s logic and reasoning. Thus, under *Kiobel* and *RJR Nabisco*, an actionable ATS-based claim must involve both domestic conduct and domestic injury.

In *RJR Nabisco*, the Court unanimously held the underlying substantive provisions of the RICO statute could be applied extraterritorially. *RJR Nabisco*, 2016 WL 3369423, at *9-11. But the Justices split 4-3 (one Justice did not participate) on the issue of whether RICO's private cause of action provision, 18 U.S.C. § 1964(c), overcame the presumption against extraterritoriality. Section 1964(c) of the RICO statute allows "[a]ny person injured in his business or property by

reason of a violation of section 1962" to sue for damages, costs, and attorney's fees. *Id.* at *15. Applying the "logic" of *Kiobel*, the Court concluded that Section 1964(c) "does not overcome the presumption against extraterritoriality," and held that a private RICO plaintiff "must allege and prove a *domestic* injury to its business or property." *Id.* (emphasis in original). According to the Court in *RJR Nabisco*, the logic of *Kiobel* "requires that we separately apply the presumption against extraterritoriality to RICO's cause of action despite our conclusion that the presumption has been overcome with respect to RICO's substantive prohibitions." *Id.* The *RJR Nabisco* court noted that, in *Kiobel*, the High Court held that the presumption against extraterritoriality "constrain[s] courts considering causes of action" under the ATS even though it was a "'strictly jurisdictional statute' that 'does not directly regulate conduct or afford relief'" and "even though the underlying substantive law consisted of well-established norms of international law, which by definition apply beyond this country's borders." *Id.* (citing *Kiobel*, 133 S.Ct. at 1664).

Like the Court in *Kiobel*, the Court in *RJR Nabisco* emphasized the significant foreign policy implications of providing a cause of action for foreign injury: "[A]s we have observed in other contexts, providing a private civil remedy for foreign conduct creates a potential for international friction beyond that presented by merely applying U.S. substantive law to that foreign conduct." *Id.*; *see also id.* at *16 ("This is not to say that friction would necessarily result in every case, or that Congress would violate international law by permitting such suits. **It is to say only that there is a potential for international controversy that militates against recognizing foreign-injury claims without clear direction from Congress**.") (emphasis added). Thus, it was nothing unique about the particular statutory language in RICO that required only "domestic"

injuries—indeed, the statute does not include that limitation expressly.[3] Instead, the foreign policy concerns discussed at length in *Kiobel*, coupled with a robust view of the presumption against extraterritoriality, provide the underpinnings for the decision.

Also similar to the Court in *Kiobel*, the Court in *RJR Nabisco* found that "[n]othing in §1964(c) provides a clear indication that Congress intended to create a private right of action for injuries suffered outside of the United States." *Id.* at *17. "The word 'any' ordinarily connotes breadth, but it is insufficient to displace the presumption against extraterritoriality," and the statute's "reference to injury to 'business or property' also does not indicate extraterritorial application." *Id*. This conclusion echoes the *Kiobel* decision from three years earlier:

> **[N]othing in the text of the statute suggests that Congress intended cause of action recognized under it to have extraterritorial reach**. The ATS covers actions by aliens for violations of the law of nations, but that does not imply extraterritorial reach—such violations affecting aliens can occur either within or outside the United States. **Nor does the fact that the text reaches '*any* civil action' suggest application to torts committed abroad**; it is well established that generic terms like 'any' or 'every' do not rebut the presumption against extraterritoriality.

Kiobel, 133 S.Ct. at 1665 (italics in original; bold emphasis added). "It is not enough to say that a private right of action must reach abroad because the underlying law governs conduct in foreign countries. Something more is needed, and here it is absent." *RJR Nabisco*, 2016 WL 3369423, at *17. The question presented in *RJR Nabisco*, as in *Kiobel*, is not "whether a federal court has

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[3] Three justices dissented from the Court's conclusion that a "domestic" injury was required. *RJR Nabisco*, 2016 WL3369423, at *23 (Ginsburg, J., concurring in part, dissenting in part, and dissenting from the judgment). According to the **dissenters**, "this case has the United States written all over it" since "[a]ll defendants are U.S. corporations, headquartered in the United States, charged with a pattern of racketeering activity directed and managed from the United States, involving conduct occurring in the United States," and thus posed no concerns about international friction. *Id.* But neither the defendant's U.S. citizenship nor its U.S.-based conduct was enough to overcome application of the extraterritorial bar where all injuries occurred abroad.

jurisdiction to entertain a cause of action provided by foreign or international law," but instead "'whether the court has authority to recognize a cause of action *under U.S. law*' **for injury suffered overseas**." *Id.* (quoting *Kiobel*, 133 S.Ct. at 1666) (italics in original; bold emphasis added). The answer, based upon the application of the presumption against extraterritoriality, is no. Because the only injury allegedly suffered by the European Community and 26-member nations who filed the suit was "injury suffered abroad" (the plaintiffs had previously waived their damages claims for domestic injuries), the complaint had to be dismissed. *Id.* at *19.

Finally, in *Kiobel*, the Court further stated that "there is no indication that the ATS was passed to make the United States a uniquely hospitable forum for the enforcement of international norms." *Kiobel*, 133 S.Ct. at 1668. "The United States was, however, embarrassed by its potential inability to provide judicial relief to foreign officials **injured in the United States**. Such offenses against ambassadors violated the law of nations, 'and if not adequately redressed could rise to an issue of war.' The ATS ensured that the United States could provide a forum for adjudicating such incidents." *Kiobel*, 133 S.Ct. at 1668 (internal citations omitted) (emphasis added). Therefore, the same "domestic injury" requirement recognized by a plurality of the Court in *RJR Nabisco* in the context of a civil RICO claim must also be applied in ATS cases such as the case at bar.

Applying the *Kiobel – RJR Nabisco* reasoning to SMUG's claims under the ATS requires entry of summary judgment, since SMUG has failed to establish any injury at all (*see* Sections VI-VII, *infra*), let alone injury suffered in the United States. Importantly, SMUG only alleges foreign injuries, if any. (MF ¶¶ 178-179). Headquartered in Uganda and situated exclusively in Uganda, the only purported harms allegedly suffered by SMUG took place in Uganda and never here in the United States. (MF ¶¶ 104-117, 178-179, 193). There is "nothing in the text of the ATS" that "evinces the requisite clear indication of extraterritoriality," and, therefore, any cognizable "tort"

recognized under the ATS—in addition to requiring actionable domestic conduct—must also be a tort causing domestic injury. *See Kiobel*, 133 S.Ct. at 1666, 1669 ("The reference to 'tort' does not demonstrate that the First Congress 'necessarily meant' for those causes of action to reach conduct in the territory of a foreign sovereign."); *RJR Nabisco*, 2016 WL 3369423, at *19 (invoking the presumption against extraterritoriality to require a civil RICO plaintiff "to allege and prove a **domestic injury** to business or property" since the statute "does not allow recovery for foreign injuries") (emphasis added).

Thus, the ATS statute does not indicate extraterritorial application or reach so the presumption must apply, even as to SMUG's alleged (but unproven) injuries. Summary judgment should be granted.

C. SMUG'S State Law Claims Also Are Barred On Extraterritorial Grounds.

The presumption against extraterritorial application of the ATS that bars SMUG's federal claims applies with equal (if not greater) force to SMUG's state law claims. *See Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 263 (2010) ("we apply the presumption **in all cases**") (emphasis added).

There is "no indication" that any Massachusetts law (whether based in statute or the common law) was passed (or made) so that Massachusetts would be "a uniquely hospitable forum for the enforcement of international norms." *Kiobel*, 122 S.Ct. at 1668. As Justice Story stated nearly 200 years ago, "No nation has ever yet pretended to be the *custos morum* of the whole world . . ." *U.S. v. The La Jeune Eugenie*, 26 F. Cas. 832, 847 (1822). The principle no less applies to a single U.S. state, or a single U.S. court. *See Morrison*, 561 U.S. at 261 (explaining that the "wisdom" of the extraterritorial bar is demonstrated by the inconsistent and unpredictable "results of judicial-speculation-made law"); *Kiobel*, 133 S.Ct. at 1664 ("the danger of unwarranted judicial

interference in the conduct of foreign policy is magnified in the context of the ATS, because the question is not what Congress has done but instead what courts may do").

It would be a complete rejection of the Supreme Court in *Kiobel* and other Supreme Court precedent to conclude that the state common law of Massachusetts (or any one of the fifty states that has no constitutional prerogative in foreign relations) does, in fact, apply abroad. In *Kiobel*, the presumption against extraterritoriality applied even though the very substance of the law at issue was directed at well-established international law norms that necessarily apply abroad. 122 S.Ct. at 1664-66. The presumption against extraterritorial application of laws has also been applied to employment practices of U.S. employers employing U.S. citizens in another country. *See EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 246-48, 259 (1991). No principle prohibits a similar application of *Kiobel* to the state law claims at issue here. *Kiobel* was clearly intended to curb ATS litigation in American courts, not simply to punt it into different fora (state court rather than federal court) or under a different jurisdictional guise (diversity jurisdiction rather than ATS jurisdiction).[4]

Confirming the above principles, numerous Massachusetts courts have applied the same presumption against extraterritoriality found in *Kiobel*, *Morrison* and elsewhere to preclude application of Massachusetts state laws to events occurring outside the United States. *See e.g.*, *Doricent v. American Airlines, Inc.*, No. 91-12084, 1993 WL 437670, at *8 (D. Mass. Oct. 19, 1993) (holding that Massachusetts civil rights laws did not apply to events occurring in Haiti);

[4] *Kiobel* cannot be interpreted to open a back door for these same lawsuits through the federal diversity statute instead. The ATS, like the federal diversity statute (28 U.S.C. § 1332), is a "strictly jurisdictional" statute that "does not directly regulate conduct or afford relief." *Kiobel*, 133 S.Ct. at 1664. Even so, the *Kiobel* Court held that the presumption against extraterritoriality "constrain[s] courts considering causes of action" under the ATS. *Id.*; *see also RJR Nabisco*, 2016 WL 3369423, at *15 (applying presumption to private right of action provision in RICO statute). This same analysis should be applied by a federal court sitting in diversity based upon state common law claims involving events that occurred abroad.

Hadfield v. A.W. Chesterton Co., No. 20084382, 2009 WL 3085921, at *1-2 (Mass. Super. Sept. 15, 2009) (applying presumption against extraterritorial application of state law to dismiss wage claim brought by an Australian resident who worked in sub-Saharan Africa, **even though defendant company was headquartered in Massachusetts** and plaintiff had made numerous trips to its Massachusetts headquarters); *Taylor v. Eastern Connection Operating, Inc.*, 988 N.E.2d 408, 413 n.9 (Mass. 2013) (assuming without deciding that "there is a presumption against the application of Massachusetts statutes outside the United States"); *Howarth v. Lombard*, 56 N.E. 888, 889 (Mass. 1900) ("It is familiar law that statutes do not extend, *ex proprio vigore*, beyond the boundaries of the state in which they are enacted.").

Beyond Massachusetts, it is a well-recognized principle in federal and state courts across the country that the presumption against extraterritoriality applies to state law claims. *See, e.g.*, *Hirst v. Skywest, Inc.*, No. 15-2036, 2016 WL 2986978, at *8 (N.D. Ill. May 24, 2016) ("State laws . . . presumptively lack extraterritorial reach."); *Abel v. Planning & Zoning Comm'n*, 998 A.2d 1149, 1157 (Conn. 2010) ("Many state courts have applied this principle [of the presumption against extraterritoriality] to state statutes.") (collecting cases); *Judkins v. Saint Joseph's College of Maine*, 483 F. Supp. 2d 60, 65 (D. Me. 2007); *Mitchell v. Abercrombie & Fitch*, No. 04-306, 2005 WL 1159412, at *2 (S.D. Ohio May 17, 2005); *Rathje v. Scotia Prince Cruises, Ltd.*, No. 01-123, 2001 WL 1636961, at *9 (D. Me. Dec. 20, 2001) ("[S]tate statutes are presumed not to have extraterritorial reach."); *Union Underwear Co. v. Barnhart*, 50 S.W.3d 188, 190 (Ky. 2001); *Sandberg v. McDonald*, 248 U.S. 185, 195 (1918) ("Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction."); 73 Am. Jur. 2d Statutes § 243 (2d ed.) (noting general rule that a state law does not operate beyond the territorial limits of

the state unless "clearly expressed or indicated by its language, purpose, subject matter, or history").

Importantly, specifically within the ATS context, numerous courts have applied the presumption against extraterritoriality to bar **state law** claims brought in conjunction with ATS claims, whether statutory or common law. *See, e.g., In re: Chiquita Brands Int'l, Inc. Alien Tort Statute & Shareholder Derivative Litig.*, 792 F. Supp. 2d 1301, 1355 (S.D. Fla. 2011) (holding in ATS litigation that the "civil tort laws" of Florida, Ohio, New Jersey and the District of Columbia do not apply to extraterritorial conduct and dismissing various state common law claims); *see also Roe I v. Bridgestone Corp.*, 492 F. Supp. 2d 988, 1024 (S.D. Ind. 2007) (dismissing state law claims in ATS litigation where "[p]laintiffs have not yet articulated a viable basis for applying California law or Indiana law to the management of a Plantation in Liberia"); *Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1318 (11th Cir. 2008) (affirming the district court's grant of summary judgment on state law claims in ATS litigation because the "tort claims" under Alabama law did not apply to injuries that occurred outside the state); *In re: Chiquita Brands Int'l, Inc. Alien Tort Statute & Shareholder Derivative Litig.*, --- F. Supp. 3d ---, 2016 WL 3247913, at *8 (S.D. Fla. June 1, 2016) (finding that state law claims against individual defendants were "similarly barred on extraterritoriality grounds" as claims against a corporate defendant and dismissing such claims for lack of subject matter jurisdiction).

The same outcome should obtain here. As shown above, SMUG has no evidence of any "relevant conduct" by Lively in the United States (including Massachusetts). (MF ¶¶ 130-148.) And SMUG has no evidence of **any** injury (*see* Sections VI-VII, *infra*), let alone the **domestic** injury (in Massachusetts) required under *RJR Nabisco*. Accordingly, this Court lacks subject-

matter jurisdiction over SMUG's state law claims (*i.e.*, Count IV for civil conspiracy, and Count V for negligence). Summary judgment should be granted.

III. SMUG'S CLAIMS ARE BARRED BY THE ACT OF STATE DOCTRINE.

The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 401 (1964). In one of its earliest formulations, the High Court stated that "**[e]very sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory**." *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897) (emphasis added). Notably, "[n]one of this Court's subsequent cases in which the act of state doctrine was directly or peripherally involved manifest any retreat from *Underhill*." *Sabbatino,* 376 U.S. at 416.

The act of state doctrine requires that "when it is made to appear that the foreign government has acted in a given way on the subject-matter of the litigation, the details of such action or the merit of the result cannot be questioned." *Ricaud v. Am. Metal Co.*, 246 U.S. 304, 307 (1918). Put another way, "[t]he act of state doctrine is not some vague doctrine of abstention but a *principle of decision* binding on federal and state courts alike." *W.S. Kirkpatrick & Co., Inc. v. Envt'l Tectonics Corp., Int'l,* 493 U.S. 400, 406 (1990) (emphasis original). As Justice Scalia put it,

> The short of the matter is this: Courts in the United States have the power, and ordinarily the obligation, to decide cases and controversies properly presented to them. The act of state doctrine does not establish an exception for such cases and controversies that may embarrass foreign governments, but merely **requires** that, in the process of deciding, **the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid.**

Id. at 409 (emphasis added).

In *W.S. Kirkpatrick*, the Court ultimately found that the act of state doctrine did not apply, but for reasons much different than what SMUG seeks here. Indeed, there, the Court noted that "[a]ct of state issues only arise when a court *must decide* – that is, when the outcome of the case turns upon – the effect of official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine." *Id.* at 406 (emphasis original). Unlike SMUG's claims, the Court determined that the "doctrine has no application to the present case **because the validity of no foreign sovereign act is at issue**." *Id.* at 409-10 (emphasis added).

Where, as here, the validity and legality of a foreign government's action is squarely at issue and indeed fundamental to the plaintiff's entire claim, the act of state doctrine has clear and unambiguous application. *See Ricaud*, 246 U.S. at 310 (noting that it is a "rule of law that **the act within its own boundaries of one sovereign state cannot become the subject of re-examination and modification in the courts of another**") (emphasis added); *Sabbatino*, 376 U.S. at 439 ("Since the act of state doctrine proscribes a challenge to the validity of the Cuban [government's] decree in this case, any counterclaim based on asserted invalidity **must fail**.) (emphasis added).

The Supreme Court likewise invoked the act of state doctrine in *Oetjen v. Cen. Leather Co.*, 246 U.S. 297 (1918). There, the actions of the Mexican government were at issue, and the courts dismissed the action stating that redress for alleged injuries – if any – must be obtained in the courts of the government who allegedly caused the injuries. *Id.* at 304. The Court stated:

> The principle that the conduct of one independent government cannot be successfully questioned in the courts of another is applicable to a case involving . . . claims for damages [which] are based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. **To permit the validity of the acts of one sovereign to be reexamined and perhaps condemned by the courts of another would certainly imperil the amicable relations between governments and vex the peace of nations**.

Id. at 303-04 (emphasis added).

The act of state doctrine bars this Court from inquiring into the validity of the AHA, and also precludes this Court from reexamining and questioning the facts or result of the alleged official acts of Ugandan government officials. Here, SMUG's claims of "persecution" hinge entirely upon its claim that the introduction, consideration, passage and enactment of the AHB/AHA by the sovereign government of Uganda constituted a "crime against humanity of persecution," in which Lively was somehow complicit as a "conspirator" or "aider and abettor." Alternatively, SMUG wants this Court to declare that official acts of Ugandan government officials, such as Minister Lokodo's alleged "raids" of LGBTI workshops or Minister Buturo's promises to criminalize "promotion of homosexuality," constitute "crimes against humanity of persecution," in which Lively was somehow complicit. If this Court were to find that the actions of Uganda's Parliament and government officials in considering, passing and implementing the AHA were valid and not "criminal" or "persecutory," SMUG's claims against Lively, such as they are, would evaporate, for one cannot "conspire" to do something lawful. As such, there is no way for SMUG to prevail in this case without this Court inquiring into the validity of the official acts of Uganda's sovereign government, and without this Court's indictment of those official acts as criminal or persecutory.

If SMUG's claims are not barred by the act of state doctrine here, then the doctrine is meaningless. Indeed, one of the most fundamental applications of the act of state doctrine arises when plaintiffs ask a court to determine the legality of a foreign statute or policy. *Soc'y of Lloyd's v. Siemon-Netto*, 457 F.3d 94, 102-03 (D.C. Cir. 2006) (holding that "the act of state doctrine bars [courts] **from even asking**" whether a foreign statute is lawful) (emphasis added); *Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019 (W.D. Wash. 2005) (holding that act of state doctrine barred the court's consideration of claims concerning a foreign government's official policies);

see also Doe v. Exxon Mobile Corp., 69 F. Supp. 2d 75, 87 (D.D.C 2014) (noting that an "illustrative list of acts" to which the act of state doctrine applies includes *inter alia* "**passing a law**") (emphasis added).

Not only is this Court's inquiry concerning the legality of the AHA prohibited by the act of state doctrine, but so, too, is any inquiry regarding the alleged acts of persecution undertaken by Ugandan officials in the course of implementing official Ugandan policy and law. Yet, SMUG's claims under the ATS require not only the prohibited inquiry into, but also a direct indictment of, such official acts as criminal. Indeed, the fourteen specific acts of alleged persecution identified by SMUG were primarily engaged in, if at all, by officials of the sovereign Ugandan government. (MF ¶ 104) (Ugandan police); (¶ 105) (Ugandan Minister Lokodo and Ugandan police); (¶ 106) (Ugandan police); (¶ 107) (Ugandan Minister Lokodo); (¶ 108) (Ugandan Deputy Attorney General, Ugandan Minister Buturo, and Uganda Broadcast Council); (¶ 109) (Ugandan authorities); (¶ 112) (Ugandan police); (¶ 113) (Ugandan Parliament); (¶ 114) (Ugandan government); (¶ 115) (Ugandan police); (¶ 116) (Ugandan officials); (¶ 117) (Ugandan police). Accordingly, the gravamen of SMUG's entire lawsuit is predicated on this Court reviewing the actions of a sovereign government and its officials, concluding that they were criminal, and then finding that Lively somehow "conspired" in or "assisted" those acts (despite SMUG's complete evidentiary failure on Lively's involvement). The act of state doctrine precludes this Court from undertaking the inquiry requested by SMUG.

Following the Supreme Court's admonitions in *Sabbatino, Underhill, Ricaud*, and *Oetjen*, numerous cases have dismissed claims that sought precisely what SMUG seeks here – namely, the prohibited inquiry into the validity of the actions of sovereign governments and government officials. *See, e.g.*, *Konowaloff v. Metro. Museum of Art*, 702 F.3d 140 (2d Cir. 2012) (dismissing

plaintiff's complaint based on the act of state doctrine and holding that "the validity of the foreign state's act may not be examined '**even if the complaint alleges that the [act] violates customary international law**'") (emphasis added) (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964)); *Glen v. Club Mediterranee, S.A.*, 450 F.3d 1251, 1257 (11th Cir. 2006) (dismissing a tort claim "[b]ecause the act of state doctrine requires that the courts deem valid the Cuban [action] at issue in this case, [and] the Glens cannot maintain their claims"); *Braka v. Bancomer, S.N.C.*, 762 F.2d 222, 225-26 (2d Cir. 1986) ("The act of state doctrine bars consideration of plaintiffs' complaint because the situs of defendant's obligations was in Mexico and the acts in question were taken by the Mexican government in its capacity as a sovereign."); *Empresa Cuban Exportadora De Azucar y Sus Derivados v. Lamborn & Co., Inc.*, 652 F.2d 231 (2d Cir. 1981) (dismissing a claim based on the act of state doctrine); *Occidental Petro. Corp. v. Buttes Gas & Oil Co.*, 461 F.2d 1261 (9th Cir. 1972) (affirming a district court's dismissal of a complaint based on the act of state doctrine despite plaintiffs' assertion that the actions of the government official at issue in the case were motivated by his own personal interests).

It should be noted, too, that the act of state doctrine bars judicial inquiry regardless of how offensive or abhorrent a foreign state's action or statutory enactment may be to SMUG, this nation, this Court, or Massachusetts. *Sabbatino*, 376 U.S. at 436-37 ("However offensive to the public policy of this country and its constituent states [a government's action] of this kind may be, we conclude both that the national interest and progress toward the goal of establishing the rule of law among nations are best served by maintaining intact the act of state doctrine.").

Since this court cannot even inquire into the legality of Uganda's AHB/AHA or the acts of Ugandan government officials, the Court should grant summary judgment on all of SMUG's claims.

IV. THE COURT LACKS SUBJECT-MATTER JURISDICTION OVER SMUG'S INTERNATIONAL LAW CLAIMS UNDER THE ALIEN TORT STATUTE BECAUSE SMUG HAS NO EVIDENCE THAT LIVELY HAS VIOLATED ANY UNIVERSALLY ACCEPTED AND CLEARY DEFINED INTERNATIONAL LEGAL NORMS.

A. The Record Evidence Shows Lively's Actual Conduct Did Not Violate Any Specific, Universal And Obligatory Customary International Law Norm.

In the MTD Order, this Court accepted SMUG's **allegations** that Lively committed the crime against humanity of persecution against LGBTI people in Uganda. (MTD Order at 30-31.) The Court also recognized, however, that "all these allegations will need to be proved . . . and they may not be." (MTD Order at 35.) "[T]hey may not be," is an understatement. The allegations on which SMUG's Amended Complaint survived dismissal have been conclusively disproved, by SMUG's own witnesses. And just as SMUG's sensational allegations are now supplanted by record evidence, whatever norm of international law ostensibly criminalized Lively's conduct according to SMUG's allegations, must be supplanted by a specific, universal, and obligatory norm that covers Lively's actual conduct according to the record.

Under the ATS, federal courts have jurisdiction only to adjudicate the very narrow subset of international law norms that are "'specific, universal and obligatory.'" *Sosa*, 542 U.S. at 732; *Kiobel*, 133 S. Ct. at 1665. Lower courts must engage in "vigilant doorkeeping" to maintain only a "narrow class" of actionable torts, *Sosa*, 542 U.S. at 729, limited to "'a handful of heinous actions—each of which violates definable, universal and obligatory norms.'" *Id.* at 732 (quoting *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 781 (D.C. Cir. 1984) (Edwards, J., concurring)).

"[T]he requirement of universality goes not only to recognition of the norm in the abstract sense, **but to agreement upon its content as well**." *Xuncax v. Gramajo*, 886 F. Supp. 162, 187 (D. Mass. 1995) (emphasis added). "[T]he offense must be based on present day, **very widely accepted** interpretations of international law: **the specific things the defendant is alleged to have**

done must violate what the law already clearly is." *Mamani v. Berzain*, 654 F.3d 1148, 1152 (11th Cir. 2011) (emphasis added). This court in *Xuncax* dismissed ATS claims for "cruel, inhuman, or degrading treatment" because, although proscribed generally by "major international agreements on human rights," there was no universal agreement as to what specific acts constitute the tort. 886 F. Supp. at 187. In *Mamani*, the Eleventh Circuit dismissed an ATS claim for crimes against humanity because, although some crimes against humanity are recognized, there is no universal consensus that the specific conduct alleged constituted such crimes. 654 F.3d at 1152. *See also Forti v. Suarez-Mason*, 694 F. Supp. 707, 712 (N.D. Cal. 1988) ("To be actionable under the [ATS] the proposed tort must be characterized by universal consensus in the international community as to its binding status *and its content*. In short, it must be a universal, *definable,* and obligatory international norm.") (emphasis in original) (dismissing ATS claim because of "definitional gloss" and lack of universal agreement over the elements of the asserted norm); *In re Terrorist Attacks on September 11, 2001*, 714 F.3d 118, 125 (2d Cir. 2013) (affirming dismissal of ATS claim because "there continues to be strenuous disagreement among States about what actions do or do not constitute terrorism . . . .").

In *Sosa*, the ATS plaintiff sought damages for "a single illegal detention of less than a day, followed by the transfer of custody to lawful authorities and a prompt arraignment." 542 U.S. at 738. As the basis for his ATS claim, the plaintiff asserted an international norm against "arbitrary" detention, ostensibly prohibiting any officially sanctioned, illegal detention, no matter the circumstances. *Id.* at 736. As support for this norm, the plaintiff pointed to a "survey of national constitutions," *id.* at 736 n.27, showing, "[t]he right to be free from arbitrary arrest and detention is protected in at least 119 national constitutions." M. Cherif Bassiouni, *Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent*

Protections in National Constitutions, 3 Duke J. Comp. & Int'l L. 235, 261 (1993). The Supreme Court observed, however, "that consensus is at a high level of generality." *Sosa*, 542 U.S. at 736 n.27. "Any credible invocation of a principle against arbitrary detention that the civilized world accepts as binding customary international law requires a factual basis beyond relatively brief detention in excess of positive authority." *Id.* at 737. The Court concluded that the plaintiff's asserted norm, criminalizing **any** officially sanctioned illegal detention "regardless of the circumstances," was "far from full realization," and "expresses an aspiration that exceeds any binding customary rule having the specificity we require." *Id.* at 738, n.29. Thus, while there was a discernable norm against arbitrary detention, **generally**, the Court did not discover any specific, universal, and obligatory norm as to the meaning of "arbitrary" that criminalized the specific detention at issue.

Accordingly, for SMUG to recover under the ATS for "persecution" as a crime against humanity, it is not enough for SMUG to point to a binding international law norm against "persecution," or even a norm against persecution based generally on sexual orientation or gender identity. Rather, SMUG must point to a specific, universal, and obligatory norm criminalizing Lively's specific conduct. And while SMUG's ATS claims survived dismissal based on unproven allegations of Lively's conduct, to survive summary judgment SMUG must show that the world has criminalized what Lively **actually did**, according to the **record evidence**. SMUG will fail.

No conceivable international law norm is violated by what Lively actually did according to the record evidence:[5]

[5] SMUG neither has produced, nor can produce, evidence to refute any of these facts. As set forth in the Statement of Material Facts above, SMUG's witnesses consistently disclaimed knowledge of any contrary facts.

- Lively visited Uganda twice in 2002 for several speaking engagements regarding his orthodox Christian viewpoint on sexual ethics and the natural family; homosexuality was but one topic among many he discussed. (MF ¶¶ 10-20.)
- Lively returned to Uganda nearly seven years later in March 2009, to speak at a conference on the subject of homosexuality (MF ¶ 47.)
- At the March 2009 conference and a few speaking engagements around the conference, Lively presented a broad range of his research, conclusions, and views regarding homosexuality, which included urging tolerance, compassion, dignity, and respect for people who identify as homosexual or are engaged in homosexual conduct, as fellow human beings made in the image of God; urging the maintenance of a distinction between homosexual **people**, whom are to be loved, and the homosexual political and social **agenda**, which is to be opposed; identifying ways that young people are introduced to homosexuality based on his own personal experience and the accounts given to him **by Ugandans**; and advocating for the liberalization of Ugandan laws against homosexual conduct. (MF ¶¶ 2-9, 53-61, 64-72.)
- Following the March 2009 conference, Lively campaigned—for nearly five years—for the liberalization, and ultimately abandonment, of a proposed new law against homosexual conduct which he did not write, request, have prior knowledge of, or even suggest at any time, and which was stricken by a court shortly after enactment, before it was ever enforced. (MF ¶¶ 79-81, 85, 94.)
- During the nearly seven years between Lively's second 2002 Uganda visit and his return in March 2009, he had no substantive contact with any person in Uganda, apart from a sporadic exchange of e-mails with Stephen Langa beginning in March 2007 to

plan for the conference in March 2009, and a single exchange with a representative of pastor Martin Ssempa, in 2008, wherein the representative sought permission to make copies of a previously published book by Lively, and Lively invited Ssempa to join in planning the logistics for the March 2009 conference.[6] (MF ¶¶ 21-24.)

- Lively provided no support, assistance, or participation, directly or indirectly, for any of the alleged instances of "persecution" for which SMUG seeks recovery in this case. (MF ¶¶ 102-117.)
- Lively had no knowledge of, or intent to effect, incite, or facilitate, alone or in concert with anyone else, any of the alleged instances of "persecution" for which SMUG seeks recovery in this case, or any expansion of Uganda's laws against homosexuality, or any violence, hatred, ridicule, ostracism, or vilification of any LGBTI Ugandan. (MF ¶¶ 103, 118, 129.)

Neither political incorrectness nor opposition to a popular cause is a crime against humanity. Lively is not an enemy of the human race for opposing the viewpoints or social and political agenda of a Ugandan LGBTI organization, representing no more than one tenth of one percent of the LGBTI people in Uganda (MF ¶ 193), even as he publicly (and privately) urged liberalization of laws against the conduct of the organization's constituents. Whatever "persecution" means, it cannot mean Lively's pure speech and public advocacy—no matter how disagreeable—are now criminal endeavors. Whatever norm against persecution found by this Court in the MTD Order to be specific enough to reach the untested "facts" of SMUG's tall tale in the Amended Complaint, it is obvious now, in the light of a record, that a still more novel and as yet unannounced norm

[6] Langa also paid a brief social visit to Lively and his wife in the United States in 2005 or 2006, and they visited a museum together. (MF ¶ 22.)

must be discovered to criminalize what Lively actually did (or, rather, said) in Uganda. To be sure, only an "any circumstances" norm akin to the one asserted by the *Sosa* plaintiff, criminalizing as persecution **any** opposition to SMUG's viewpoint, would suffice. Clearly no such norm exists, and Lively is entitled to summary judgment on SMUG's ATS claims as a matter of law.

B. There Is No Universally Accepted And Clearly Defined International Law Norm Against "Persecution" On The Basis Of Sexual Orientation And Gender Identity.

As shown by Lively in support of his motion to dismiss, there is no universally accepted and clearly defined international law norm against persecution, **generally** on the basis of sexual orientation and gender identity, sufficient to confer this Court jurisdiction over SMUG's ATS claims, which depend on those categories. (Mem. Law Supp. Lively Mot. Dismiss Pls. Am. Compl. ("Lively MTD Mem."), dkt. 33, § III.B; Mem. Law Supp. Lively Mot. Amend and Certify Non-Final Order Interl. Appeal, dkt. 65, § II; Mem. Law Supp. Lively Mot. Recon. Order Den. Certification Interl. Appeal , dkt. 73, at 8-9.) Although Lively will not rehearse all the points of these arguments here, Lively reasserts them and incorporates them herein by this reference. There is more to be said, however, at this summary judgment stage of these proceedings.

The Court's MTD Order rejected Lively's arguments and accepted an international law norm the Court deemed sufficiently universal to cover SMUG's claims, but it did so based only on the **allegations** of the Amended Complaint, which were superficially astounding. (MTD Order at 30-31.) Now that the **record** has revealed the allegations to be fiction, however, a new specific, universal, and obligatory norm criminalizing Lively's actual conduct must be discovered to save SMUG's claims from summary judgment. (*See* Section IV.A, *supra*.) New considerations are warranted.

First, the absence of any international law consensus on the inclusion of sexual orientation as a basis category for persecution at the level of crime against humanity has been observed at

least twice—in 2010 and 2014—by a leading (perhaps *the* leading) publicist on international criminal law.[7] Professor M. Cherif Bassiouni,[8] cited by the Supreme Court in *Sosa*, argued the need for an international law convention on crimes against humanity ("CAH") to unify to consensus **twelve** disparate formulations of CAH scattered throughout international law,[9] and to expand CAH into new areas. M. Cherif Bassiouni, *Crimes Against Humanity: The Case for A Specialized Convention*, 9 Wash. U. Global Stud. L. Rev. 575, 582-83, 585-86, 590 (2010). In cataloguing his aspirations for expansion of CAH coverage beyond where it was in 2010 (after Lively's last visit to Uganda), Bassiouni argued, "[t]here are also other extensions of the present listing of human protections, such as . . . **persecution based on sexual orientation**." *Id.* at 590 (emphasis added). Then in 2014, in his "comprehensive treatment of all legal and historical aspects pertaining to CAH in a single definitive volume," Bassiouni repeated the aspiration: "The list of human protections could also extend to . . . persecution based on sexual orientation." M. Cherif

[7] The Supreme Court in *Sosa* recited its **cautious** reliance on "jurists and commentators, who by years of labor, research an experience, have made themselves peculiarly well acquainted with the subjects of which they treat." 542 U.S. at 733-34. *See also* Statute of the International Court of Justice, June 26, 1945, art. 38(3), 59 Stat. 1031, 33 U.N.T.S. 993 (relying on "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as **subsidiary means** for the determination of rules of law" (emphasis added)).

[8] Bassiouni is also designated by SMUG as one of its expert witnesses in this case, but as a legal expert, and not on any issue of fact. Lively objects to any consideration by the Court of any expert report on purely legal issues, or expert "testimony" on legal issues, and will move to strike any such "evidence" introduced by SMUG. Confined to their scholarly writings, however, as opposed to works commissioned by advocates, commentators such as Bassiouni remain one appropriate resource for defining norms of customary international law. *See supra*, note 7.

[9] The disparity among the twelve various formulations of CAH "evidences a weakness in customary international law" and "raises questions about whether they can be deemed sufficient to identify the specific contents of CAH in customary international law . . . ." Bassiouni, *Specialized Convention, supra*, at 583. Such uncertainty in the ability of existing international instruments to accurately identify the existing international law norms of CAH counsels against any expansion of CAH claims cognizable under the ATS in reliance on such instruments.

Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application*, at i, 53 n.12 (2014).

Thus, Bassiouni confirmed in both 2010 and 2014 what Lively argued in support of his motion to dismiss: The inclusion of sexual orientation as a basis category of persecution at the level of CAH "expresses an aspiration that exceeds any binding customary rule . . . ." *Sosa*, 542 U.S. at 738. Since "[t]he ATS is no license for judicial innovation," *Mamani*, 654 F.3d at 1152, such an aspirational norm cannot be declared by this Court as a matter of jurisdictional law.

Second, courts should be wary of the arguments of "human rights advocates" who cross from arguing what the law is to arguing what they desire it to be. As cautioned by Bassiouni:

> A binding legal norm may take one of three forms: a given convention or treaty; a general or particular international custom (as evidenced by consistent practice and opino juris); and a general principle of law (as evidenced by other perfected and unperfected sources of international law or by principles derived from the major legal systems of the world).
>
> **All too frequently, human rights advocates overlook these important legal distinctions** and attempt the de jure condendo extrapolation of legal rights or binding obligations from international instruments which do not have legally binding effects. In fact, human rights advocates frequently cross into the realm of lex [desiderata[10]] with the argument that the moral and ethical merits of a given proposition are sufficient to overcome technical legal arguments.

Bassiouni, *National Constitutions*, *supra*, at 242. As shown previously by Lively, SMUG's ATS claims rely almost exclusively on "extrapolation of legal rights or binding obligations from international instruments which do not have legally binding effects." (*See, e.g.*, Lively MTD

[10] The original is "lex *desirata*," an obvious typographical error. "Lex *desiderata*" means "the law as desired," as opposed to "lex lata," meaning as "the law as it exists."

Mem., dkt. 33, § III.A; Pls. Mem. Law Opp'n Def. Mot. Dismiss Am. Compl. ("SMUG Opp. MTD"), dkt. 38, § II.C.3.) Bassiouni knows this game well and warns against it.

Third and finally, to the extent Bassiouni is wrong, and there is a universally binding international norm prohibiting persecution generally on the basis of sexual orientation, the articulation of such a norm at this "high level of generality," without more, would be useless for ATS purposes. *See Sosa*, 542 U.S. at 736 n.27. (*See* Section IV.A, *supra*.) Rather, articulation of a sufficiently "specific, universal, and obligatory" norm to apply to the specific Lively conduct shown in the record would require answering questions not yet codified in any convention, taken up by any international tribunal, or otherwise answered to consensus in any universally recognized and clearly defined norm. For example, when is advocacy of an opposing viewpoint on homosexual conduct criminal? When is petitioning the government with objectionable motives criminal? Can there be a "universal" norm against petitioning foreign governments to enact laws restricting homosexual rights, when such petitioning activity would be absolutely protected under the First Amendment (and its *Noerr-Pennington* offspring) in the United States? (*See* Section V.E *infra*.) When is the domestic criminalization of homosexual conduct *criminal in and of itself* at customary international law, as opposed to legitimate state policymaking?[11] There is no specific,

[11] Lively's argument in support of dismissal, that the continued criminalization of homosexual conduct by approximately 80 of 200 countries demonstrates no "full realization" of any norm prohibiting such laws as "persecution," drew the Court's sharp rebuke. (*See* Lively MTD Mem., dkt. 33, § III.B; MTD Order at 28-29.) Lively respectfully submits that the Court misapprehended his point. Lively does not assert, as perhaps apprehended by the Court, that the existence of deprivations of rights is justification for the continued deprivation of rights. Rather, Lively invoked the reasoning of the Supreme Court in *Sosa*:

> It is not that violations of a rule logically foreclose the existence of that rule as international law. Nevertheless, **that a rule as stated is as far from full realization as the one Alvarez urges is evidence against its status as binding law; and an even clearer point against the creation by judges of a private cause of action to enforce the aspiration behind the rule.**

universal, and obligatory international norm that these acts are ever criminal, let alone providing knowable boundaries. And this Court's binding responsibility of "vigilant doorkeeping" to maintain a "narrow class" of actionable torts, limited to "'a handful of heinous actions—each of which violates definable, universal and obligatory norms,'" *Sosa*, 542 U.S. at 729, 732, prohibits the Court from undertaking to be the first to declare such norms.[12]

C. There Is No Universally Accepted And Clearly Defined International Law Norm Of Conspiracy Liability.

Lively is entitled to summary judgment on SMUG's "Third Claim for Relief," for the "Crime Against Humanity of Persecution: Conspiracy" (Am. Compl., dkt. 27, ¶¶ 246-250), because this Court lacks subject matter jurisdiction over the claim. There is no universally accepted and clearly defined international norm of conspiracy liability which could give this Court jurisdiction under the ATS.

Since the ATS is strictly "a jurisdictional statute creating no new causes of action," *Sosa*, 542 U.S. at 724, courts must look to international law to determine not only the **existence** of

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542 U.S. at 738 n.29 (emphasis added) (internal citation omitted). In other words, the persistence of a large number of states (approx. 40%) criminalizing homosexual conduct is evidence that there is no "full[y] realiz[ed]" international law consensus that such laws constitute "deprivation of fundamental rights" "by reason of the identity of the group" to the level of a crime against humanity. The absence of such a consensus counsels against invoking (or creating) an aspirational rule that any such law, **and even the advocacy thereof**, is *per se* persecutory, and the ATS prohibits a federal court from undertaking to define the contours of any norm against such state policymaking in a case of first impression.

[12] To accomplish "persecution" requires the intent to discriminate on prohibited grounds in conjunction with other acts, which are also usually criminal. Consequently, there has always been a historical difficulty in identifying and defining persecution as a stand-alone crime without connecting it to other specific criminal acts. This is why **there has never been a case involving the charge of "persecution" that has not involved other specific criminal acts.**

Bassiouni, *Contemporary Application, supra*, at 405 (emphasis added).

liability for the challenged conduct, *id*. at 733 ("[defendant's] detention claim must be gauged against the current state of international law"), but also the **scope** of that liability, *id*. at 732 n.20 ("A related consideration is whether **international law** extends the **scope** of liability for a violation of a given norm to the perpetrator being sued, if the defendant is a private actor such as a corporation or individual") (emphasis added). "**To find ATS jurisdiction over an alleged secondary tort, there must be a sufficient and sufficiently definite international consensus supporting not only the underlying tort but also the form of secondary liability for that tort**." *Abecassis v. Wyatt*, 704 F. Supp. 2d 623, 654 (S.D. Tex. 2010) (applying *Sosa*) (emphasis added).

Fortunately, the Supreme Court has made this Court's task of divining the contours of international law on conspiratorial liability relatively easy. In *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), the Supreme Court reviewed various sources of international law, and held,

> the only 'conspiracy' crimes that have been recognized by international war crimes tribunals (**whose jurisdiction often extends beyond war crimes proper to crimes against humanity** and crimes against the peace) are **conspiracy to commit genocide and common plan to wage aggressive war** . . . .

548 U.S. at 610 (emphasis added). The Supreme Court quoted with approval other international jurists who "made a persuasive argument that **conspiracy in the truest sense is not known to international law**." *Id*. at 611 (emphasis added) (internal quotes omitted). Finally, the Supreme Court quoted various United Nations War Crimes Commissions, which "observ[ed] that, although a few individuals were charged with conspiracy under European domestic criminal codes following World War II, the United States Military Tribunals established at that time **did not recognise as a separate offence conspiracy to commit** war crimes or **crimes against humanity**." *Id*. at 611 n.40 (emphasis added) (internal quotations and alterations omitted).

As with all Supreme Court precedent, "this Court must . . . apply the Supreme Court's assessment of the law of nations." *In re S. African Apartheid Litig.*, 617 F. Supp. 2d 228, 263

(S.D.N.Y. 2009). Thus, even though *Hamdan* was not decided under the Alien Tort Statute, the Supreme Court's determination that international law forecloses conspiratorial liability for all but two offenses, neither of which is claimed here, is binding. *Id*. Applying *Hamdan* specifically to conspiracy claims brought under the Alien Tort Statute, the court in *South African Apartheid* held:

> **Jurists from the civil law tradition have long resisted the application of conspiracy to crimes under the law of nations**, as conspiracy is an Anglo–American legal concept. Importantly, the Supreme Court recently stated in *Hamdan v. Rumsfeld* that the law of war provides liability only for 'conspiracy to commit genocide and common plan to wage aggressive war.' While *Hamdan* did not address the [Alien Tort Statute], this Court must nevertheless apply the Supreme Court's assessment of the law of nations. ***Sosa* requires that this Court recognize only forms of liability that have been universally accepted by the community of developed nations. Conspiracy does not meet this standard. Therefore, this Court declines to recognize conspiracy as a distinct tort to be applied pursuant to [ATS] jurisdiction**.

Id. at 263 (emphasis added).

The *South African Apartheid* court is by no means unique in its application of the *Hamdan*-*Sosa* principle to reject conspiratorial liability for alleged human rights abuses under the Alien Tort Statute. *See e.g., Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 453 F. Supp. 2d 633, 664-65 (S.D.N.Y. 2006) ("As of today, therefore, liability under the ATS for participation in a conspiracy may **only attach where the goal of the conspiracy was either to commit genocide or to commit aggressive war**. . . . As described above, [plaintiffs] contend that [defendant] joined **a conspiracy to commit a crime against humanity**. . . . As a result, the defendants' motion for summary judgment on the conspiracy claim is granted") (emphasis added) (applying *Hamdan*), *aff'd*, 582 F.3d 244, 260 (2d Cir. 2009) ("[P]laintiffs have not established that international law universally recognizes a doctrine of conspiratorial liability . . . .") (internal quotations and alterations omitted); *cf. United States v. Ali*, 718 F.3d 929, 935, 942 (D.C. Cir. 2013) (observing "piracy . . . the oldest and most widely acknowledged" of "universal crimes,"

but affirming dismissal of charge for conspiracy to commit piracy on grounds that "[i]nternational law does not permit [it]").

Because it knows that international law does not recognize conspiracy claims, SMUG may entreat this Court to look to United States federal common law, which is much more hospitable to such claims.[13] However, numerous federal courts applying *Sosa* have properly rejected similar requests and looked only to international law, as *Sosa* requires. *See e.g., South African Apartheid,* 617 F. Supp. 2d at 263 (looking "to customary international law as the source of relevant authority" to determine whether conspiratorial liability may be asserted under ATS); *Presbyterian Church of Sudan,* 453 F. Supp. 2d at 665 n.64 ("[T]his Court continues to believe that international law must supply the substantive law for plaintiffs' [conspiracy] claims . . . .") (rejecting application of *Pinkerton*), *aff'd,* 582 F.3d 244, 260 (2d Cir. 2009) ("As a matter of first principles, we look to international law to derive the elements for any such cause of action [for conspiracy]."); *Abecassis,* 704 F. Supp. 2d at 654 ("International law, according to [*Sosa*], also defines who may be sued for violating that norm. There is no reason to believe that international law determines whether private – as well as state – actors can be sued but not whether secondary – as well as primary – actors can be sued."). Fidelity to Supreme Court precedent necessitates that this Court likewise look exclusively to international law to determine whether SMUG can assert a claim of conspiracy to persecute under the Alien Tort Statute.

[13] Under federal common law, "a defendant who does not directly commit a substantive offense may nevertheless be liable if the commission of the offense by a co-conspirator in furtherance of the conspiracy was reasonably foreseeable to the defendant as a consequence of their criminal agreement." *United States v. Bruno,* 383 F.3d 65, 89 (2d Cir. 2004) (citing *Pinkerton v. United States,* 328 U.S. 640, 646-48 (1946)).

Here, SMUG seeks to assert a claim of conspiracy not for the two torts allowed under *Hamdan*, but for a "crime against humanity," which was specifically dismissed in *South African Apartheid* and *Presbyterian Church of Sudan*. SMUG's claim should meet the same fate.[14]

D. There Is No Universally Accepted And Clearly Defined International Law Norm Of Joint Criminal Enterprise Liability.

Lively is also entitled to summary judgment on SMUG's "Second Claim for Relief," for the "Crime Against Humanity of Persecution: Joint Criminal Enterprise." (Am. Compl., dkt. 27, ¶¶ 240-245), because this Court lacks subject matter jurisdiction over the claim. There is no universally accepted and clearly defined international norm of joint criminal enterprise liability which could give this Court jurisdiction under the ATS.

The Supreme Court has observed that **one** court, "[t]he International Criminal Tribunal for the former Yugoslavia (ICTY), drawing on the Nuremberg precedents, has adopted a 'joint criminal enterprise' theory of liability, but that is **a species of liability for the substantive offense** (akin to aiding and abetting), **not a crime on its own**." *Hamdan v. Rumsfeld*, 548 U.S. 557, 611, n.40 (2006) (emphasis added) (citing *Prosecutor v. Tadíc*, Judgment, Case No. IT–94–1–A (ICTY App. Chamber, July 15, 1999)). Because it lacks "universal recognition" in international courts, the theory of joint criminal enterprise has been dismissed, along with conspiracy claims, in ATS

[14] SMUG will undoubtedly point to *Cabello v. Fernandez-Larios*, 402 F.3d 1148 (11th Cir. 2005), where the Eleventh Circuit recognized conspiracy liability under the Alien Tort Statute for a number of violations of international law including crimes against humanity. 402 F.3d at 1159. However, *Cabello* was decided before *Hamdan*. Moreover, the Eleventh Circuit ran afoul of the Supreme Court's instruction in *Sosa*, and looked to domestic rather than international law to determine whether conspiracy liability exists. *Id*. For these reasons, the Second Circuit expressly rejected *Cabello*, agreeing instead with the lower court in *Presbyterian Church of Sudan*, "that *Sosa* required applying international law." *Presbyterian Church of Sudan*, 582 F.3d at 260 n.11 (affirming *Presbyterian Church*, 453 F. Supp. 2d at 665 n.64 ("[T]he Eleventh Circuit erred . . . by drawing on domestic law, and not international law.")). This court should likewise reject *Cabello*, and follow the Supreme Court's clear teaching in *Hamdan* and *Sosa*.

cases. *See e.g.*, *Presbyterian Church*, 582 F.3d at 260 (affirming dismissal of joint criminal enterprise theory along with conspiracy claims because plaintiff failed to establish universal recognition, and, in any event, had failed to establish the requisite *mens rea*); *South African Apartheid*, 617 F. Supp. 2d at 263 (noting "the ICTY recognized Joint Criminal Enterprise as a crime derived from customary international law and comparable to conspiracy, [h]owever, the ICC has repeatedly declined to apply a broad notion of conspiratorial liability under customary international law"). Because it lacks universal recognition and is not clearly defined, this Court should enter summary judgment, for lack of subject matter jurisdiction, on SMUG's "claim" for joint criminal enterprise liability.

E. The United States Constitution Prohibits This Court From Entertaining Any ATS Claim Against Lively Based On A Crime Which Has Not Been Punished By Another Nation Or International Tribunal As An Offense Against The Law Of Nations.

In clarifying the limits on ATS jurisdiction to claims based on specific, universal, and obligatory norms of international law, the *Sosa* Court began with the premise that "federal courts should not recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when [the original ATS] was enacted." 542 U.S. at 731-32. The Court cited for context an early-nineteenth century Supreme Court case, *United States v. Smith*, 18 U.S. 153 (1820), which considered the constitutionality of an early ATS counterpart statute punishing "the crime of piracy, **as defined by the law of nations**." 18 U.S. at 157 (emphasis added).

The constitutional authority for the piracy statute at issue in *Smith* came from Article 1, Section 8, clause 10 (hereinafter, the "Offenses Clause"), providing, "[The Congress shall have Power To] define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." *See Smith*, 18 U.S. at 158. The issue in dispute was whether, under

the Offenses Clause, the piracy statute was a constitutional delegation by Congress of its power to define piracy, by merely referring to "the law of nations" rather than defining the crime itself, essentially leaving the definition to judicial interpretation. *Id.* at 156-58.

The *Smith* Court held that reference to "the law of nations" was constitutionally sufficient, reasoning that "[w]hat the law of nations on this subject is, may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognising and enforcing that law," thus defining this "crime of a settled and determinate nature" with "reasonable certainty." *Id.* at 160-162. "So that, whether we advert to writers on the common law, or the maritime law, or the law of nations, we shall find that they universally treat of piracy as an offence against the law of nations, and that its true definition by that law is robbery upon the sea." *Id.* at 162.

It appears no accident that the *Sosa* Court cited to *Smith*, in that the ATS derives its constitutional authority from the same Offenses Clause as the 1819 statute at issue in *Smith*. *See* Eugene Kontorovich, *Discretion, Delegation, and Defining in the Constitution's Law of Nations Clause*, 106 Nw. U.L. Rev. 1675, 1747-48 (2012).

> In effect, *Sosa* stated that courts cannot define their own offenses under the ATS in the absence of congressional definitions. They can only take those offenses that are predefined in international law. It is thus instructive that in calling for definite norms, *Sosa* specifically cites *Smith*--a case about the constitutional limits of the define power--to illustrate the specificity with which ATS causes of action must be defined in international law. After all, *Smith* said that piracy was uniquely so self-defined that it alone could be punished by the courts without any further definition by Congress. The status and definition of piracy was not just something some scholars and legal sources indicated, but one on which there was universal agreement. Had there been less than that, Congress's delegation of defining authority to the courts may well have been inadequate.
>
> . . . . *Sosa's* standard is independent of presumed legislative intent: it is mandated by the Offenses Clause and nondelegation concepts. **The constitutional underpinnings of *Sosa's* rule mean that**

> **refusing to recognize fuzzy, emerging, or not universally accepted offenses is more than an implementation of congressional intent or a prudent policy. Rather, *Sosa's* caution may be the kind of caution courts must exercise when there is a danger of construing a statute in a way that would raise constitutional concerns.**

Id. (emphasis added).

Though the Offenses Clause is not expressly discussed in *Sosa*, the *Sosa* prohibition against courts' defining their own offenses under the ATS is not only dictated by the text and history of the ATS itself, but in the first instance by the Offenses Clause. *Id.* at 1748. Thus, the rule announced in *Sosa* "was necessary to avoid serious constitutional difficulties." *Id.* The constitutional implications for ATS cases are significant:

> These suits have invoked an increasingly broad set of international norms of increasing nonobviousness and indefiniteness. **When the suitability of a cause of action under the *Sosa* standard is questionable, doubts must be resolved in favor of caution.** This is because the question of definiteness implicates not just the Court's recent interpretation of the ATS, but also the limits on federal legislative authority and the separation of powers.
>
> . . . . [T]he Court has given a template for analyzing these issues, most recently in *Hamdan*. To satisfy the Offenses Clause, an offense defined solely by the courts would have to meet the same kind of searching scrutiny given the conspiracy charge in *Hamdan*. **It would have to be shown, to begin with, that the same conduct has in fact been punished by other nations or international tribunals as an offense against the law of nations.**

Id. at 1749 (emphasis added).

No nation or international tribunal has punished, as an offense against the law of nations, the same purely speech conduct, with no factual, temporal, or causal connection to any cognizable harm, as is attributable to Lively on the record before the Court. Thus, any new international law norm defined by the Court to criminalize Lively's conduct would not only violate the jurisdictional

grant of the ATS, but would also violate the Offenses Clause of the Constitution. Accordingly, Lively is entitled to judgment as a matter of law on SMUG's ATS claims.

V. SMUG HAS NO EVIDENCE THAT LIVELY ENGAGED IN ANY UNPROTECTED SPEECH OR CONDUCT, AND SMUG'S CLAIMS ARE FORECLOSED BY THE FIRST AMENDMENT.

SMUG's lawsuit is (and always has been) a brazen and direct assault on Lively's First Amendment rights. SMUG's goal has been to punish Lively for his speech and remove his voice from the public sphere, because it abhors Lively's religiously-motivated views on marriage, family, and homosexuality. To avoid its obvious head-on collision with the First Amendment, SMUG manufactured allegations of a hate-crime ring and far-reaching "conspiracy" to persecute LGBTI persons in Uganda, which was allegedly orchestrated and directed by Lively. But, at this stage, SMUG can no longer transmogrify Lively's protected speech into unprotected "conduct" through vacant and hollow unverified allegations of a purported criminal mastermind allegedly manipulating the sovereign Parliament and will of an entire nation to persecute LGBTI Ugandans.

In the MTD Order, this Court envisioned that "this issue [of whether Lively's expression is protected by the First Amendment] will almost certainly be front and center at the summary judgment stage of this case." (MTD Order at 57); *see also id.* at 64 (explaining that courts have regularly "tackle[d] a First Amendment defense with a more complete evidentiary record at the summary judgment stage"). Now center stage, SMUG's claims must rest upon evidence of unprotected speech or conduct by Lively—yet discovery has confirmed that SMUG's claims against Lively are simply unvarnished criticism of his protected speech, and nothing more. Therefore, SMUG cannot avoid summary judgment on First Amendment grounds because it has no facts showing that Lively ever engaged in any unprotected speech or conduct, let alone the alleged "advocacy of imminent criminal conduct" and "management of actual crimes," for which this Court denied Lively's motion to dismiss. (MTD Order at 62.) SMUG has not a shred of

evidence that Lively engaged in any unprotected speech or conduct, and, therefore, its claims against Lively are foreclosed by the First Amendment.

A. A U.S. Citizen's Fundamental First Amendment Right To Free Speech Applies Anywhere In The World And Trumps "International Law."

As a U.S. citizen, Lively has a fundamental right to engage in core political speech, not only in the United States but throughout the entire world. His First Amendment rights protected by the U.S. Constitution trump SMUG's makeshift contortions of purported "international" or foreign "law." Well over one century ago, the Supreme Court held that "[t]he guaranties [the Constitution] affords . . . apply only to citizens and others within the United States, **or who are brought there for trial for alleged offenses committed elsewhere**." *Ross v. McIntyre*, 140 U.S. 453, 464 (1891) (emphasis added) (citing *Cook v. U. S.*, 138 U. S. 157, 181 (1891)). Subsequently, in *Reid v. Covert*, 354 U.S. 1 (1957), the Supreme Court reaffirmed this principle in the strongest possible terms, holding that the Bill of Rights applies to protect U.S. citizens even in a foreign jurisdiction:

> [W]e reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights. The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution. **When the Government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land**. This is not a novel concept. To the contrary, **it is as old as government**. It was recognized long before Paul successfully invoked his right as a Roman citizen to be tried in strict accordance with Roman law.

Id. at 5-6 (emphasis added); *see also Haig v. Agee*, 453 U.S. 280, 308 (1981) ("[a]ssuming, *arguendo* that First Amendment protections reach beyond our national boundaries . . ."); *Drummond Co., Inc. v. Collingsworth*, Nos. 13-80169, 13-80171, 2013 WL 6074157, at *14 (N.D. Cal. Nov. 18, 2013) (finding that U.S. citizen defendant "enjoyed First Amendment rights

abroad"); *Bullfrog Films, Inc. v. Wick*, 646 F. Supp. 492, 502 (C.D. Cal. 1986) ("[T]here can be no question that, in the absence of some overriding governmental interest such as national security, **the First Amendment protects communications with foreign audiences to the same extent as communications within our borders**."), *aff'd*, 847 F.2d 502 (9th Cir. 1988) (emphasis added).[15].

This bedrock principle is fully recognized by the Restatement (Third) of Foreign Relations Law § 721 (1987), which states that, "[t]he Constitution governs the exercise of authority by the United States government over United States citizens outside United States territory, for example on the high seas, and even on foreign soil." *Id*. at cmt. b (emphasis added). More specifically, the Restatement recognizes that:

> The **freedoms of speech**, press, religion, and assembly, and the right not to be subject to an establishment of religion, **are protected against infringement in the exercise of foreign relations power** as in domestic affairs.

Id. at cmt. d (emphasis added). Accordingly, it is beyond cavil that Lively did not check his First Amendment rights at the airport before departing for Uganda, either when he visited in March and June of 2002, or again seven years later, in March 2009. Since this Court could not punish Lively for his core political speech if (and to the extent) it had occurred (or did occur) in the United States, the Court cannot punish that same speech and expressive activity because it took place in Uganda.[16]

An equally firm and non-negotiable principle is that Lively's First Amendment rights trump anything contrary in the amorphous and shifting world of "international law," especially as defined by SMUG rather than the actual governing legal standards established by the Supreme

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[15] SMUG conceded the cross-border application of the First Amendment. (*See* SMUG Opp. MTD, dkt. 38, at 39 ("It is true that the First Amendment generally traveled with Lively to Uganda…")).

[16] In fact, the extraterritorial nature of Lively's speech in Uganda presents a separate and insurmountable obstacle, because it deprives this Court of subject-matter jurisdiction, warranting summary judgment in Lively's favor. *See* Section II, *supra*.

Court. "**No agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution**." *Reid*, 354 U.S. at 16 (emphasis added) (emphasis added).

> It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights--let alone **alien to our entire constitutional history and tradition--to … permit[] the United States to exercise power under an international agreement without observing constitutional prohibitions**.

Id. at 17 (emphasis added) ("This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty"). The Restatement also recognizes this principle:

> A rule of **international law** or a provision of an international agreement of the United States **will not be given effect as law in the United States if it is inconsistent with the United States Constitution**.

Restatement (Third) of Foreign Relations Law § 115(3) (1987) (emphasis added). Thus, whatever the First Congress intended when it enacted the Alien Tort Statute in 1789, it could not have meant to render the First Amendment subservient to the dictates of "international law," because any "**law repugnant to the constitution is void**." *Marbury v. Madison*, 5 U.S. 137, 180 (1803) (emphasis added). "**[T]he [Alien Tort Statute] is not a blanket delegation of lawmaking to the democratically unaccountable international community of custom creators**," *Flomo v. Firestone Nat. Rubber Co., LLC*, 643 F.3d 1013, 1016 (7th Cir. 2011) (emphasis added).

Support for this conclusion can also be found in the unwillingness of U.S. Courts to give effect to foreign judgments which implicate fundamental constitutional rights, including First Amendment free speech rights, or which invite a U.S. Court to apply foreign law contrary to the U.S. Constitution. *See, e.g.*, *Matusevitch v. Telnikoff*, 877 F. Supp. 1, 3-4 (D.D.C. 1995) (refusing to recognize and enforce a foreign judgment because the underlying cause of action is repugnant to U.S. public policy since it would "would deprive the plaintiff of his constitutional rights" under

the First Amendment); *Abdullah v. Sheridan Square Press, Inc.*, No. 93-2515, 1994 WL 419847, at *1 (S.D.N.Y. May 4, 1994) (dismissing British libel claim, holding that "establishment of a claim under the British law of defamation would be antithetical to the First Amendment protection accorded the defendants"); *Bachchan v. India Abroad Publ'ns, Inc.*, 585 N.Y.S.2d 661, 665 (Sup. Ct. 1992) (stating that the First Amendment "would be seriously jeopardized by entry of [a] foreign libel judgment granted pursuant to standards deemed appropriate in England but considered antithetical to the protections afforded [to] the press by the U.S. Constitution"). "Speech similar to the plaintiff's statements have received protection under the First Amendment to the Constitution and are thereby **unactionable in U.S. courts**." *Matusevitch*, 877 F. Supp. at 4 (emphasis added).[17]

Accordingly, the supremacy of the U.S. Constitution, coupled with its portability for U.S. citizens in foreign jurisdictions, mean that SMUG cannot hold Lively liable in this Court for any speech in Uganda which allegedly violated "international law" or Massachusetts state law, if that speech is constitutionally protected in the United States. Because Lively's core political speech is fully protected in the United States, SMUG's claims based upon his speech or expressive activity are entirely foreclosed by the First Amendment and require summary judgment in favor of Lively on all of SMUG's claims.

[17] These concerns have also been statutorily embodied in the Securing the Protection of our Enduring and Established Constitutional Heritage Act (SPEECH Act), enacted in 2010, in which Congress detailed "First Amendment considerations" that require domestic courts not to recognize and enforce certain foreign defamation judgments. *See* 28 U.S.C. § 4102; *see also Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 496 (5th Cir. 2013) (holding under SPEECH Act that Nova Scotian judgment was "unrecognizable and unenforceable" since Canadian law failed to offer "as much free speech protection as the United States Constitution").

B. Lively's Alleged Conduct Is Core Political Speech Protected By The First Amendment.

At bottom, SMUG's complaint – and Lively's alleged "crime" against humanity – is that Lively **spoke** and **wrote** about homosexuality in a way SMUG finds deeply offensive. In no small measure, SMUG seeks to turn First Amendment jurisprudence entirely on its head and arm United States District Courts through the ATS with the power to censor, restrain, suppress, and silence speech that offends SMUG's sensibilities. On the undisputed evidentiary record in this case, the First Amendment – if it means anything – requires dismissal of SMUG's claims.

The Supreme Court has repeatedly held that "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 131 S.Ct. 1207, 1215 (2011) (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)). The Court has also indicated that in public debate "citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment." *Boos v. Barry*, 485 U.S. 312, 322 (1988) (quoting *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988)) (internal quotes omitted). As the Court stated in *FCC v. Pacifica Found.*, 438 U.S. 726 (1978):

> [T]he fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, **if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection**. For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas.

Id. at 745-46 (emphasis added); *see also Hustler Magazine*, 485 U.S. at 56 ("It is firmly settled that . . . the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.") (quoting *Street v. New York*, 394 U.S. 576, 592 (1969)).

"The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Snyder*, 131 S.Ct. at 1215 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). "That is because 'speech concerning public affairs is more than self-expression; it is the essence of self-government.'" *Id*. at 1215 (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964)); *see also Hustler Magazine*, 485 U.S. at 50-51 ("[T]he freedom to speak one's mind is not only an aspect of individual liberty—and thus a good unto itself—but also is essential to the common quest for truth and the vitality of society as a whole.") (quoting *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 503-04 (1984)). The Supreme Court has explained that protecting speech is not a case-by-case cost-benefit analysis:

> The First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relevant social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. **Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it**.

U.S. v. Stevens, 559 U.S. 460, 470 (2010) (emphasis added). "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 579 (1995).

Even "threats of vilification or social ostracism," are "constitutionally protected and beyond the reach of a damages award." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926 (1982). "**Speech is powerful**. **It can stir people to action** … and—as it did here—inflict great pain. [But] we cannot react to that pain **by punishing the speaker**." *Snyder*, 131 S.Ct. at 1220 (emphasis added); *see also Hustler Magazine*, 485 U.S. at 55 (acknowledging the Court's

"longstanding refusal to [punish speech] because the speech in question may have an adverse emotional impact on the audience"); *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 243 (6th Cir. 2015) (en banc), *cert denied*, 136 S.Ct. 2013 (2016) ("In fact, it is the minority view, including expressive behavior that is deemed distasteful and highly offensive to the vast majority of people, that most often needs protection under the First Amendment."). Nor may speech be regulated based upon "listeners' reaction" to it. *Forysth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 134 (1992). Thus, the strength of the First Amendment is in how wide its net is cast. Any other speech rule "would effectively empower a majority to silence dissidents simply as a matter of personal predilections," and open the door for government to "regulate" offensive speech as "a convenient guise for banning the expression of unpopular views." *Cohen v. California*, 403 U.S. 15, 21, 26 (1971).

In *Snyder*, the Supreme Court afforded immunity from private suit to a religious group that opposed homosexuality in the military, and that held highly offensive signs and chanted equally offensive slurs outside a military funeral, including: "Fag Troops," "Semper Fi Fags," "God Hates Fags," "Fags Doom Nations," "Not Blessed Just Cursed," "You're Going to Hell," and "God Hates You." 131 S.Ct. at 1216-17. The Supreme Court agreed that this message was "particularly hurtful" and caused "incalculable grief." *Id*. at 1217-18. Nevertheless, the Court concluded that the speech was protected by the First Amendment and not actionable by the aggrieved parties in a United States court, because it was public discourse on a matter of public concern. *Id*. at 1219. "**If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable**." *Id*. (quoting *Texas v. Johnson*, 491 U.S. 397, 414 (1989)) (emphasis added). "Indeed, '**the point of all speech protection** . . . is to shield just those choices of content that in

someone's eyes are misguided, or even hurtful.'" *Id*. (emphasis added) (quoting *Hurley*, 515 U.S. at 574).

Clearly, SMUG is deeply offended by Lively's speech and opinions, and it wants to quash his allegedly "anti-gay" speech about marriage, family, and homosexuality (or, for that matter, anyone who shares Lively's views on these matters). This, however, does not give SMUG a cause of action for tort liability against a U.S. citizen in a U.S. court. "As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate." *Snyder*, 131 S.Ct. at 1220. "**That choice requires that we shield [Lively] from tort liability**." *Id*. (emphasis added).

In its Amended Complaint, SMUG alleged that Lively committed "crimes against humanity" in violation of "international law," because he: (1) shared his purported **opinion** that all who engage in homosexual conduct are "evil," "rapists and murders," "child abusers," have a "predilection for child sexual violence," and possess the "genocidal tendencies of the Nazis and Rwandan conspirators"; and (2) advocated, lobbied and otherwise tried to influence members of the Ugandan government (and other private citizens) that they should propose and pursue laws that "criminalize advocacy undertaken by [homosexual] rights advocates." (*See* Am. Compl., dkt. 27, ¶¶ 65-93). In the MTD Order, this Court found that SMUG's Amended Complaint alleged that Lively "vilified the targeted community to inflame public hatred against it" and "advised" citizens how to pursue, and members of the Ugandan government how to enact, legislation restricting homosexual rights. (MTD Order at 34.) The undisputed evidentiary record demonstrates that SMUG has no evidence to support these allegations. In the first instance, the record shows that SMUG's claims about what Lively said are highly distorted, or at the very least, are not supported

by any actual evidence. Moreover, all of Lively's speech that is contained in the actual record in this case constitutes protected First Amendment expression that would **not** be unlawful in the U.S.

As noted above, the undisputed record shows that Lively's actual beliefs and speech about marriage, family, and homosexuality do not comport with the manufactured and unfounded allegations in SMUG's Amended Complaint. Lively's views and beliefs are summarized without any dispute in his affidavit. (MF ¶¶ 2-9). Among other things, Lively believes traditional man-woman marriage is the "best and most optimal societal arrangement for the raising of children" and he encourages the continuation of the Judeo-Christian, marriage-based civilization as God designed and intended it benefits, while opposing agendas that threaten it. (MF ¶¶ 5-6). Lively believes that homosexuality is a sin, but, in and of itself, no greater sin than any other sin, including his own. (MF ¶¶ 2, 5). He believes he is compelled by Jesus Christ to love as individuals all persons who identify as homosexual or commit the sin of homosexuality. (MF ¶¶ 2, 5). As such, Lively has always been, and remains, firmly opposed to any violence against, or ridicule, ostracism or vilification of any person, including any person who identifies as homosexual, and he does not hate anyone. (MF ¶¶ 6, 67-68). He abhors the idea of forcibly "outing" persons who want to keep their consensual, adult sexual activities private and discrete. (MF ¶ 5). Lively has always been, and remains, firmly opposed to any attempt to criminalize or punish any form of "status" or sexual "identity" or "orientation," separate and apart from sexual conduct. (MF ¶¶ 8, 118, 129). While Lively is in favor or prohibiting promotion of homosexual conduct to children and he opposes the so-called "gay agenda," he would not prohibit homosexual persons or organizations supporting them from using legal means and the democratic process to advocate for changes to laws they oppose, and he firmly believes that the people involved in homosexual conduct are to be treated with dignity and respect. (MF ¶¶ 9, 72). SMUG has no evidence to refute these undisputed and

religiously-motivated beliefs, and no amount of scorn for them removes them from First Amendment protection, not only when they are deeply held, but especially when they are shared in the marketplace of ideas.

As for Lively's trips to Uganda in March and June 2002, SMUG has no knowledge of what Lively actually said during those visits. (MF ¶¶ 15-19). In fact, Lively spoke to different groups and media outlets about pornography, Christian leadership, abstinence, God's design for marriage and family, and holiness and Christian living. (MF ¶¶ 11-13). In a few of those appearances, homosexuality was but one topic discussed among many within the broader context of preserving a Judeo-Christian marriage- and family-based culture, but Lively never discussed or advocated about the concepts of "promotion of homosexuality" or "recruitment" of youth into homosexuality, changing Ugandan laws about homosexual conduct, or strategies on the criminalization of promotion of homosexuality. (MF ¶¶ 14, 20). Following his second visit to Uganda in 2002, Lively did not return to Uganda until March 2009, and SMUG has no evidence of anything Lively did or said in Uganda until he returned to the country in March 2009. (MF ¶ 21).

Lively returned to Uganda to participate in a March 2009 conference. (MF ¶ 47). The undisputed purpose for this conference when he agreed to attend was to provide correct and truthful information on homosexuality. (MF ¶¶ 48-49). Before arriving in Uganda, there was no mention of enacting or amending Ugandan laws regarding homosexuality or discussing governmental strategies or policies regarding homosexuality. (MF ¶¶ 49-51, 57). When Lively arrived, he was informed that some members of the Ugandan Parliament were considering enacting a new law regarding homosexuality and he attended and spoke at a meeting where less than ten out of Uganda's 385 members of the Parliament were in attendance. (MF ¶¶ 51, 53, 56-57). In this meeting, and elsewhere, Lively repeatedly shared his views that any criminalization of homosexual

conduct should focus on rehabilitation and not punishment, and he urged Ugandans, including members of the Parliament, to liberalize Ugandan law to allow voluntary counseling instead of incarceration for those convicted of homosexual conduct. (MF ¶¶ 58-60, 81, 85). When speaking to the gathering at Parliament, Lively did not advocate for tougher criminal punishments for homosexual conduct, and he did not advocate for the death penalty or life imprisonment for any form of homosexual conduct. (MF ¶¶ 61-62). Otherwise, Lively provided a series of three lectures at a conference where about thirty to forty people were in attendance, **including persons who disagreed with Lively's views about marriage, family, and homosexuality, who were allowed to state their opposing viewpoints and who thanked Lively for the exchange of ideas**. (MF ¶¶ 64-71). Lively's lectures in March 2009, as well as other speaking engagements he had with several church, university, and school assemblies, comported with his religiously-motivated views set forth above. (MF ¶¶ 2-9, 67, 72).

Lively's speech about marriage, family, and homosexuality is afforded the highest protection under the First Amendment, because it is core political speech on public issues and matters of public significance. Furthermore, SMUG has no evidence of any speech amounting to incitement, or integral to or aiding and abetting any criminal conduct, or constituting a conspiratorial agreement to persecute. (*See* Sections V.C & V.D, *infra*.) Thus, Lively's speech cannot be the basis for SMUG's claims, no matter how much it offends SMUG. The First Amendment has withstood far more (and far worse), because it must.

Finally, a refusal to protect Lively's expression under the First Amendment based upon the undisputed record in this case would carry the astounding implication that Americans engaged in the public debate over sexual rights – for example by "conspiring" to pass constitutional amendments denying marriage rights to homosexual couples, by "plotting" to defeat local

ordinances requiring cross-gender bathroom use, by "scheming" to defeat the passage of the Employer Non-Discrimination Act, or by vigorously arguing these issues in the courts – are somehow perpetrating or "aiding and abetting" "widespread and systematic attacks against a civilian population" and therefore potentially guilty of the "crime against humanity of persecution," because they have engaged in the "intentional and severe deprivation of fundamental rights contrary to international law." To question the wisdom of such advocates, and to oppose them in the political process is one thing, but to open the door for declaring them *hostis humanis generis*, is quite another. Countless Americans involved in intense advocacy over homosexual rights are not enemies of the state or of mankind with no First Amendment rights—and certainly no less First Amendment rights than the KKK, *see Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); Neo Nazis, *see Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 43-44 (1977); Westboro Baptists, *see Snyder*, 131 S.Ct. at 1220; lewd magazine publishers, *see Hustler Magazine*, 485 U.S. at 50-51, 56; "dial-a-porn" pleasure seekers, *see Sable Comm'cns of Cal., Inc. v. v. FCC*, 492 U.S. 115, 126, 130 (1989); or animal crush video enthusiasts, *Stevens*, 559 U.S. at 469-72.

While speech which is an "integral part" of a crime may not be protected under the First Amendment, there is no question that "vilifying a targeted group" and engaging the legal and political process over rights afforded that group is neither a "crime" nor criminally "aiding and abetting" a crime. Such conduct, even if considered utterly reprobate and vile by some (if not "doubtless gross and repugnant in the eyes of most," *Hustler Magazine*, 485 U.S. at 50), is not unlawful in the United States and thus cannot provide a cause of action under the ATS or any state law. Thus, allowing SMUG to pursue tort liability against Lively based upon his speech will violate not only his own First Amendment rights and protections but also substantially erode this cherished

freedom for all U.S. citizens.[18] Accordingly, Lively's speech is core political speech, and SMUG's claims based upon Lively's protected speech and expressive activity must fail.

C. Neither The Criminal Conduct Nor Incitement Exceptions To The First Amendment Apply To Lively's Speech.

To avoid dismissal of its claims on First Amendment grounds at the pleading stage, SMUG claimed that it sought "to challenge [Lively's] **conduct** through his involvement in a conspiracy to severely deprive people of their fundamental rights," and "not … his anti-gay speech or writings." (Am. Compl., dkt. 27, ¶ 11 (emphasis added)). However, as discovery has shown, SMUG has no evidence of any conspiratorial "conduct," and is left to complain only about Lively's **speech**. "Just as putting a 'Horse' sign around a cow's neck does not make a bovine equine," *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 224 (3d Cir. 2003), so labeling speech as "conduct" or "conspiracy" does not render that speech actionable on this undisputed evidentiary record. *See NAACP v. Button*, 371 U.S. 415, 429 (1963) ("a State cannot foreclose the exercise of constitutional rights by mere labels").[19] Instead, SMUG must show how Lively's speech falls outside the First Amendment's protection. As detailed below, SMUG cannot make this showing to defeat summary judgment.

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[18] SMUG has admitted that it is indeed attempting to criminalize Lively's expressive activity, even if, and to the extent, it occurred in the United States. (*See, e.g.*, Pls.' Opp. To Lively's Mot. to Amend MTD Order, dkt. 69 at 21, n.12). SMUG has no limiting principle to resist this conclusion if Lively's speech rights are not protected here. Rather than ask this Court to "punish the speaker," SMUG should sue actual criminals who commit or incite imminent violence against its members in Ugandan courts, **just as it has successfully done on repeated occasions to date**. (MF ¶¶ 159-161).

[19] Even if Lively's writings, books, speeches, presentations, and other verbal or written statements are treated as "conduct"—a conclusion that ignores their nature and substance and outright defies logic—his activities and communications nonetheless represent protected expression under the First Amendment. *See Bartnicki v. Vopper*, 200 F.3d 109, 120 (3d Cir. 1999) ("[A]lthough it may be possible to find some kernel of conduct in almost every act of expression, such conduct does not take the defendants' speech activities outside the protection of the First Amendment."), *aff'd*, 532 U.S. 514 (2001).

For speech to fall outside the First Amendment's protection, it must satisfy one of the few "historic and traditional categories [of expression] long familiar to the bar," including: "advocacy intended, and likely, to incite imminent lawless action"; obscenity; defamation; "speech integral to criminal conduct"; "fighting words"; child pornography; fraud; true threats; and "speech presenting some grave and imminent threat the government has the power to prevent." *U.S. v. Alvarez,* 132 S.Ct. 2537, 2544 (2012) (internal citations and quotations omitted); *see also Stevens,* 559 U.S. at 468.

In this matter, the Court permitted this case to proceed beyond the pleadings because it found SMUG's allegations might take Lively's speech outside the protection of the First Amendment as incitement or "speech integral to criminal conduct." (MTD Order at 59-62.) Pointing to SMUG's Amended Complaint, this Court found "sufficient allegations to support a claim for activity outside the protection of the First Amendment" based upon "sufficient allegations" of "conduct" that "has gone far beyond mere expression into the realm" of "advocacy of imminent criminal conduct" (or "advocacy of a crime against humanity") and "management of actual crimes—repression of free expression through intimidation, false arrests, assaults, and criminalization of peaceful activity and even the status of being gay or lesbian." (MTD Order at 61-62.)[20]

[20] In an earlier part of the MTD Order, this Court described SMUG's allegations of Lively's role as follows: "Essentially, Defendant's role is alleged to be analogous to that of an upper-level manager or leader of a criminal enterprise. He participated in formulating the enterprise's policies and strategies. He advised other participants on what actions might be most effective in achieving the enterprise's goals, such as criminalizing any expressions of support of the LGBTI community and intimidating its members through threats and violence. He generated and distributed propaganda that falsely vilified the targeted community to inflame public hatred against it. In particular, Plaintiff has set out plausibly that Defendant worked with associates within Uganda to coordinate, implement, and legitimate 'strategies to dehumanize, demonize, silence, and further criminalize the [Ugandan] LGBTI community.' In both 2002 and 2009, as part of this alleged campaign, Defendant met with Ugandan governmental leaders. Defendant's intentional activities,

SMUG cannot defeat summary judgment on its claims because it has no evidence to support these wild allegations. As detailed below, the undisputed record in this case shows that neither the "criminal conduct" nor the "incitement" exceptions apply. Lively never authorized, directed, ratified, managed or even assisted any tortious or criminal activity against LGBTI Ugandans. He also never gave specific instructions to threaten, intimidate, or commit violent acts against them, or incite any other form of imminent lawless action against LGBTI Ugandans. He simply made three visits to Uganda (spaced out by nearly 7 years), gave speeches and presentations based upon his writings, conducted some interviews, and, upon his return to the United States, later urged Ugandans to moderate their legislative proposals and existing law—views which were deemed too liberal by Ugandans and outright rejected by the Ugandan government.

1. Lively's Speech Is Not Integral To Any Criminal Conduct.

The undisputed evidentiary record in this case demonstrates that Lively's speech and expressive activity – both in Uganda and in the United States – was neither integral to any criminal conduct, nor aiding and abetting any such conduct. In *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), the Supreme Court recognized an exception to the First Amendment for speech that is integral to criminal conduct. In *Giboney*, members of a union were enjoined by a state antitrade restraint statute from picketing outside a company for the purpose of persuading the company to discontinue its sales to non-union buyers. 336 U.S. at 492-94. The Court found that the union's picketing was not protected by the First Amendment because it was "doing more than

according to the Amended Complaint, succeeded in intimidating, oppressing, and victimizing the LGBTI community. Indeed, as noted, according to the Amended Complaint Defendant acknowledged that his efforts made him instrumental in detonating 'a nuclear bomb against the 'gay' agenda in Uganda. **Of course, all these allegations will need to be proved** at trial to entitle Plaintiff to a verdict, **and they may not be**." (MTD Order at 34-35 (internal citations omitted; emphasis added).)

exercising a right of free speech or press." 336 U.S. at 503. In language specifically cited by this Court in its MTD Order, the Supreme Court rejected the union workers' free speech claim, noting that it "rarely has been suggested that the constitutional freedom for speech and press extends to immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute" and concluding that "it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Giboney*, 336 U.S. at 408, 502 (citations omitted). Ever since, "speech integral to criminal conduct" has been recognized as a well-established category of unprotected speech, *see Stevens*, 559 U.S. at 468, but the scope, breadth and meaning of this exception has also been the subject of much controversy and confusion. *See, e.g.*, Eugene Volokh, *Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, "Situation-Altering Utterances," and the Unchartered Zones*, 90 Cornell L. Rev. 1277, 1314-22 (2005) (identifying at least eight different interpretations of *Giboney*'s "course of conduct" language).

Importantly, whatever the outer bounds of this exception could be while still preserving the bedrock First Amendment principles discussed at length above, the *Giboney* exception requires at least three key elements, none of which has been (nor can be) shown here. First, *Giboney* involved a "**valid criminal statute**" that was violated by the speaker. *Giboney*, 336 U.S. at 495-98 (emphasis added). This case does not involve the violation of any lawfully enacted criminal statute, at the state or federal level. In this international context, a corollary statute would be a federal criminal statute enacted by Congress pursuant to its constitutional legislative power to "define and punish . . . Offenses against the Law of Nations." U.S. Const., art. I, § 8, Cl. 10. No such statute is at issue here. Moreover, no Court has ever held that the *Giboney* exception applies

to judge-made federal common law under the ATS on what constitutes a violation of the law of nations. Any such holding would represent not only an expansion of the ATS – which the Supreme Court has soundly rejected in *Sosa* and *Kiobel* – but one that puts it on a collision course with the First Amendment.

Second, the speech at issue in *Giboney* lost First Amendment protection because its "**sole immediate object**" and "**sole immediate purpose**" was to facilitate the ongoing commission of a criminal offense—in that case, the felony violation of an antitrade restraint statute by forcing a company to enter into an unlawful business arrangement. *Giboney*, 336 U.S. at 498, 501 (emphasis added). In stark contrast, there is no evidence that Lively had any criminal purpose for his speech, let alone one that could be described as his "sole immediate object." Although this heightened intent showing under *Giboney* requires something comparable to specific intent, SMUG has no evidence to establish even a lesser intent requirement, such as knowledge or foreseeability. Certainly, there is no evidence in the record that Lively's **only** purpose—or "sole immediate object"—was to facilitate, manage, direct, and orchestrate the commission of a crime against humanity. Instead, all of the evidence in this case demonstrates that Lively only intended to share his views on marriage, family, and homosexuality. (MF ¶¶ 2-9, 48-52, 67). He shared those views openly and publicly, and **he respectfully engaged with others that disagreed with him, who ultimately thanked him for sharing his views**. (MF ¶¶ 64-71). When Lively travelled to Uganda in March and June 2002 and in March 2009, and at all times before, during, in between, and after such travels, Lively never had any intention to effect, incite, or facilitate: the persecution of any LGBTI or other person in Uganda; the criminalization or punishment of any form of sexual "identity" or "orientation" or "status" or existence of any LGBTI or other person in Uganda; or violence against, or hatred, ridicule, ostracism, or vilification of, any LGBTI person in Uganda.

(MF ¶¶ 103, 118, 129). Moreover, Lively specifically objected to Ugandan attempts to enact laws that were, in Lively's views, abhorrently harsh. (MF ¶¶ 58-61, 81-85). Therefore, nothing in the record provides any evidence that Lively's "sole" and "immediate" objective was violence to or abuse of LGBTI Ugandans.

Third, the union and its members who picketed in *Giboney* had "**adopted a plan**" and made "**agreements**" that were "designed" to violate the antitrade restraint law with "all" of their activities constituting a "single and integrated course of conduct." *Giboney*, 336 U.S. at 492, 502. In that way, the speech implemented the agreed-upon criminal purpose. In contrast, SMUG has absolutely no evidence that Lively entered into any agreement for any purpose, let alone an unlawful one, with a person responsible for committing any one of the single acts of persecution. In fact, Lively never "offer[ed] to engage in [any] illegal transactions," *see U.S. v. Williams*, 553 U.S. 285, 297 (2008), nor enter into any "agreements and conspiracies deemed injurious to society." *See Giboney*, 336 U.S. at 502. The record is indisputably clear: Lively neither "designed" nor "adopted" a plan to commit or aid the commission of a crime against humanity. Thus, SMUG cannot establish any of these three key elements present in *Giboney* to remove the speech at issue in that case from First Amendment protection.

Whether under *Giboney* or any other case relying upon it, SMUG cannot establish that Lively's speech is unprotected because it is "integral to criminal conduct." SMUG has utterly failed to put forward any proof supporting its allegations that Lively engaged in "management of actual crimes" (MTD Order at 62), or that Lively is the leader or member of a "conspiracy to deprive persons of their fundamental rights on the basis of their sexual orientation and gender

identity". (SMUG Opp. MTD, dkt. 38 at 20; *see id.* at 21 (referring to "his conspiracy")).[21] SMUG has no evidence showing that Lively's alleged speech and conduct is somehow "criminal activity" or conduct not protected by the First Amendment. Critically, SMUG has no evidence that Lively contributed any actual conduct to the alleged persecutory acts. (MF ¶¶ 102-117, 130-148). SMUG also has no evidence that Lively engaged in his expression with any criminal purpose or design. (MF ¶¶ 2-14, 47-52, 67-68, 103, 118, 129). SMUG also has no evidence that Lively entered into any agreement with anyone to commit any crimes against humanity. (MF ¶ 118, 130-131).

For any and all of the alleged persecutory acts, SMUG's witnesses testified repeatedly and unambiguously that they and SMUG "don't know" of "**any** connection" whatever between Lively and the fourteen persecutory incidents and their alleged perpetrators. (MF ¶¶ 102, 104-117). SMUG's witnesses consistently admitted that SMUG has absolutely no knowledge of any "communications," let alone "agreements," between Lively and the alleged perpetrators (or even Ugandan leaders for that matter); that SMUG has absolutely no knowledge of "**any assistance at all**" provided by Lively to the alleged perpetrators; and that SMUG has absolutely no knowledge of "any facts that would show that Scott Lively was responsible" for any of the fourteen incidents of alleged persecution at issue in this case. (MF ¶¶ 102, 104-117). Lively meanwhile expressly

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[21] The "conspiracy" alleged by SMUG in its Amended Complaint is that (1) Lively saturated the public discourse on homosexuality in Uganda with his opinions about homosexuality and homosexuals in a manner that offended SMUG, and (2) Lively then worked with private Ugandan citizens to lobby and influence two members of the Ugandan government to introduce legislation which allegedly "would render [SMUG's] work and mere existence illegal." (Am. Compl., dkt. 27, ¶¶ 65-93). Aside from the undisputed facts that (i) the legislation in question was only enacted nearly five years after Lively's last visit, and was promptly invalidated by Ugandan courts before anyone was punished under it (MF ¶¶ 88, 94-95); (ii) Lively had no role in preparing its initial draft (MF ¶¶ 75-76, 79-80); (iii) Lively stridently and consistently opposed the draconian criminal measures of the bill (MF ¶¶ 81, 85); and (iv) the Ugandans specifically rejected Lively's objections and concerns (MF ¶¶ 82-84, 86-93), Lively has a protected right to petition government to enact legislation, regardless of whether SMUG likes his proposals or even his motives. *See* Section V.E, *infra*.

disclaims any knowledge of, provision of support, assistance for, or other participation whatsoever in, whether directly or indirectly, any of the alleged persecutory acts other than the downward revision of the AHB, which is addressed below.[22] Accordingly, there is no direct or indirect connection between Lively and any of the alleged acts of persecution.

SMUG further claimed in its Amended Complaint that Lively worked with his Ugandan co-conspirators "on a campaign to systematically persecute LGBTI individuals and deny them fundamental human rights." (Am. Compl., dkt. 27, ¶ 94). But the only activities of this alleged "campaign" that SMUG could identify in discovery are First Amendment-protected activities: (i) writing and delivering petitions to the Ugandan Parliament; (ii) holding rallies and delivering sermons riling Ugandans against homosexuality; (iii) taunting and humiliating LGBTI individuals in public spaces; and (iv) using the media to continue to call the public's attention to the promotion of homosexuality. (MF ¶¶ 119-120). Not only that, but, critically, SMUG has no knowledge of any participation by Lively in any of these four activities. (MF ¶¶ 121-124).

Furthermore, SMUG's Executive Director and Board Chairman testified that they have no knowledge of any unlawful agreement that Lively entered into with anyone to deprive persons of fundamental rights on the basis of their sexual orientation and gender identity, and that no one at SMUG has that knowledge. (MF ¶¶ 125-126). Moreover, SMUG has no knowledge of any action taken by Lively in the United States to deprive any Ugandan person of fundamental rights based on sexual orientation or gender identity. (MF ¶ 148). Lively has also expressly testified that at no time when he travelled to Uganda in March and June 2002 and in March 2009, and at all times

[22] As discussed herein, Lively provided comments to a draft of the AHB—comments which specifically objected to the most draconian measures of the proposed law, and which were rejected by the Ugandan Parliament as too lenient. (MF ¶¶ 79-93). Thus, it would be unimaginable to hold Lively liable for a law he indisputably opposed.

before, during, in between, and after such travels, did he ever enter into any campaign, agreement, conspiracy or enterprise with Langa, Ssempa, Buturo, or Bahati, or any other person to effect, incite, or facilitate the persecution of any LGBTI or other person in Uganda. (MF ¶¶ 118, 130-131).

SMUG also testified that it has no knowledge of any agreement between Lively and another person to deprive persons of fundamental rights on the basis of their sexual orientation, apart from its baseless and unsubstantiated accusation of Lively's alleged drafting of the 2009 AHB, which SMUG claims to have seen in unverified "media reports" from unidentified sources. (MF ¶¶ 97, 127). However, in fact, SMUG admits that it does not know who wrote the first draft of the 2009 AHB and does not know of any "specific contribution" that Lively made to the AHB. (MF ¶¶ 98-99, 113, 142). Moreover, there is no evidence in the record of any meeting between Lively and David Bahati, the actual drafter of the AHB, ever, and others with actual knowledge of the AHB deny any involvement from Lively in the drafting of it. (MF ¶¶ 73-76, 79-80, 96). Furthermore, when Lively provided comments to a draft of the AHB, his views were deemed too liberal by Ugandans and rejected in their entirety, because Lively was asking them to relax the proposed criminal penalties to levels that were even lower than existing law. (MF ¶¶ 62-63, 82-84, 86-93). Lively did not advocate for tougher laws against homosexual conduct, and certainly did not advocate for the death penalty, or even life imprisonment for any sexual offense. (MF ¶¶ 58-61, 81). In fact, Lively specifically objected to the death penalty and life imprisonment provisions in the AHB, which he found to be "appall[ing]," and he continued to make these same objections (and others) in subsequent years until a later version of the bill, the AHA, was enacted in 2014. (MF ¶¶ 81, 85).

Thus, on this undisputed evidentiary record, SMUG has no evidence of any criminal conduct by Lively to direct, authorize, manage, or aid and abet the commission of any crime against humanity. Nothing. Not one act—whether direct persecution, aiding and abetting persecution, or conspiracy to persecute. Therefore, SMUG has no evidence of Lively doing anything remotely criminal, as part of anything that could be described as a criminal enterprise, let alone an act that would constitute a specific and universally accepted crime against humanity. This total absence of evidence is fatal to SMUG's claims. The utter lack of proof requires summary judgment on SMUG's claims because all of Lively's alleged "conduct" is, at the end of the day, exclusively and only speech, writings and expressive activity protected under the First Amendment. Accordingly, the *Giboney* exception does not apply and Lively's expression is protected by the First Amendment.

2. Lively's Speech Does Not Constitute Incitement.

The undisputed evidentiary record in this case also demonstrates that Lively's speech and expressive activity – both in Uganda and in the United States – does not constitute incitement. Much like its lack of proof of any criminal conduct, SMUG has no evidence showing any incitement to **any** violence, let alone **imminent** violence, by Lively that would suffice to pierce his First Amendment privilege. Indeed, SMUG has utterly failed to put forward any proof supporting its allegations that Lively engaged in "advocacy of imminent criminal conduct"—in this case advocacy of an imminent crime against humanity. (MTD Order at 62.)

"[M]ere *advocacy* of the use of force or violence does not remove speech from the protection of the First Amendment." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982) (italics in original) (citing *Brandenburg v. Ohio*, 395 U.S. 444 (1969)); *see also Williams*, 553 U.S. at 298-99 (noting the "important distinction" between a "proposal to engage in illegal

activity" and the "abstract advocacy of illegality"). Neither do "threats of vilification or social ostracism," which are likewise "constitutionally protected and beyond the reach of a damages award." *Claiborne*, 458 U.S. at 926 (emphasis added). Only "advocacy [which] is directed to inciting or producing **imminent** lawless action **and is likely** to incite or produce such action" is unprotected. *Id.* at 928 (citing *Brandenburg*, 395 U.S. at 447). But "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." *Brandenburg*, 395 U.S. at 448 (quoting *Noto v. United States*, 367 U.S. 290, 297–298 (1961)). Speech that "amount[s] to nothing more than advocacy of illegal action **at some indefinite future time**," cannot be punished. *Hess v. Indiana*, 414 U.S. 105, 108 (1973) (state could not punish speaker who exclaimed to police that "we'll take the f----- street **later**," because lawless action being advocated for "later" was not imminent) (emphasis added). In *Claiborne*, the Supreme Court held that "strong language" and "emotionally charged rhetoric" that arguably advocated racial violence was nonetheless protected, even though violence ultimately resulted, because "the acts of violence … occurred **weeks or months** after the … speech," and thus it was not imminent. 458 U.S. at 928 (emphasis added).

In the case at bar, the undisputed record shows that SMUG cannot establish that Lively advocated any violence, much less incitement of "**imminent**" lawless violence against LGBTI Ugandans. As an initial matter, SMUG has no evidence to support its allegations that Lively ever advocated any violence in the abstract or specifically against any person or group, let alone incited anyone to produce or commit imminent violence. (MF ¶¶ 5, 8, 67-68, 72, 102-118, 130-148). Under *Brandenburg*, *Claiborne* and *Hess*, incitement cannot be found if violence is merely advocated, let alone if no violence is even advocated and mere opinions on social and moral issues are disseminated through speech and writings. Moreover, SMUG has no evidence that Lively ever

sought the commission of "imminent" crimes against LGBTI Ugandans, whether in the form of intimidation, false arrests, assaults, or criminalization of status. (MF ¶¶ 104-118, 129-148). In fact, the undisputed evidentiary record demonstrates that Lively never sought to effect, incite, or produce any such actions. (MF ¶¶ 8, 129).

SMUG has no evidence to show that Lively's speech and advocacy "invited, induced and encouraged" people whom Lively never even met to commit violent acts which Lively never advocated, such as "severe repression, arrest and certainly even violence," (Am. Compl., dkt. 27, ¶ 93), and then not "imminently," but rather many months and even years removed from Lively's visits to Uganda. For instance, SMUG has no evidence that Lively provided locations for Ugandan police to "raid" or names of people for Ugandan police to arrest (MF ¶¶ 104-105, 109, 112, 115); nor that he provided names of homosexuals for Ugandan tabloids to "out" (MF ¶¶ 5, 108, 110-111, 137, 139). Critically, SMUG has no evidence that Lively advocated for, let alone incited anyone to commit any of the specific persecutory acts. (MF ¶¶ 102-117, 130-148).

Thus, SMUG has no evidence whatsoever linking Lively to the alleged persecutory acts, or the incitement of them. SMUG has no knowledge of "any connection" between Lively and the fourteen persecutory incidents and their alleged perpetrators, and it has no knowledge of any "communications" or "agreements" between Lively and the alleged perpetrators. (MF ¶¶ 118, 130-131). SMUG also has absolutely no knowledge of "any assistance at all" provided by Lively to the alleged perpetrators and no knowledge of "any facts that would show that Scott Lively was responsible" for any of these fourteen incidents. (MF ¶¶ 102-117, 132-146). The allegations of sinister and nefarious "conduct," "strategy," "scheming" and "plotting" that SMUG attributes to Lively in its Amended Complaint has been shown to be a bag of air. All that Lively did was speak his views, offensive as they may be to SMUG.

On this undisputed record, SMUG also cannot possibly meet the imminence requirement of *Brandenburg*. Each of the fourteen alleged acts of persecution took place several **years** before (?) or after the alleged speech that caused it. If "later today" was not sufficiently imminent in *Hess*, "later this decade" is certainly not imminent. So, even if "discrimination" against homosexual conduct were illegal under international law, and it is not, Lively cannot be liable for advocating such discrimination because he did not advocate **imminent** lawless conduct. Accordingly, the *Brandenburg* exception does not apply and Lively's expression is protected by the First Amendment.

D. The First Amendment Bars Guilt By Association.

Both the Supreme Court and the First Circuit have recognized particular concerns raised by conspiracy claims in the context of First Amendment activity that apply to, and doom, SMUG's claims against Lively. The Supreme Court has held that parties cannot be liable for conspiracy or similar claims based upon mere association alone. *See Claiborne*, 458 U.S. 918-19 ("The First Amendment similarly restricts the ability of the State to impose liability on an individual solely because of his association with another."); *see also Healy v. James*, 408 U.S. 169, 186 (1972) ("[I]t has been established that 'guilt by association alone, without [establishing] that an individual's association poses the threat feared by the Government,' is an impermissible basis upon which to deny First Amendment rights.") (citation omitted); *Scales v. United States*, 367 U.S. 203, 229 (1961) (noting, in view of First Amendment concerns, that a "blanket prohibition of association with a group having both legal and illegal aims" would present "a real danger that legitimate political expression or association would be impaired," and suggesting that punishment requires "clear proof that a defendant 'specifically intend[s] to accomplish [the aims of the organization] by resort to violence'") (citing *Nolo*, 367 U.S. at 299); *De Jonge v. Oregon*, 299 U.S. 353, 364-65

(1937) (holding that a person could not be prosecuted merely for "assist[ing] in the conduct of [peaceable] meetings" held by the Communist Party).

Therefore, Lively's simple and limited association with certain private Ugandan citizens who opposed the expansion of homosexual rights cannot be "criminal activity," even if those alleged co-conspirators had subsequently committed crimes. *Claiborne*, 458 U.S. at 920 ("Civil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence."); *see also In re: Asbestos Litig.*, 46 F.3d 1284, 1286, 1290 (3d Cir. 1994) (reversing denial of summary judgment on conspiracy claims under the "strict standard set out in Claiborne" because mere association with another "cannot possibly show that [defendant] specifically intended to further" wrongful conduct by another).

But, in this case, the undisputed evidentiary record shows that the four individuals with whom Lively allegedly associated in Uganda **are not even the same as those who allegedly committed the acts of persecution**. (MF ¶¶ 104-117). Thus, SMUG not only has no evidence of any direct or indirect involvement by Lively in the acts of persecution, (MF ¶¶ 102-118, 125-126, 129-148), SMUG also has no evidence showing a connection between the four alleged co-conspirators and the alleged acts of persecution. SMUG has no evidence that any of the four alleged co-conspirators committed any of the acts of persecution, let alone at the insistence or direction of Lively. (MF ¶¶ 102-118, 130-148). Instead, the alleged perpetrators of the acts are entirely different persons and not one of them is alleged to be a co-conspirator of Lively. (MF ¶¶ 104-118). Still further attenuated, SMUG also has no evidence that any of the four co-conspirators instructed or otherwise conspired with the alleged perpetrators in the commission of the persecutory acts, let alone that they did so at the behest of Lively. (MF ¶¶ 102-118, 129-148). Accordingly, on the undisputed record, there is no cognizable connection whatsoever between

Lively and the alleged persecutory acts. Speech – even speech that is offensive or hostile or inflammatory – is not enough. Nor is mere association with others.

SMUG's conspiracy claims also face an even higher hurdle in the First Circuit based upon the court's seminal decision in *United States v. Spock*, 416 F.2d 165 (1st Cir. 1969), addressing heightened requirements for proving conspiratorial liability when the First Amendment is involved. In *Spock*, the First Circuit held that "[t]he metastatic rules of ordinary conspiracy are at direct variance with the principle of *strictissimi juris*." *Spock*, 416 F.2d at 173. When analyzing an alleged conspiracy involving political speech "within the shadow of the First Amendment," as involved here, "'[c]riminal intent must be judged *strictissimi juris*, for otherwise there is a danger that one in sympathy with the legitimate aims of such an organization, **but not specifically intending to accomplish them by resort to violence**, might be punished …'" *Id.* at 172 (quoting *Noto*, 367 U.S. at 299-300). "[The] intertwining of legal and illegal aspects [of an alleged conspiracy involving political advocacy], the public setting of the agreement and its political purposes, and the loose confederation of possibly innocent and possibly guilty participants raise the most serious First Amendment problems." *Spock*, 416 F.2d at 169.

In *Spock*, the First Circuit reversed the conviction of Dr. Spock, who was convicted for conspiring with others to aid the hindrance of the Vietnam War draft. *Id.* at 168. Dr. Spock and other "co-conspirators" drafted and widely circulated The Call, a manifesto that urged resistance to and defeat of the draft, in no uncertain terms. *Id.* at 168, 173-74. Dr. Spock even offered financial assistance and a defense to those who would resist the draft. *Id.* at 176. Some of Dr. Spock's "co-conspirators" then went out and actually collected and burned draft cards, a criminal act. Dr. Spock himself, however, did not participate in this activity. *Id.* at 168, 179. Nevertheless, he was charged with "conspiracy," and convicted along with the others. *Id.* at 168.

Because this purported conspiracy also involved protected political speech, the First Circuit applied the doctrine of *strictissimi juris,* and went on to analyze whether Dr. Spock actually had the specific intent to undertake the unlawful acts, or employ the unlawful means, that the other co-conspirators employed: "There remains the question whether it could have been found, within the strict test laid down by the cases supra, that the individual defendants **personally agreed to employ the illegal means contemplated by the agreement**." *Id.* at 176-77 (emphasis added). Intent to accomplish the general **objectives** of the conspiracy was not sufficient under the First Amendment, because it would operate as an impermissible chill on protected speech. Fidelity to the First Amendment required instead specific intent to carry out the unlawful **acts** themselves. The Court found that Dr. Spock had no such specific intent, even though he made plenty of "generalized" statements calling for resistance to the draft, and **even though he was actually present** at (though not personally involved in) a draft card burning demonstration:

> The principle of strictissimi juris requires the acquittal of Spock. It is true that he was one of the drafters of the Call, but this does not evidence the necessary intent to adhere to its illegal aspects. Nor does his admission to a government agent that he was willing to do 'anything' asked to further opposition to the war. **Specific intent is not established by such a generalization**. …The jury could not find proscribed advocacy from the mere fact, which he freely admitted, that he hoped the frequent stating of his views might give young men 'courage to take active steps in draft resistance.' **This is a natural consequence of vigorous speech**.

Id. at 178-79 (emphasis added). "Similarly, Spock's actions lacked the clear character necessary to imply specific intent under the First Amendment standard. … Although he was at the Washington demonstration he had, unlike Goodman and Coffin, … **contributed nothing, even by his presence, to the turning in of [draft] cards**." *Id.* at 179 (emphasis added).

The same outcome should obtain here. This Court is required to apply *strictissimi juris* to SMUG's claims because they indisputably involve speech "within the shadow of the First

Amendment." *See id.* at 416 F.2d at 179. Under this doctrine, Lively could not be liable for the alleged acts of persecution unless he "**personally agreed to employ the illegal means contemplated**." *See id*. at 176 (emphasis added). If Dr. Spock could not be liable for the crime of draft card burning committed by others, even though he explicitly advocated that crime and was physically present during its commission, *id*. at 176-79, Lively cannot be liable for the alleged persecution here, which occurred an ocean away from Lively, because SMUG has no evidence whatsoever that Lively "personally agreed to employ" the alleged persecutory acts. (MF ¶¶ 102-118, 125-126, 129-148). Moreover, just as Dr. Spock did not have specific intent for the unlawful acts committed at the very event which he attended, the undisputed record shows that Lively had no specific intent for the allegedly unlawful acts committed while he was half-a-world away, and years after his visits to Uganda. (MF ¶¶ 103, 118, 129).

In sum, there is no way that SMUG's phantom claim of "conspiracy" can survive this Court's application of the binding precedent in *Spock*, and the Supreme Court precedent rejecting guilt by association. The First Amendment prohibits this Court from holding Lively liable for any conspiracy based upon his mere association with private Ugandan citizens (none of whom themselves committed any crimes), particularly since Lively did not personally agree to employ, let alone associate with any persons who perpetrated, the fourteen incidents of alleged persecution.

E. Lively Is Immune From Tort Liability Under The *Noerr-Pennington* Doctrine.

Lively is also immune from tort liability under the "*Noerr-Pennington*" doctrine. Under this doctrine, which takes its name from two Supreme Court cases, "all persons, **regardless of motive**, are guaranteed by the First Amendment the right to seek to influence the government or its officials to adopt a new policy, and they cannot be required to compensate another for loss occasioned by a change in policy should they be successful." *Sierra Club v. Butz*, 349 F. Supp. 934, 938 (N.D. Cal. 1972) (emphasis added); *see also Eastern R.R. Conference v. Noerr Motor*

Freight, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). The First Circuit has made it clear that "**there is no remedy against private persons who urge the enactment of laws, regardless of their motives**." *Tomaiolo v. Mallinoff*, 281 F.3d 1, 11 (1st Cir. 2002) (emphasis added) (internal alterations omitted) (quoting *Munoz Vargas v. Romero Barcelo*, 532 F.2d 765, 766 (1st Cir. 1976), in turn citing *Noerr*, 365 U.S. 127, and Pennington, 381 U.S. at 669-70) (affirming dismissal of Section 1983 action). This case is no different. Lively cannot be liable for any "conspiracy" with members of the Ugandan government, not only because his downward revisions of the proposed criminal penalties were never adopted, but because he was exercising a protected First Amendment right.

Originally adopted in the context of antitrust claims, the *Noerr-Pennington* doctrine is no longer limited to antitrust claims under the Sherman Act or any particular language in that federal statute, notwithstanding this Court's prior suggestion to the contrary. (MTD Order at 63 n.11.) The cases applying the *Noerr-Pennington* doctrine to shield petitioning activity outside the antitrust field are literally legion.[23]

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[23] *See, e.g., In re: Innovatio IP Ventures, LLC Patent Litig.*, 921 F. Supp. 2d 903, 911 (N.D. Ill. 2013) ("[B]ecause the doctrine derives from a constitutional source, other regional circuit courts have held that it must also extend to state law statutory and common law claims.") (collecting cases); *New West, L.P. v. City of Joliet*, 491 F.3d 717, 722 (7th Cir. 2007) ("*Noerr-Pennington* has been extended beyond the antitrust laws, where it originated, and is today understood as an application of the First Amendment's speech and petitioning clauses."); *Sosa v. DirecTV, Inc.*, 437 F.3d 923, 934-36 (9th Cir. 2006) (affirming dismissal of civil RICO claim based upon *Noerr-Pennington* immunity); *Anderson Development Co., L.C. v. Tobias*, 116 P.3d 323, 332-33 (Ut. 2005) (holding that lower courts had erred in failing to grant defendant's motions for summary judgment based on *Noerr-Pennington* in a claim for intentional interference with prospective economic relations and existing contractual relations); *IGEN Int'l, Inc. v. Roche Diagnostics GmbH*, 335 F.3d 303, 310 (4th Cir. 2003) ("[A]lthough originally developed in the antitrust context, the doctrine has now universally been applied to business torts."); *Harrah's Vicksburg Corp. v. Pennebaker*, 812 So.2d 163, 171-74 (Miss. 2002) (applying the *Noerr-Pennington* doctrine to reject state tort claims of restraint of trade, tortious interference, and civil conspiracy); *Titan America, LLC v. Riverton Investment Corp.*, 569 S.E.2d 57, 61-62 (Va. 2002) (applying the *Noerr-Pennington* doctrine in an action for tortious interference with business expectancy and conspiracy); *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1092 (9th

Instead, courts overwhelmingly agree that the doctrine is grounded in the First Amendment. *See, e.g.*, *Vibo Corp. v. Conway*, 669 F.3d 675, 683-84 (6th Cir. 2012) (explaining that the *Noerr-Pennington* doctrine protects First Amendment rights); *Mercatus Group, LLC v. Lake Forest Hosp.*, 641 F.3d 834, 846 (7th Cir. 2011) ("*Noerr-Pennington* was crafted to protect the freedom to petition guaranteed under the First Amendment."); *Suburban Restoration Co., Inc. v. ACMAT Corp.*, 700 F.2d 98, 101 (2d Cir. 1983) (referring to *Noerr-Pennington* doctrine as "an application of the [F]irst [A]mendment"); *see also California Motor Transport. Co. v. Trucking*

Cir. 2000) ("The immunity is no longer limited to the antitrust context; we have held that *Noerr-Pennington* immunity applies to claims under 42 U.S.C. § 1983 that are based on the petitioning of public authorities."); *Tarpley v. Keistler*, 188 F.3d 788, 794-96 (7th Cir. 1999) (Noerr-Pennington doctrine applied to protect defendant from a Section 1983 claim); *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 128 (3d Cir. 1999) ("We are persuaded that the same First Amendment principles on which *Noerr–Pennington* immunity is based apply to the New Jersey tort claims."); *Pound Hill Corp., Inc. v. Perl*, 668 A.2d 1260, 1263 (R.I. 1996) (applying *Noerr-Pennington* doctrine to common-law tort claims); *Gunderson v. University of Alaska*, 902 P.2d 323, 326-30 (Alaska 1995) (affirming the grant of defendants' motion for summary judgment on the basis of *Noerr-Pennington* in a suit alleging numerous tort claims); *Azar v. Primebank, FSB*, 499 N.W.2d 793, 794-95 (Mich. 1993) ("[T]he *Noerr–Pennington* doctrine is a principle of constitutional law that bars litigation arising from injuries received as a consequence of First Amendment petitioning activity, regardless of the underlying cause of action asserted by the plaintiffs."); *Eaton v. Newport Bd. of Educ.*, 975 F.2d 292, 298-99 (6th Cir. 1992) (applying *Noerr-Pennington* immunity in Section 1983 action); *Lampley v. Bridgestone Firestone, Inc.*, No. 90-907, 1992 WL 12666661, at *2 (M.D. Ala. Mar. 31, 1992) ("While the *Noerr-Pennington* doctrine evolved in the antitrust area, the First Amendment rights it protects apply equally to other claims.") (civil conspiracy claim); *Video Int'l Production, Inc. v. Warner-Amex Cable Commc'ns, Inc.*, 858 F.2d 1075, 1084 (5th Cir. 1988) ("Although the *Noerr–Pennington* doctrine initially arose in the antitrust field, other circuits have expanded it to protect first amendment petitioning of the government from claims brought under federal and state laws, including section 1983 and common-law tortious interference with contractual relations."); *Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155, 159-60 (3d Cir. 1988) ("In numerous cases, the courts have rejected claims seeking damages for injuries allegedly caused by the defendants' actions directed to influencing government action." (affirming granting of summary judgment) (collecting cases); *Evers v. County of Custer*, 745 F.2d 1196, 1204 (9th Cir. 1984) (finding *Noerr-Pennington* immunity under the First Amendment against a conspiracy claim); *Gorman Towers, Inc. v. Bogoslavsky*, 626 F.2d 607, 614 (8th Cir. 1980) ("Lower federal courts have adopted this deference to the right to petition not only in antitrust cases but in other cases involving civil liability. In various contexts, these courts have held individual defendants constitutionally immune from liability for exercising their right to petition.") (Section 1983 claim).

Unlimited, 404 U.S. 508, 510-12 (1972) (discussing the First Amendment underpinnings of the *Noerr-Pennington* doctrine); *BE&K Constr. Co. v. N.L.R.B.*, 536 U.S. 516, 524-25 (2002). "**There is simply no reason that a common-law tort doctrine can any more permissibly abridge or chill the constitutional right of petition than can a statutory claim such as antitrust**." *Video Int'l Production*, 858 F.2d at 1084 (emphasis added); *see also First Nat'l Bank of Omaha v. Marquette Nat'l Bank of Minneapolis*, 482 F. Supp. 514, 525 (D. Minn. 1979) (granting immunity against tortious interference claims for "to hold otherwise would effectively chill the defendants' First Amendment rights").

Even cases cited by this Court in the MTD Order (dkt. 59, p. 63 n.11) do not suggest this limitation but instead state just the opposite conclusion.[24] Importantly, these cases evidence that the First Amendment sets a floor for constitutional protection. Therefore, just as individuals and entities cannot be liable under the Sherman Act for petitioning activities, neither can they be held liable for torts in violation of international law over against the First Amendment.

Moreover, *Noerr-Pennington* immunity is also not limited to petitioning the United States government. Neither the First Circuit (nor any other Circuit, for that matter) has limited petitioning immunity to one's own government. The unquestionable legality of Lively's alleged conduct, had it occurred in the United States, raises serious due process and free speech questions about whether a U.S. court can punish it:

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[24] *See, e.g., Carpet Group Int'l v. Oriental Rug Importers Ass'n, Inc.*, 256 F. Supp. 2d 249, 261 (D.N.J. 2003) ("The *Noerr-Pennington* doctrine thus protects citizens from being penalized for exercising their [F]irst [A]mendment right to petition the government."); *Luxpro Corp. v. Apple, Inc.*, No. 10-3058, 2011 WL 1086027, at *3 (N.D. Cal. Mar. 24, 2001) ("Under the *Noerr-Pennington* doctrine, those who petition the government for redress are generally immune from antitrust, statutory, or tort liability **as part of the First Amendment right to petition the government**.") (emphasis added).

> **We see no reasons why acts that are legal and protected if done in the United States should in a United States court become evidence of illegal conduct because performed abroad**. We also reject the idea that the availability of petitioning immunity turns on the political "persuasion" of the government involved. The political character of the government to which the petition is addressed should not taint the right to enlist its aid.

Coastal States Mktg., Inc. v. Hunt, 694 F.2d 1358, 1366-67 (5th Cir. 1983) (emphasis added); *see also Coca-Cola Co. v. Omni Pac. Co.*, 1998 U.S. Dist. LEXIS 23277, *28-30 (N.D. Cal. Dec. 9, 1998) (agreeing with *Coastal States*, and declining to impose liability for conduct directed at foreign government that was legal in the United States); *Carpet Group*, 256 F. Supp. 2d at 266 (agreeing that the "lobbying of foreign governments, whether performed at home or abroad, is protected" from civil liability under the *Noerr-Pennington* doctrine); *Luxpro*, 2011 WL 1086027, at *5 (agreeing with Fifth Circuit that "[A] party should not be held liable for conduct that would be legal and protected if it was performed in the United States, but is now illegal because it was performed abroad" and holding that the "*Noerr-Pennington* doctrine also protects parties' efforts to petition foreign governments"); *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 707 (1962) (distinguishing *Noerr* only on its facts rather than finding it inapplicable to foreign petitioning); *Friends of Rockland Shelter Animals, Inc. v. Mullen*, 313 F. Supp. 2d 339, 344 (S.D.N.Y. 2004) (concluding that the inapplicability of the *Noerr-Pennington* doctrine to foreign petitioning represents the "minority view").[25]

[25] In the MTD Order, this Court limited *Noerr-Pennington* Immunity to domestic petitioning. However, one of the two district court cases relied upon by this Court (MTD Order at 62) to establish this limitation, *Australia/E. U.S. A. Shipping Conference v. United States*, 537 F. Supp. 807 (D.D.C. 1982), **was vacated**, 1986 WL 1165605 (D.C. Cir. Aug. 27, 2086), and has not been used to confine First Amendment protections to the United States. The other district court case (MTD Order at 62), *Occidental Petroleum Corp. v. Buttes Gas & Oil Co.*, 331 F. Supp. 92 (C.D. Cal. 1971), has been repeatedly rejected as "the minority view." *See, e.g.*, *Mullen*, 313 F. Supp. 2d at 344 (rejecting *Occidental Petroleum*-based argument that "the First Amendment right to petition

As discussed above, the First Amendment does not stop at the U.S. border. Accordingly, the *Noerr-Pennington* doctrine should equally apply to foreign petitioning or lobbying efforts as it does here in the United States, especially when Plaintiffs are seeking to impose tort liability in an American court based upon that expressive activity. Otherwise, a U.S. court could become a vehicle for punishing or enjoining a U.S. citizen for speech and expressive activity that is lawful here. "The right to speak freely and to promote diversity of ideas . . . is . . . one of the chief distinctions that sets us apart from totalitarian regimes." *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). If a U.S. citizen can lobby or petition his own government without fear of prosecution or tort liability, the same protections and immunity should apply to any foreign petitioning activity. The First Amendment protections should not hinge on where the speech is directed to, or where the speech is made from—if that same speech directed to persons or officials in the U.S. would be lawful, as is the case here.

In this matter, there is no evidence that Lively "petitioned" or "lobbied" the Ugandan government to do anything other than to liberalize the already criminal punishments for homosexual conduct and focus on counseling and education rather than incarceration. (MF ¶¶ 58-61, 75-76, 79-81, 85, 98-100, 113, 142). Lively provided comments drastically toning down the punitive aspects of the AHB, and pleaded with the Ugandans to moderate the proposal. (MF ¶¶ 81, 85). Despite his efforts to lessen the criminal sanctions and soften the statute, all of his proposals were rejected by the Ugandan government. (MF ¶¶ 62-63, 82-84, 86-93). Moreover, discussing issues of marriage, family, and homosexuality, or writing a government official asking them to change already-drafted proposed legislation about homosexuality represent core protected speech

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the Government for a redress of grievances only applies to petitions to one's own government"); *Coastal States*, 694 F.2d at 1366; *Coca-Cola Co.*, 1998 U.S. Dist. LEXIS 23277, at *29-30.

about matters of public concern under the First Amendment. Thus, to the extent Lively discussed issues of marriage, family, and homosexuality with members of the Ugandan government, or engaged in limited correspondence regarding proposed legislation, these activities should be similarly protected.

There are further grounds for applying the *Noerr-Pennington* doctrine to shield foreign advocacy from ATS liability in particular. First, applying *Noerr-Pennington* to ATS claims furthers the Supreme Court's instruction in *Sosa* that federal courts should exercise restraint and "great caution" in recognizing judge-made causes of action for violations of "norms of international law," especially since a lack of "judicial caution" could potentially impinge foreign relations and affairs. *See Sosa*, 542 U.S. at 725-28; *see also Kiobel*, 133 S.Ct. at 1664. Thus, where foreign advocacy, foreign law, and foreign interests are at stake, a federal court should heed the Supreme Court's directive on restraint in ATS cases. One way to practice that restraint and avoid undue international friction through U.S. court litigation is through the application of the *Noerr-Pennington* immunity.

Second, applying the *Noerr-Pennington* doctrine to foreign advocacy will prevent an impermissible chilling of First Amendment activity, at home and abroad. *See U.S. Football League v. Nat'l Football League*, 634 F. Supp. 1155, 1181 (S.D.N.Y. 1986), *aff'd*, 842 F.2d 1335 (2d Cir. 1988) (noting that *Noerr-Pennington* evidence "by its very nature chills the exercise of First Amendment rights"). Indeed, such immunity protection is also necessary "to assure to the freedoms of speech and press that 'breathing space' essential to their fruitful exercise." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974) (citation omitted); *see also Hustler Magazine*, 485 U.S. at 51 (recognizing that the Court has been "particularly vigilant to ensure that individual expressions of ideas remain free" from punishment or sanction).

In the age of cross-border transactions and multinational corporations, where American citizens are dealing with foreign governments each and every day on a myriad issues, it makes no sense from a policy standpoint to require them to check their petitioning safeguards at the border, even if the First Amendment allowed it, which it does not. U.S. citizens frequently comment on and propose foreign legislation, whether from a computer at their home or office situated in the United States or an in-person visit to the foreign jurisdiction. This expression of core political views should not be curbed by ATS litigation that can punish a U.S. citizen for speech directed abroad that would be legal if directed at their own government.

The Supreme Court has struck down on First Amendment grounds laws prohibiting incoming international communications. *See Lamont v. Postmaster General of the U.S.*, 381 U.S. 301, 305-07 (1965). U.S. courts should similarly resist any attempt to impose liability for outgoing international communications. Courts are creatures of the Constitution, so they cannot punish United States citizens for conduct that would be protected in the United States, simply because that conduct took place in another country. Thus, if this Court cannot punish Lively for advocating so called "discrimination" of homosexual conduct in the United States; for criticizing or condemning homosexual conduct in the United States; or for lobbying government officials to defeat legislative efforts to protect homosexual conduct in the United States, then the Court cannot punish him for allegedly doing **these very same things** in Uganda. Accordingly, this Court should also grant summary judgment in Lively's favor on SMUG's claims under the *Noerr-Pennington* doctrine.

VI. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER SMUG'S CLAIMS BECAUSE SMUG LACKS STANDING.

A. SMUG Lacks Standing To Bring Its Own Claims.

Article III of the United States Constitution limits the judicial power to actual cases and controversies. *See* U.S. Const. art. III, § 2. "Though some of its elements express merely prudential considerations that are part of judicial self-government, the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The Supreme Court has established an "irreducible constitutional minimum" that a Plaintiff must establish before being given the keys to the federal courthouse. *Id.* "First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *Id.* (internal citations and quotations omitted). "Second, there must be a causal connection between the injury and the conduct complained of—the injury must be fairly traceable to the challenged action of the defendant, and **not the result of the independent action of some third party not before the court**." *Id.* (emphasis added). "Third, it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision." *Id.* at 561 (internal citations and quotations omitted).

"The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law." *Valley Forge Christian College v. American United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan*, 504 U.S. at 561. Indeed, "[s]ince they are not mere pleading requirements but rather **an indispensable part of the plaintiff's case**, each element must be supported in the same way as any other matter on which

the plaintiff bears the burden of proof." *Id.* (emphasis added). The indispensable and irreducible constitutional minimum of standing is "not merely a troublesome hurdle to overcome if possible so as to reach the merits of a lawsuit which a party desires to have adjudicated, it is a part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787." *Valley Forge*, 454 U.S. at 476. "**Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States**." *Id.* at 475-76 (emphasis added). SMUG fails this test. It seeks "little more than . . . to employ a federal court as a forum to air generalized grievances about the conduct of" unrelated actors in its country, to which it cannot in any away connect Lively. *Id.* at 483.

SMUG has utterly failed to come forward with sufficient evidence to establish that it meets the three irreducible constitutional minimums of standing to bring its claims in this court. SMUG cannot and has not established with the requisite evidence that it has an injury or that Lively is the cause of its injuries, and therefore whatever injuries SMUG may have allegedly suffered are not traceable to Lively. Moreover, the remedy SMUG seeks from this Court will not redress its injuries. SMUG lacks standing to litigate as a suitor in federal court, and summary judgment should be granted.

1. SMUG Cannot Demonstrate An Actual And Concrete Injury.

"The first of [the Article III] prerequisites deals with harm. The plaintiff must adequately allege [and at the summary judgment stage, demonstrate with evidence] that [it] has suffered or is threatened by an injury in fact to a cognizable interest." *Pagan v. Calderon*, 448 F.3d 16, 27 (1st Cir. 2006). "An injury in fact is one that is concrete and particularized, on the one hand, and actual or imminent (as opposed to conjectural or hypothetical), on the other hand." *Id.* (citing *Lujan,* 504 U.S. at 560. Put another way, "[t]here must be a personal stake in the outcome such as to assure

that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974). "**Abstract injury is not enough**." *Id.* (emphasis added).

SMUG has utterly and completely failed to bring forth any evidence of harm to its organization. While this Court noted that SMUG's alleged injuries "obviously costs money" (MTD Order at 47), SMUG has not put forward any admissible evidence of such costs and therefore has failed to adequately demonstrate harm. *See* Section VII, *infra* (demonstrating SMUG's failure to provide the admittedly required expert evidence on damages, and SMUG's failure to provide damages documentation and deposition testimony on damages during fact discovery). SMUG's evidentiary failure on damages is neither accidental nor surprising. Not only was SMUG's designee on damages not able to answer a single question on SMUG's damages calculations (MF ¶ 191), but SMUG's own Chairman of the Board, who is "supposed to approve the budgets," and who is described as the "backbone of the LGBT movement in Uganda," was not able to identify even one way that Lively has damaged SMUG monetarily. (MF ¶ 177). Simply put, while at the motion to dismiss stage this Court felt compelled to credit SMUG's vacant assertion that the alleged "injuries to Plaintiff are quantifiable" (MTD Order at 49), when it came time for proof SMUG completely failed to quantify them. Thus, all SMUG can put forward is the axiomatically insufficient abstract injury. Such will not suffice to satisfy the rigorous demands of Article III.

2. SMUG Has Not And Cannot Demonstrate Any Causal Connection Between Its Alleged Injuries And The Alleged Conduct Of Lively.

Even if SMUG could demonstrate sufficient and quantifiable injuries, which it cannot, SMUG would still lack Article III standing because it cannot demonstrate that those non-existent injuries are fairly traceable to Lively. "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice . . . In response to a summary judgment motion,

however, [SMUG] can no longer rest on such 'mere allegations' but must 'set forth' by affidavit and other evidence 'specific facts'" showing that Lively's alleged conduct is the cause of its purported injuries. *Lujan,* 504 U.S. at 561. Under the second irreducible constitutional requirement of standing, SMUG is mandated "to show a sufficiently direct causal connection between the challenged action and the identified harm." *Katz v. Pershing, LLC*, 672 F.3d 64, 71 (1st Cir. 2012). This direct causal connection "cannot be overly attenuated." *Donahue v. City of Boston*, 304 F.3d 110, 115 (1st Cir. 2002); *Pagan*, 448 F.3d at 27 ("This causal connection must be demonstrable; in other words, it cannot be overly attenuated.").

Additionally, "causation is absent if the injury stems from the independent action of a third party." Katz, 672 F.3d at 71. *See also Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 42 (1976) (holding that causation requires that the "injury [not] result from the independent action of some third party not before the court."). As the Supreme Court has recognized, SMUG's burden is to demonstrate with sufficient evidence that its alleged injuries are the direct result of Lively's alleged conduct and **not** "**the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume to either control or to predict**." *Lujan*, 504 U.S. at 562 (emphasis added).

Here, SMUG has no evidence of any demonstrable and direct connection between Lively and its alleged injuries. SMUG claims that it was injured by fourteen specific acts of persecution within the fourteen years since Lively first visited Uganda in 2002. (MF ¶¶ 102-117). However, for each and every one of those acts, SMUG and its witnesses repeatedly and unambiguously testified that they know of no connection whatsoever between Lively and those incidents and their alleged perpetrators. *Id*. SMUG has no knowledge of any communications, let alone agreements, between Lively and the alleged perpetrators. *Id*. SMUG has no knowledge of "**any assistance at**

all" provided by Lively to the alleged perpetrators. *Id*. And SMUG readily and candidly admits that it is not "aware of any facts that would show that Scott Lively was responsible" for any of these alleged incidents. *Id*. Rarely does the testimony of a litigant so unequivocally establish that the litigant has no standing, and no claim.[26]

Since SMUG has no evidence of any "communication," "agreement," "involvement," "assistance" or "responsibility" as to Lively with respect to any of the fourteen incidents which allegedly injured SMUG, it necessarily follows that SMUG cannot in any way prove that the alleged perpetrators of those incidents did not act independently of Lively. This is fatal to SMUG's standing under *Katz*. 672 F.3d at 71.

3. SMUG's Alleged Injuries Are Not Redressable.

a. SMUG's Alleged Injuries Cannot Be Redressed Through Monetary Damages.

Even if SMUG could articulate cognizable injuries that are fairly traceable to Lively, which it cannot, SMUG would still lack Article III standing because its non-existent injuries are not redressable by this Court. SMUG must demonstrate with sufficient evidence that it is "likely, **as opposed to merely speculative**, that [its alleged] injuries will be redressed by a favorable decision from this Court." *Lujan*, 504 U.S. at 561 (emphasis added). For its alleged injuries to be redressable by this Court, SMUG must also demonstrate that there is a "**substantial likelihood** that the requested relief will remedy the alleged injury in fact." *Bonas v. Town of N. Smithfield*, 265 F.3d 69, 73 n.4 (1st Cir. 2001) (quoting *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000)) (emphasis added).

[26] SMUG's failure to prove any causation in the matter is also discussed more fully in Section VIII, *infra*.

At the motion to dismiss stage, this Court accepted as true the notion that SMUG's alleged organizational injuries "were quantifiable and may be remedied by an award of monetary damages." (MTD Order at 49.) At this stage of the proceedings, however, taking SMUG at its word is no longer permissible to satisfy the Constitutional standing requirements. *See, e.g.*, *Lujan*, 504 U.S. at 561 (holding that at the summary judgment stage, a plaintiff can no longer rest on its allegations, but must put forward direct evidence to satisfy its burden). Here, SMUG has fallen fatally short of the mark concerning its burden to demonstrate that its alleged injuries can be redressed. *See* Section VII, *infra* (demonstrating that SMUG cannot establish damages). Redressing SMUG's injuries through a monetary award is no longer even theoretically possible because SMUG has failed to bring forth evidence of such damages. *Id*.

b. SMUG's Alleged Injuries Cannot Be Redressed Through Equitable Relief.

i. This Court Cannot Affect The Conduct Of Independent, Sovereign Actors On Another Continent.

Nor can SMUG's unsubstantiated injuries be redressed through any injunctive relief. Importantly, Article III's redressability requirement applies "with undiminished force" to claims for equitable relief. *Igartua-De La Rosa v. United States*, 417 F3d. 145, 153 (1st Cir. 2005) (Lipez, J., concurring). Fatally for SMUG's claims of equitable relief, when the requested relief cannot reach independent third parties who are also responsible for the harm alleged, the equitable relief claim is not redressable and plaintiff has no standing to assert it. *Lujan*, 504 U.S. at 561 (holding that the plaintiff failed to establish redressability on its injunctive relief claims because the remedy for its alleged injury required action from parties not before the court and over whom the court had no power); *see also Simon*, 426 U.S. at 43 (same). Even more problematic for SMUG's claims is that the independent actors here are outside the jurisdiction and reach of any injunctive relief from this Court. *See Iguarta-De La Rosa*, 417 F.3d at 155 (Lipez, J., concurring) ("If a legislative body

would be within its rights to ignore the court's decision, and the plaintiff cannot convince the court that it is 'likely as opposed to merely speculative,' that the legislature will react in the way that he hopes, **the redressability requirement has not be met**.") (quoting *Lujan*, 504 U.S. 561) (emphasis added).

This Court, too, has recognized the problem of injunctive relief in this matter: "It is quite true that this court does not have either the jurisdiction or power to stop all possible harm against Plaintiffs in Uganda." (MTD Order at 56.) The Court found Lively's redressability argument to have "force," but nonetheless found it "unpersuasive" **at the motion to dismiss stage**, because the Court was required to accept as true SMUG's now-defunct allegations that the perpetrators of the alleged persecution were not independent actors but merely Lively's puppets. (*Id*.) However, now that SMUG has repeatedly admitted that it has no evidence of "any connection" between Lively and the actual perpetrators of the fourteen alleged acts of persecution (MF ¶¶ 102-118, 130-148), and that it has no facts whatsoever that "would show that Scott Lively was responsible" for the alleged acts of those independent parties, (*id*.), the Court can no longer accept SMUG's vacant allegations. If SMUG has no proof that Lively was in any way connected to the fourteen acts of persecution, then it necessarily must follow that SMUG has no proof that an injunction against Lively would have any effect on the conduct of non-parties on a different continent. While redressability might be "a matter of degree" (MTD Order at 56), the injunctive relief sought must still alleviate the injuries that SMUG claims require injunctive relief. *See, e.g.*, *Katz*, 672 F.3d at 72. Here, SMUG has no evidence that any injunctive relief against Lively would have any meaningful impact on alleged perpetrators of persecution whom Lively has never even met, and with whom SMUG can establish no connection.

ii. SMUG Has No Evidence Of Irreparable Future Harm Likely To Be Caused By Lively.

Additionally, to obtain an injunction against Lively, SMUG must also show that there is a likelihood that its alleged persecution in the past **is likely to be caused by Lively in the future**.[27] "In seeking prospective relief like an injunction, a plaintiff must show that he can reasonably expect to encounter the same injury again in the future—**otherwise there is no remedial benefit that he can derive from such judicial decree**." *MacIssac v. Town of Pughkeepsie*, 770 F. Supp. 2d 587, 593 (S.D.N.Y. 2011) (citing *City of L.A. v. Lyons*, 461 U.S. 95, 102-05 (1983)) (emphasis added). An injunction cannot issue for speculative future conduct that may not ever occur, against Lively – who SMUG has no knowledge of ever participating or assisting in alleged acts of past persecution. *See Lyons*, 461 U.S. at 105-06 (holding that speculative future injuries based solely on suppositions and the independent actions of third parties cannot justify the extraordinary remedy of injunctive relief). If such an injunction could issue, then the Supreme Court's requirement of immediate and irreparable injury has absolutely no meaning. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (requiring plaintiffs to demonstrate immediate and irreparable injury before the extraordinary and disfavored remedy of an injunction can be granted).

SMUG can point to no evidence to demonstrate that Lively poses any credible and demonstrable threat of **future** irreparable injury. That this is true can hardly be gainsaid because Lively never participated in any of the previous acts of alleged persecution in Uganda. (MF ¶¶ 102-118, 132-146; Lively Decl. ¶ 34). Moreover, Lively has never engaged in "any conduct

[27] In fact, what SMUG appears to be seeking is an improper remedy to punish Lively for alleged conduct in the past. *Weinberfer v. Romero-Barcelo*, 456 U.S. 305 (1982) (noting that injunctive relief is intended to deter future violations, **not to punish past ones**); *Maine Human Rights Comm'n v. Sunbury Primary Care, P.A.*, 770 F. Supp. 2d 370, 398 (D. Me. 2011) ("A party seeking injunctive relief must show a threat of irreparable future harm . . . The requirement exists because an injunction is intended to forestall future violations, not to punish past ones).

whatsoever in the United States (or anywhere else in the world) in connection with any campaign, agreement, conspiracy, enterprise, or other effort" to engage in any form of persecution or discrimination. (MF ¶¶ 130-131).

Most problematic for SMUG, however, is the fact that Lively indisputably has "no intention to return to Uganda at any time in the future, to speak regarding homosexuality or for any other reason." (Lively Decl. ¶ 38). With no evidence of past involvement in any alleged acts of persecution, and no evidence that Lively intends to return to Uganda at all, the injunctive relief sought by SMUG would not redress anything and "would be pointless." *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 304 (1st Cir. 2003) (injunctive relief is only available for credible and proven threats of **future** irreparable injury, not to punish past acts; absent proof of irreparable future action "an injunction would be pointless").

iii. This Court Cannot Redress SMUG's Non-Existent Injuries Through An Unconstitutional Injunction.

Finally, even if SMUG's unsubstantiated injuries could be redressed through equitable relief, which they cannot, the Court could not redress them through an unconstitutional remedy. As discussed in Section V, *infra*, what SMUG really seeks in this lawsuit is to enjoin pure political speech and protected activity that lies at the core of the First Amendment. Since this Court cannot enter the equitable relief sought by SMUG, the Court cannot redress SMUG's alleged injuries. SMUG lacks standing and summary judgment should be entered on all of its claims.

B. SMUG Lacks Associational Standing To Bring Claims On Behalf Of Its Members.

Because of the same three defects discussed in the preceding section, SMUG not only lacks standing to bring its own claims, but also lacks associational standing to bring the claims of its members. An association may only bring suit on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are

germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individuals members in the lawsuit." *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977).

SMUG attempts to get around its inability to prove monetary damages (*see* Section VII, *infra*), and its inability to seek money damages in a representative capacity[28], by committing to only seek injunctive relief on behalf of its members. (MF ¶¶ 171-176; MTD Order at 50). But, while claims for injunctive relief have **sometimes** been allowed to be brought by an association, "[t]his does not mean, however, that an association automatically satisfies the third prong of the *Hunt* test simply by requesting equitable relief rather than damages." *Bano v. Union Carbide Corp.*, 361 F.3d 696, 714 (2d Cir. 2004). As this Court has also noted, "[a]dmittedly, all requests for injunctive relief do not automatically grant a plaintiff associational standing." (MTD Order at 53.)

SMUG does not have associational standing because, for one thing, its associational claims *require* SMUG to allege and prove damages. As shown in Section VII, *infra*, all of SMUG's claims sound in tort, and damages are an essential element of all tort claims, including SMUG's. SMUG's members are barred from showing injury in this case for the same reasons as SMUG. *See* Section VI.A, *infra*. Moreover, for the same reasons that the injunctive relief sought by SMUG could not redress SMUG's alleged injuries (*see* Section VI.A.3.b, *supra*), that relief also could not redress any alleged but unsubstantiated injuries of any SMUG members. Accordingly, SMUG has no associational standing to bring the claims of its members. Summary judgment should be granted.

[28] *United Union of Roofers, Waterproofers, & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1400 (9th Cir. 1990) ("no federal court has allowed an association standing to seek monetary relief on behalf of its members").

VII. SMUG'S CLAIMS FAIL AS A MATTER OF LAW BECAUSE SMUG HAS NO ADMISSIBLE AND COMPETENT EVIDENCE OF DAMAGES.

Summary judgment on SMUG's claims is also appropriate because SMUG has no admissible and competent evidence to support its claims for money damages.[29] This lack of proof is fatal to SMUG's claims at this stage because damages is an essential element it must prove for each of its claims. Throughout the entire period of fact discovery, SMUG withheld its damages computation from Lively, maintaining repeatedly under oath that its computation required expert testimony and would be disclosed along with expert reports after fact discovery is closed. SMUG then failed to provide an expert report or any expert testimony on its damages. Instead, after fact discovery closed, SMUG attempted to provide a calculation through its lay witness, even though that witness admitted under oath that the calculation was performed by a hired (yet undisclosed) expert because no one at SMUG had the expertise to perform it. Not surprisingly, SMUG's damages designee was not able to answer a single question about SMUG's damages that had been calculated by SMUG's secret expert. On this record, SMUG cannot establish any damages for its tort claims. Summary judgment is warranted.

A. All Of SMUG's Claims Sound In Tort And Require Proof Of Damages As An Essential Element.

As a general matter, the failure to show damages is grounds for granting summary judgment where damages are an element of the claim. *See Young v. Wells Fargo Bank, N.A.*, 109

[29] Rule 56 allows a party to move for summary judgment on "part of each claim or defense," Fed. R. Civ. P. 56(a), which was intended "to make clear . . . that summary judgment may be requested not only as to an entire case but also as to a claim, defense, or part of a claim or defense," Fed. R. Civ. P. 56 advisory committee notes (2010). Accordingly, summary judgment can be granted on elements of claims, as well as remedies. *See Gaither v. Stop & Shop Supermarket Co. LLC*, 84 F. Supp. 3d 113, 122 n.8 (D. Conn. 2015); *Hamblin v. British Airways PLC*, 717 F. Supp. 2d 303, 306 (E.D.N.Y. 2010); *Stellar J. Corp. v. Smith & Loveless, Inc.*, No. 09-353, 2010 WL 4791740, at *2 (D. Or. Nov. 18, 2010).

F. Supp. 3d 387, 393-96 (D. Mass. 2015); *Amorim Holding Financeria, S.G.P.S., S.A. v. C.P. Baker & Co., Ltd.*, 53 F. Supp. 3d 279, 308-09, 312 (D. Mass. 2014); *AVX Corp. v. Cabot Corp.*, 600 F. Supp. 2d 286, 295 (D. Mass. 2009); *see also Cash Energy, Inc. v. Weiner*, 81 F.3d 147, 1996 WL 141787, at *2 (1st Cir. Mar. 29, 1996) (affirming district court's granting of summary judgment where plaintiff was unable to prove damages); *Draft-Line Corp. v. Hon Co.*, 983 F.2d 1046, 1993 WL 984, at *2 (1st Cir. Jan. 6, 1993) (finding no error in district court's granting of summary judgment for defendant where plaintiff made "no showing" that there was "genuine issue of fact relating to damages"); *Boston Prop. Exchange Transfer Co. v. Iantosca*, 720 F.3d 1, 10 (1st Cir. 2013) ("As for the tort claims, we affirm summary judgment for the defendants on all of them because [plaintiff] failed to provide any evidence to meet an essential element of each: that the defendants caused it to suffer damages.").

Counts I, II and III of SMUG's Complaint all rest upon the jurisdictional Alien **Tort** Statute. A valid ATS claim requires proof of three elements: "plaintiffs must (i) be 'aliens,' (ii) claiming **damages** for a **'tort only,'** (iii) resulting from a violation 'of the law of nations' or of 'a treaty of the United States.'" *Flores v. Southern Peru Copper Corp.*, 414 F.3d 233, 242 (2d Cir. 2003) (quoting 28 U.S.C. § 1350) (emphasis added)*; see also Presbyterian*, 582 F.3d at 255; *Shan v. China Constr. Bank Corp.*, No. 09-8566, 2010 WL 2595095, at *3 (S.D.N.Y. June 28, 2010).

Therefore "[t]he AT[S] requires the commission of a tort in order to impose liability." *Bieregu v. Ashcroft*, 259 F. Supp. 2d 342, 353 (D.N.J. 2003) (citing *Kadic v. Karadzic*, 70 F.3d 232, 238 (2d Cir.1995), *cert. denied*, 518 U.S. 1005 (1996); *Iwanowa v. Ford Motor Co.*, 67 F.Supp.2d 424, 439 (D.N.J.1999); *Jogi v. Piland*, 131 F.Supp.2d 1024, 1026–27 (C.D.Ill. 2001)). "Implicit in any wrong labeled a tort is an element of damages." *Jogi v. Piland*, 131 F. Supp. 2d 1024, 1027 (C.D. Ill. 2001), *rev'd on other grounds and remanded sub nom. Jogi v. Voges*, 480

F.3d 822 (7th Cir. 2007). ATS plaintiffs "cannot state [an ATS] tort claim in the absence of a showing of 'causation' and 'damages,' necessary elements of any tort claim." *Bieregu,* 259 F. Supp. 2d at 353-54. Without damages, any tort claims brought under the ATS must fail. *Bieregu,* 259 F. Supp. 2d at 353-54 (dismissing ATS claim because the damages alleged were speculative); *Jogi*, 131 F. Supp.2d at 1027 (dismissing ATS claim because "the court can discern no element of damages from the plaintiff's speculation).

Moreover, "when questions endemic to tort litigation or civil liability arise in ATS litigation—such as damages computation …—these issues must be governed by domestic law." *Doe I v. Nestle USA, Inc.*, 766 F.3d 1013, 1022 (9th Cir. 2014), *cert. denied sub nom. Nestle U.S.A., Inc. v. John Doe I,* 136 S. Ct. 798, 193 L. Ed. 2d 711 (2016). It cannot be reasonably disputed that domestic law requires damages for any tort claim. *Ankiewicz v. Kinder*, 563 N.E.2d 684, 686 (Mass. 1990) ("**All torts share the elements** of duty, breach of that duty, and **damages arising from that breach**.") (emphasis added).

For the same reason, SMUG's state law claims for civil conspiracy (Count IV) and negligence (Count V), which also sound in tort, also require SMUG to prove damages as an essential element. A civil conspiracy claim under Massachusetts law requires proof of damages. *See Advanced Micro Devices, Inc. v. Feldstein*, 951 F. Supp. 2d 212, 221 (D. Mass. 2013) (noting that a civil conspiracy under Massachusetts law requires proof of "an overt act that results **in damages**") (internal quotations omitted; emphasis added); *see also Therrien v. Hamilton*, 849 F. Supp. 110, 115 (D. Mass. 1994) (same) (Ponsor, J.); *Clermont v. Fallon Clinic, Inc.*, No. 2001-1512 B, 2003 WL 21321190, at *15 (Mass. Super. May 15, 2003) ("To establish a claim for civil conspiracy, a [plaintiff] must prove . . . damage."); *Shawsheen River Estates Assocs. Ltd. P'ship*, No. 95-1557, 1995 WL 809834, at *4 (Mass. Super. Apr. 11, 1995). Likewise, damages is a

required element of any negligence claim under Massachusetts law. *Geshke v. Crocs, Inc.*, 740 F.3d 74, 77 (1st Cir. 2014) ("To recover on a claim for negligence under Massachusetts law, a plaintiff must carry the burden of proving the elements of duty, breach, causation, and **damages**.") (citing *Leavitt v. Brockton Hosp., Inc.*, 907 N.E.2d 213, 215 (Mass. 2009)) (emphasis added); *see also Donovan v. Philip Morris USA, Inc.*, 914 N.E.2d 891, 898-99 (Mass. 2009).

Because damages is an essential element of each of SMUG's tort claims, and because, as shown below, SMUG has not adduced and cannot adduce evidence of any damages, summary judgment is warranted on each of SMUG's claims. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) ("In our view, the plain language of Rule 56 mandates that entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial"); *Sanchez v. Triple S. Mgmt, Corp*., 492 F.3d 1, 9 (1st Cir. 2007).

B. SMUG Has Consistently Maintained, Under Oath, That Its Alleged Damages Require Expert Computation, But SMUG Failed To Adduce Any Expert Testimony On Damages.

In its Complaint filed more than four years ago, SMUG sought (as it was required to do) an award of money damages for each of its claims. *See* Am. Compl., ¶¶ 13, 239, 245, 250, 255-256, 262; *see also id.* "Prayer for Relief," § a-b. Rule 26 required SMUG to provide Lively "a computation of each category of damages claimed" as well as "the documents or other evidentiary material . . . on which each computation is based, including materials bearing on the nature and extent of injuries suffered." Fed. R. Civ. P. 26(a)(1)(A)(iii). Lively also sought SMUG's damages, and, particular, SMUG's calculations for its alleged damages, through an interrogatory. (Lively Interrogatory 4).

However, throughout the entire period of fact discovery in this case, SMUG continually refused to provide its damages calculations to Lively, maintaining instead that its damages would be calculated by an expert and disclosed with its expert reports after the close of fact discovery. SMUG repeatedly made these representations in its initial disclosures and its sworn interrogatory responses. (MF ¶ 180) (*e.g.*, "Plaintiff will provide its computation of damages as soon as expert reports are delivered and damages are computed.").

In addition to its sworn discovery responses, SMUG also clearly and unambiguously admitted at its Rule 30(b)(6) deposition that the work of a financial expert was required to calculate its damages; that SMUG did not have the expertise to calculate its own damages, and that SMUG indeed retained an undisclosed expert to perform its damages calculation. (MF ¶¶ 181, 186) (SMUG Rule 30(b)(6) damages designee unambiguously reaffirming under oath that "**an expert witness is required to prepare SMUG's damages calculations for this case**" and that there is no one at SMUG that could have made the actual calculations without consulting with a financial expert because "**SMUG does not have that exact expertise to do the calculations**") (emphasis added) (MF ¶ 183) (SMUG damages designee admitting that SMUG hired financial expert for its damages calculation).

In spite of all of these admissions about the requirement for expert testimony on the issue of its alleged damages, SMUG inexplicably failed to identify any expert witness or provide an expert report on damages prior to its expert disclosure deadline, which had already been extended by over three months at SMUG's request. (MF ¶ 182; *see also* Order (6/24/15), dkt. 190 (granting dkt. 178, Pls.' Mot. for Ext. of Time to Submit Expert Disclosures); Order (8/14/15), dkt. 207). SMUG stated under oath that it had no reason for its critical failure. (MF ¶¶ 182, 187-189).

Realizing the fatal import of SMUG's admissions and evidentiary failures on expert testimony, on the evening after the first day of SMUG's Rule 30(b)(6) deposition SMUG's lawyers discussed this specific issue with SMUG's damages designee, knowing full well that the witness was still under cross-examination and required to return for a second day of testimony. (MF ¶ 184). On the second day of testimony, after admittedly receiving instruction from SMUG's counsel, SMUG's damages designee sought to change SMUG's sworn testimony from the previous day, and sought to change SMUG's multiple sworn discovery responses, by suddenly claiming that now there **was** someone within SMUG who could (but did not) perform the damages calculations—SMUG's in-house accountant. (*Id.*) SMUG's designee did not speak with SMUG's in-house accountant to confirm that the accountant could indeed perform the calculations, but nonetheless testified – based only upon what SMUG's attorneys had told the designee the night before – that the accountant could do the task. (*Id.*)

In any event, SMUG indisputably did not designate its in-house accountant either as an expert witness on damages (with an attendant report), or to testify on SMUG's behalf as a lay witness on the subject of damages. (MF ¶ 190). Instead, the only witness SMUG did designate on damages could provide no testimony on damages. (MF ¶ 191). Specifically, SMUG's damages designee was not able to answer **a single question** about how SMUG's purported damages were calculated. (*Id.*) For example, SMUG's designee could not explain how the financial figures from its 2007 documents were used to come up with any of its calculated damages for 2007, nor for any other year between 2007 and 2014. (*Id.*) This is not surprising at all, since SMUG's calculations were admittedly performed by an undisclosed expert, after SMUG concluded that it lacked the expertise to perform its own calculations. (MF ¶¶ 183, 186). "**That's why we engaged an [outside] accountant to help with the calculation**." (MF ¶ 191) (emphasis added).

The Court should not and cannot allow SMUG, at the behest of counsel, to so easily cast aside its repeated sworn disclosure and testimony. Instead, the Court must credit SMUG's unrefuted, unambiguous and unrehearsed sworn discovery disclosures and sworn testimony that its damages require calculation by a financial expert, and the Court should enter summary judgment for SMUG's total failure to produce a damages expert.[30] *See, e.g.*, *Antioch Co. Litig. Trust v. Morgan*, No. 10-156, 2014 WL 1365949, at *5-6 (S.D. Ohio Apr. 7, 2014) (granting summary judgment on claims requiring proof of damages after precluding "Plaintiff's new attempt to claim that its damages can be proven without an expert," where factual record closed with plaintiff providing "no information about its claimed damages" and plaintiff's Rule 30(b)(6) witness having testified that "an expert was required"); *Cole v. Homier Distrib. Co.*, No. 07-1493, 2009 WL 775627, at *5 (E.D. Mo. Mar. 20, 2009) (granting defendant summary judgment on plaintiffs' breach of contract claims since defendant was not able to perform discovery "on **Plaintiffs' new assertion that they can provide a reasonable basis for their damages, absent any expert testimony**," where plaintiffs had stated under oath until fact discovery closed that they would rely upon an expert to calculate damages) (emphasis added).

In *Antioch*, the plaintiff's Rule 30(b)(6) witness, like SMUG's Rule 30(b)(6) witness, originally testified that damages and damages calculations were the "province of expert testimony," but once fact discovery closed, plaintiff claimed that "it does not need an expert because it relies on simple math using numbers that were available at the time of the [Rule 30(b)(6)] deposition." *Antioch*, 2014 WL 1365949, at *6. But, "**[i]f calculating damages were as**

[30] Separate and apart from SMUG's sworn testimony that its damages require expert calculation, the law clearly agrees with SMUG as well. *See e.g., Nat'l Fire Protection Ass'n, Inc. v. Int'l Code Council, Inc.*, No. Civ. A 03-10848 DPW, 2006 WL 839501 *25 (D. Mass. Mar. 29, 2006) ("when loss of goodwill is not adequately proven by expert testimony, the trial court should not allow the jury to speculate as to what damages would be").

easy as simple arithmetic, and is based on the facts in the record, then Plaintiff's 30(b)(6) witness should have answered questions about damages." *Antioch*, 2014 WL 1365949, at *6 (emphasis added). Like the damages designee in *Antioch*, SMUG's damages designee could do nothing of the sort. (MF ¶ 191).

Summary judgment on each of SMUG's claims is therefore warranted for SMUG's failure to provide the indisputably required expert testimony. Lacking any expert testimony on damages, let alone evidence attributing such damages to Lively, SMUG has no evidence to establish its alleged damages under any of its claims. Thus, since SMUG "is **unable to demonstrate that it has in fact suffered quantifiable damages as the result of any conduct attributable to**" Lively, Lively's motion for summary judgment should be granted. *See AVX Corp.*, 600 F. Supp. 2d at 295; *see also Cash Energy*, 81 F.3d 147, 1996 WL 141787, at *2 ("It is axiomatic that the defendants are not liable for damages they did not cause.").

C. Even If SMUG's Damages Could be Determined Without Expert Testimony, And Even If The Court Could Allow SMUG To Change Its Sworn Testimony At The Behest Of Counsel, SMUG Is Still Barred From Proving Damages By Its Failure To Timely Provide Its Damages Documentation And Calculation.

Finally, even if SMUG's damages could be determined without expert testimony, after SMUG repeatedly claimed that they could not, and even if the Court could allow SMUG to completely change its unambiguous sworn testimony at the behest of counsel – none of which is possible – SMUG would still be precluded from proving any damages through lay witnesses because it failed to provide its damages documentation and calculation in discovery.

By the time of SMUG's Rule 30(b)(6) deposition in November 2015, fact discovery in this case had already been closed for **more than four months**, and SMUG's expert disclosure deadline

had also expired.[31] After it repeatedly claimed that its damages required expert calculation and would be provided with expert reports, SMUG attempted to provide **for the very first time** a nonsensical "calculation" of its damages just two business days prior to its Rule 30(b)(6) deposition, four days after its expert disclosure deadline, and four months after the close of fact discovery. (MF ¶¶ 180, 182, 185). This woefully belated disclosure was provided via a purported two-age worksheet, in a "supplement" to SMUG's prior interrogatory responses – the same interrogatory responses in which SMUG had consistently claimed, under oath, that its damages would be calculated by financial experts. (MF ¶¶ 180, 183).

SMUG's worksheet and interrogatory "supplement" was neither sworn nor verified, but it was purportedly coming from a lay witness. (MF ¶ 185). This was the first inkling – and it was a vague one – that SMUG would attempt to walk away from the "wait for expert reports" mantra it had repeated while discovery was still open. (MF ¶ 180). But, at its Rule 30(b)(6) deposition, SMUG's damages designee conceded that the calculations on the worksheet **were, in fact, performed by the expert financial firm that SMUG had retained, because no one at SMUG**

[31] Lively was forced to take SMUG's Rule 30(b)(6) deposition after the close of all fact discovery, and after the expiration of SMUG's expert report deadline, because of SMUG's failure to produce documents in a timely manner, and to accommodate the travel schedule of SMUG's witness. (*See* Orders, dkts. 191, 207, 227, 231). The deadline for general fact discovery closed on June 30, 2015. (*See* Order (2/24/15), dkt. 136 (granting dkt. 135, Joint Mot. to Extend Time to Complete Discovery). In an order dated June 24, 2015, the Court extended the deadline for completing fact discovery only "for limited and stated purposes," including the taking of SMUG's Rule 30(b)(6) deposition. (*See* Order (6/24/15), dkt. 191). On August 14, 2015, the Court further extended the deadline for taking non-expert depositions that had already been noticed (including SMUG's Rule 30(b)(6) deposition) until October 2, 2015. (*See* Order (8/14/15), dkt. 207). On September 23, 2015, without extending the deadline for general fact discovery, the Court again extended the deadline for taking previously noticed fact depositions, including SMUG's Rule 30(b)(6) deposition, until the week of October 26, 2015. (*See* Order (9/23/15), dkt. 227). Finally, on October 13, 2015, without extending the deadline for general fact discovery, the Court again extended the time for taking SMUG's Rule 30(b)(6) deposition until the week of November 9, 2015. (*See* Order (10/13/15), dkt. 231).

had the expertise to perform the calculations themselves. (MF ¶ 186). Additionally, as noted above, SMUG's damages designee – a law witness – was unsurprisingly unable to answer a single question about the "calculations" on the worksheet. (MF ¶ 191).

Importantly, on its second deposition day, after SMUG's witness changed SMUG's tune from "expert required" to "no need for expert," SMUG's damages designee admitted that SMUG had no good reason for failing to provide its supposedly easily calculable damages during fact discovery, when Lively could have still investigated and rebutted them. (MF ¶¶ 184, 187-189). SMUG's damages designee testified that SMUG could have performed its damages calculations **several years prior**, but SMUG was too busy to do so. (MF ¶ 188). SMUG's designee also testified that there was no reason why SMUG could not have performed its damages calculations for the years 2007 to 2013 by at least July of 2014. (MF ¶ 189).

The upshot of SMUG's failure to timely calculate and disclose its damages to Lively until November 2015, after fact discovery had already closed, coupled with SMUG's failure to provide a damages designee that could answer basic questions about SMUG's belated "calculation" at SMUG's deposition, is that SMUG has completely denied Lively any ability to probe, investigate and rebut SMUG's claimed damages, such as they are. SMUG's trial by ambush should not be countenanced, and must result in the preclusion of any damages showing by SMUG at this stage. *See, e.g., Cash Energy, Inc. v. Weiner*, 81 F.3d 147 (1st Cir. 1996) (affirming grant of summary judgment against a plaintiff for failing to provide sufficient evidence of damages during the discovery period); *AVX Corp. v. Cabot Corp.*, 251 F.R.D. 70, 78 (D. Mass. 2008) (refusing to permit plaintiff to use damages calculation because of failure to produce supporting evidence for such calculation and stating that "[t]he late disclosure after the close of discovery leaves Cabot without the means to explore and challenge the basis of the recent calculations. Both fact and

expert discovery are closed thereby leaving Cabot in a prejudicial position of having to defend against calculations without opportunity to explore and challenge the basis for the calculation."); *Nat'l Fire Protection Ass'n, Inc. v. Int'l Code Council, Inc.*, No. Civ. A 03-10848 DPW, 2006 WL 839501 *25 (D. Mass. Mar. 29, 2006) (denying a plaintiff's motion for summary judgment for failing to provide any proof of damages, other than a self-serving affidavit, and failing to provide promised expert testimony concerning the damages calculation).

SMUG is therefore stuck with the hollow and vacant damages testimony provided by its damages designee. Rule 30(b)(6) requires a company to have persons testify "on its behalf as to all matters known or reasonably available to it" and "requires persons to review all matters known or reasonably available to it in preparation for the 30(b)(6) deposition" in order to "make the deposition a meaningful one and to prevent the 'sandbagging' of an opponent by conducting a half-hearted inquiry before the deposition," which would "totally defeat the purpose of the discovery process." *Calzaturficio S.C.A.R.PA. s.p.a. v. Fabiano Shoe Co., Inc.*, 201 F.R.D. 33, 36 (D. Mass. 2001) (quoting *United States v. Taylor*, 166 F.R.D. 356, 362 (M.D.N.C. 1996); *see also Int'l Ass'n of Machinists & Aerospace Workers v. Werner-Masuda*, 390 F. Supp. 2d 479, 487-88 (D. Md. 2005) (addressing the deficiencies of a "woefully unprepared" Rule 30(b)(6) witness who was not "properly educated as to the noticed deposition topics," as best illustrated by a series of fourteen "I don't know[s]"); *Black Horse Lane Assocs., L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 304 (3d Cir. 2000) ("In reality if **a Rule 30(b)(6) witness is unable to give useful information he is no more present for the deposition than would be a deponent who physically appears for the deposition but sleeps through it**.") (emphasis added); *Rainey v. Am. Forest & Paper Ass'n, Inc.*, 26 F. Supp. 2d 82, 95 (D.D.C. 1998) ("Rule 30(b)(6) does not require a corporate party to facilitate preparation of its opponent's legal case; but it binds the corporate party to the positions

taken by its 30(b)(6) witnesses so that opponents are, by and large, insulated from trial by ambush.").

In sum, SMUG cannot prove damages for either of two independently sufficient reasons: (1) SMUG failed to produce a damages expert after repeatedly claiming and admitting under oath that expert testimony was required; or, (2) SMUG failed timely to provide damages calculations and documentation during fact discovery, and failed to provide a fact witness at its deposition with any knowledge about its damages calculations. In either case, SMUG has failed to produce evidence of damages, which is an essential part of each of SMUG's tort claims in this action. Accordingly, summary judgment should be granted.

VIII. SMUG'S CLAIMS FAIL AS A MATTER OF LAW BECAUSE SMUG HAS NO COMPETENT OR ADMISSIBLE EVIDENCE AS TO CAUSATION.

Summary judgment on SMUG's claims is also appropriate because SMUG has no admissible and competent evidence of causation to support its claims against Lively. This lack of proof is fatal to SMUG's claims at this stage because causation is an essential element it must prove for each of its tort claims against Lively.

A. All Of SMUG's Claims Sound In Tort And Require Proof Of Causation As An Essential Element.

As a general matter, the failure to show causation is grounds for granting summary judgment where causation is an element of the claim. *See Schubert v. Nissan Motor Corp. in U.S.A.*, 148 F.3d 25, 29 (1st Cir. 1998) (affirming grant of summary judgment based on plaintiffs' failure "to carry their burden on 'the issue of causation'" in negligence-based products liability action); *Champagne v. Servistar Corp.*, 138 F.3d 7, 13 (1st Cir. 1998) (affirming grant of summary judgment where plaintiff "failed to produce evidence of causation sufficient to survive summary judgment" on discrimination claims); *Rodriguez-Cirilo v. Garcia*, 115 F.3d 50, 53 (1st Cir. 1997) (affirming grant of summary judgment on Section 1983 claim "based on plaintiffs' failure to

demonstrate causation under well-established tort principles"); *Moody v. Maine Central Railroad Co.*, 823 F.2d 693, 694 (1st Cir. 1987) (resisting plaintiff's invitation to "make this a pioneer cases exploring the frontier" and affirming the district court's grant of summary judgment where plaintiff "failed to make a sufficient showing of causation"). "**If there are 'fatal gaps" in the evidence introduced to prove the plaintiff's causal chain, summary judgment is appropriate**." *In re: Nexium (Esomeprazole) Antitrust Litig.*, 42 F. Supp. 3d 231, 269 (D. Mass. 2014) (citing *Kearney v. Philip Morris, Inc.*, 916 F. Supp. 61, 66 (D. Mass. 1996)) (emphasis added).

As noted above, Counts I, II, and III of SMUG's Amended Complaint all rest upon the jurisdictional ATS, which requires the commission of a tort for liability to imposed. ATS plaintiffs "cannot state [an ATS] tort claim in the absence of a showing of 'causation,'" which is a necessary element of any tort claim. *Bieregu*, 259 F. Supp. 2d at 353-54; *see also De Los Santo Mora v. Brady*, No. 06-46, 2007 WL 981605, at *4 (D. Del. Mar. 30, 2007) (listing "causation" as a "necessary" element of an ATS claim); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, No. 01-9882, 2005 WL 1060353, at *1-2 (S.D.N.Y. May 6, 2005) (noting that "proof of proximate causation" was necessary to establish alien association's ATS claims). Without causation, any tort claim brought under the ATS must fail. *Bieregu*, 259 F. Supp. 2d at 353-54 (dismissing ATS claim based on lack of causation); *De Los Santo Mora*, 2007 WL 981605, at *4 (dismissing ATS claims based on lack of causation); *see also Liu Bo Shan v. China Constr. Bank Corp.*, 421 Fed. Appx. 89, 94-95 (2d Cir. 2011 (dismissing ATS claim for aiding and abetting based on "thin allegations of assistance" because actionable "assistance must be **both** 'practical' **and** have 'a substantial effect on the perpetration of the crime,' which is not this case") (citing *Presbyterian Church*, 582 F.3d at 258) (emphasis added).

Moreover, "when questions endemic to tort litigation or civil liability arise in ATS litigation—such as . . . proximate causation—these issues must be governed by domestic law." *Nestle*, 766 F.3d at 1022. It cannot be reasonably disputed that domestic law requires causation for any tort claim. *Swift v. U.S.*, 866 F.2d 507, 508-09 (1st Cir. 1989) (identifying "causation (actual and proximate)" as one of the "essential elements of a common law tort action" under Massachusetts law); *Glidden v. Maglio*, 722 N.E.2d 971, 973-74 (Mass. 2000) ("[c]ausation" is an "essential element" of any negligence claim); *Feldstein*, 951 F. Supp. 2d at 221 (civil conspiracy under Massachusetts law requires proof of an "overt act that **results in** damages") (internal quotations omitted; emphasis added); *Fahey v. R.J. Reynolds Tobacco Co.*, No. 927221, 1995 WL 809837, at *8 (Mass. Super. June 12, 1995) (explaining that claim for civil conspiracy under Massachusetts law requires plaintiff to show that "defendant's actions proximately caused [plaintiff's] damages").

"Under Massachusetts tort law, proof of causation must be such as to make the defendant's causality 'appear more likely or probable in the sense that actual belief in its truth exists in the mind or minds of the tribunal notwithstanding any doubts that still linger there.'" *Schubert*, 148 F.3d at 32 (quoting *Lynch v. Merrell-Nat'l Lab.*, 830 F.2d 1190, 1197 (1st Cir. 1987), in turn citing, *Smith v. Rapid Transpit, Inc.*, 58 N.E.2d 754, 755 (Mass. 1945)). "The defendant wins if the plaintiffs fail to show 'that there was a greater likelihood or probability that the harm complained of was due to causes for which the defendant was responsible than from any other cause.'" *Lynch*, 830 F.2d at 1197 (citing *Corsetti v. Stone Co.*, 483 N.E.2d 793, 805 (Mass. 1985), and *Beaver v. Costin*, 227 N.E.2d 344, 346 (Mass. 1967)). "The concept of proximate causation restricts tort liability to those whose conduct, beyond falling within the infinite causal web leading to an injury,

was a legally significant cause. The passage of time can certainly reduce the legal significance of a particular contributing act." *Rodriguez-Cirilo*, 115 F.3d at 52.

Because causation is an essential element of each of SMUG's tort claims, and because, as shown below, SMUG has not adduced and cannot adduce evidence supporting any causal link between Lively's speech and expressive activities and SMUG's alleged injuries, summary judgment is warranted on each of SMUG's claims. *See Celotex*, 477 U.S. at 322 (summary judgment appropriate against a party who fails to sufficiently establish an element on which it bears the burden of proof).

B. SMUG Cannot Link Together Any Causal Chain Between Lively's Speech And Expressive Activities And Its Alleged Injuries.

The undisputed factual record in this case demonstrates that SMUG cannot establish causation on any of its claims against Lively. "The very mission of the summary judgment procedure is to pierce the pleading and to *assess the proof* in order to see whether there is a genuine need for trial." *Schubert*, 148 F.3d at 32 (quoting *DeNovellis v. Shalala*, 124 F.3d 298, 305-06 (1st Cir. 1997)) (internal citation omitted; emphasis in original). Thus, SMUG can no longer rest upon unfounded allegations that Lively "was one of the 'principal strategists and actors behind this decade-long persecutory campaign,'" for which this Court found causation sufficiently pleaded in SMUG's Amended Complaint. (MTD Order at 48-49 (internal citation omitted).) Instead, SMUG must come forward with "proof" that this Court can "assess." As shown below, SMUG has absolutely no proof that warrants a triable issue on causation. Instead, the causal chain for its claims is full of "fatal gaps," necessitating summary judgment. *See Nexium*, 42 F. Supp. 3d at 269.

Critically, SMUG has no evidence of any involvement or assistance provided by Lively in any of the fourteen specific instances of persecution alleged by SMUG. At their depositions, SMUG's witnesses testified repeatedly and unambiguously that they and SMUG "don't know" of

"**any** connection" whatsoever between Lively and the fourteen persecutory incidents and their alleged perpetrators. (MF ¶¶ 102-117). SMUG's witnesses further admitted that SMUG has absolutely no knowledge of any "communications," let alone "agreements," between Lively and the alleged perpetrators; that SMUG has absolutely no knowledge of "**any assistance at all**" provided by Lively to the alleged perpetrators; and that SMUG has absolutely no knowledge of "**any facts that would show that Scott Lively was responsible**" for any of these fourteen incidents. (MF ¶¶ 104-117).

In addition, the undisputed record shows that Lively has never entered into any campaign, agreement, conspiracy, or enterprise with Langa, Ssempa, Buturo, Bahati or any other person to effect, incite or facilitate: "persecution," in Uganda, including the specific incidents of persecution alleged by SMUG; nor the criminalization or punishment of any form of sexual "identity" or "orientation" or "status" or existence of any LGBTI or other person in Uganda. (MF ¶ 118). The sum total of this evidence could not be more clear at this stage: SMUG has absolutely no evidence of causation to support its allegations that Lively was a participant in, let alone "one of the 'principal strategists and actors behind [a] decade-long persecutory campaign.'" (*See* MTD Order at 48.) The complete absence of any causal link between Lively and the fourteen specific instances of persecution requires summary judgment in Lively's favor on all of SMUG's claims based upon those incidents.

Not only does SMUG lack any evidence connecting Lively to the fourteen persecutory acts or their perpetrators, but SMUG also lacks any evidence to support its novel and farfetched causation theory that Lively's speech and ideas laid the groundwork or fertilized the ground for persecution to mushroom. SMUG has no evidence that Lively did anything unlawful during his initial trips to Uganda in 2002. (MF ¶¶ 10-20). Specifically, the undisputed record shows that

during his 2002 visits to Uganda, Lively did not develop strategies for an ongoing anti-LGBTI movement in Uganda by discussing the concepts of "promotion of homosexuality" or "recruitment" of youth into homosexuality. (MF ¶ 14). Nor did he discuss or advocate strategies on the criminalization of "promotion of homosexuality." (MF ¶ 14). To the contrary, in March 2002 Lively spoke at a conference about pornography and obscenity and, in June 2002 he delivered remarks at several public speaking events focusing on pornography, obscenity, abstinence, God's design for marriage and family, and Christian living. (MF ¶¶ 10-13). SMUG has no evidence about what Lively said during his trips in 2002, other than a single TV interview in which Lively spoke about pornography's role in the sexual revolution. (MF ¶¶ 15-20). The undisputed record further shows that Lively had no substantive contact with Uganda or Ugandans between June 2002 and March 2009, and SMUG has no evidence that Lively did anything unlawful during this time period, let alone authorize, direct, manage, and oversee strategies for operating an anti-LGBTI movement in Uganda. (MF ¶¶ 21-24).

But while SMUG has absolutely no evidence of any actions taken by Lively in that timeframe, SMUG admits that between at least 1999 (**years before Lively ever visited Uganda**) and March 2009 (when Lively returned to Uganda to participate in another conference), "homophobia," "persecution," and attempts to criminalize "promotion of homosexuality" and "recruitment" of children into homosexuality were prevalent in Ugandan society and from Uganda government officials, **and SMUG further admitted that it has no evidence linking any of it to Lively**. (MF ¶¶ 25-40). These admissions are fatal to any genuine need for a trial on the issue of causality. For instance, SMUG is aware that in 1999 the President of Uganda "launched a fierce attack on homosexuality and said gays should be sent to jail." (MF ¶ 25). SMUG witnesses testified that they and SMUG were further aware that in 2002 homosexuals were experiencing denial of

health services and it was not possible to register a homosexual organization in Uganda. (MF ¶¶ 26-27). These same witnesses conceded that members of the Ugandan government and others in Ugandan society made public statements covered by media sources declaring, among other things, that "we are not going to give [homosexuals] the opportunity to recruit others," and that "homosexuality, lesbianism, and the like are a morally corrupting influence on the youth." (MF ¶¶ 30-31, 36). Other Uganda voices were publicly calling for arrests and prosecution. (MF ¶¶ 34-35). SMUG agrees that in 2006, "persecution of homosexuals was not new in Uganda" and Uganda was already engaged in "an active campaign of legislative overkill" against LGBTI rights "to silence an emerging community." (MF ¶¶ 32-33).

Moreover, in 2007, SMUG conducted a visible, 45-day "Let Us Live in Peace" media campaign, which triggered "angry response," "a lot of backlash," and calls for legislative action in Uganda and from Ugandan government officials. (MF ¶¶ 41-46). SMUG's witnesses testified that Uganda government officials and others in Ugandan society made public statements covered by media sources declaring, among other things, that the government "will not tolerate anyone who lures others into lesbianism and homosexuality" and should resist "indoctrinating our children to homosexuality." (MF ¶ 42). These same witnesses conceded that in 2007 the Ugandan government was already engaged in attempting to criminalize the "promotion of homosexual conduct," and that the backlash at the time was because "95 percent of Ugandans are against homosexuals and homosexuality." (MF ¶¶ 43, 45). SMUG has "no doubt" that in 2008 ideas such as the "promotion of homosexuality" or homosexual "recruitment" of children were prevalent in Ugandan media and society. (MF ¶ 39). The presence of these concepts into society, and the consideration of new legislation to toughen Ugandan's law against homosexual concept, are also matters confirmed by

the Principal Research Officer of Uganda's Parliament. (MF ¶¶ 74-76). SMUG has not a shred of evidence linking Lively to the foregoing statements and events. (MF ¶¶ 21, 25, 31, 33-37, 42-44).

Accordingly, this undisputed evidence demonstrates that the Ugandan society had its own ideas about homosexuality and the Ugandan government was already considering, independent of Lively, amendments to existing Ugandan law in order to ban the "promotion" of homosexuality to protect against the "recruitment" of children before Lively visited Uganda. Thus, to the extent SMUG tries to rest its tort claims against Lively on his purported introduction of the ideas of "promotion" and "recruitment" into Ugandan society, SMUG has no admissible or competent evidence to support that claim. The undisputed evidence demonstrates that these ideas were already present in Ugandan society, without Lively whatsoever and absent any direct or indirect connection to him.

Notably, several of the fourteen allegedly persecutory acts supposedly took place in this 2002 to 2009 frame, during which SMUG says it has no knowledge of anything Lively said or did in Uganda. (*E.g.*, MF ¶ 106 (2008 raid); MF ¶ 108 (2007 crackdown); MF ¶ 109 (2005 raid)). Even if SMUG had not already completely eviscerated causation by testifying that it knows of no assistance or involvement whatsoever by Lively in these incidents (*id.*), would SMUG really argue that Lively's brief visits to discuss pornography and obscenity in 2002, and his passing remarks on homosexuality in the context of the broader sexual revolution, somehow **caused** (to a legal certainty) government's arrest of homosexuals in 2005? Or in 2007? Or in 2008? Could such a preposterous argument escape sanctions, let alone dismissal? In any event, SMUG's own witnesses have removed SMUG's ability to continue to advance this argument, because they have already admitted, unequivocally, that SMUG has no knowledge of any facts connecting Lively to any of the allegedly adverse events between 2002 and 2007. (MF ¶¶ 25-46).

SMUG also has no evidence that Lively did anything unlawful during his March 2009 visit to Uganda. (MF ¶¶ 47-72). Lively committed no crime in delivering his lectures at the March 2009 conference on homosexuality or speaking to several church, university, and school assemblies. (MF ¶¶ 47, 65-72). Lively also committed no crime in giving an informal talk to a few Members of the Ugandan Parliament during that trip, a meeting about which SMUG admittedly knows nothing. (MF ¶¶ 53-63). In fact, less than ten (out of 385) Members of Parliament were present for Lively's talk, which lasted about an hour. (MF ¶¶ 53, 56). During the talk, Lively urged the handful of Parliament members present and the others in the audience that they should liberalize Uganda's criminal ban on homosexuality, and that they should focus on voluntary counseling and education instead of incarceration for those who violate the law. (MF ¶ 58). Lively also told his audience that those struggling with homosexuality do not deserve to be jailed, as under the existing law, but deserve the chance to overcome indulging in homosexual conduct through voluntary counseling and education. (MF ¶ 59). At the same meeting, Lively also urged tolerance, restraint and respect for persons struggling with homosexuality in any new law dealing with homosexual conduct. (MF ¶ 60). At the meeting at Parliament, Lively did not advocate for tougher criminal punishments for homosexual conduct; did not advocate for the death penalty for any form of homosexual conduct or sexual crimes; and did not advocate for the punishment of life imprisonment for any form of homosexual conduct of sexual crimes. (MF ¶ 61). Can SMUG really argue, without losing all credibility, that these undisputed statements, which it has no knowledge to controvert, somehow caused (to a legal certainty) any of the adverse persecutory actions that supposedly took place several years later?

Nor does SMUG have any evidence that Lively did anything unlawful upon his return to the United States after his March 2009 visit, with respect to the AHB and AHA or otherwise. As

discussed in detail above, Lively's only contribution to the AHB and the AHA was to repeatedly urge its moderation and the drastic reduction of criminal penalties, to make them even lower than existing law. (MF ¶¶ 81, 85). Lively did not draft these bills. (MF ¶¶ 78-80, 85, 98). Ultimately, all of Lively's proposals, ideas and pleas to soften the proposed Ugandan laws were outright rejected by the independent volition of the sovereign government of Uganda. (MF ¶¶ 82-84, 86-88). The AHA was passed after much debate in Uganda's Parliament, with Lively never once involved or present for a single debate, and without including any of Lively's proposed modifications to reduce the criminal punishment in the law. (MF ¶¶ 88-93). While SMUG got away with claiming that Lively was the mastermind and principal architect of the AHB at the motion to dismiss stage, when its frivolous allegations did not require proof, is SMUG going to maintain that argument now, on these facts, after admitting under oath that it has no knowledge of anything that can contradict them?

In sum, SMUG has no evidence of causation to link Lively with any of SMUG's purported injuries. The undisputed record shows that SMUG has no knowledge that Lively is the actual and proximate cause for the fourteen specific instances of alleged persecution, the introduction into Ugandan society of the concepts of "promotion of homosexuality" or "recruitment" of youth into homosexuality, or the consideration and enactment of harsher criminal laws affecting homosexuality. As such, SMUG cannot patch together any chain of causation for which Lively would be liable on SMUG's claims. Thus, SMUG cannot establish a trial-worthy issue on any aspect of causation (actual and proximate) for any of its tort claims. Summary judgment on all counts should be entered.

IX. SMUG'S CLAIMS FAIL AS A MATTER OF LAW BECAUSE SMUG HAS NO COMPETENT OR ADMISSIBLE EVIDENCE TO PROVE ANY OF THEIR OTHER ESSENTIAL ELEMENTS.

Even if SMUG overcomes the presumption against extraterritoriality, the bar of the act of state doctrine, shows the existence and violation of a universally accepted and clearly defined international norm, demonstrates that Lively is not protected by the First Amendment, and establishes standing to sue, SMUG's claims still fail because SMUG has no evidence to prove their essential elements. SMUG's failure of proof as to damages and causation, both essential elements to each of its claims, has already been discussed in Sections VII and VIII, respectively, *supra*. This section addresses the other essential elements of SMUG's claim as to which SMUG similarly lacks any competent and admissible evidence.

A. SMUG's Persecution Claim Fails for Lack of Evidence.

1. SMUG Has No Evidence To Support Direct Liability Of Lively For Persecution.

In its "First Claim for Relief" ("Persecution: Individual Responsibility"), SMUG attempts to assert both a direct liability claim against Lively for allegedly committing persecution himself (Am. Compl., dkt. 27, ¶ 237), as well as a secondary liability claim for "aiding and abetting" others to persecute (*id*. at ¶ 238). SMUG has no evidence to support either theory.

a. Lively Is Not A State Actor.

Lively cannot be directly liable on a claim of "persecution" because he is a private citizen, and not a state actor. The record is devoid of any evidence that Lively is an employee, agent, representative, or other operative for Uganda. (Am. Compl., dkt. 27, ¶¶ 22-23; MF ¶¶ 74-76, 79-93, 113, 142). In *Sosa*, the Supreme Court emphasized that "the determination [of] whether a norm is sufficiently definite to support a cause of action [under the Alien Tort Statute]" includes the "related consideration [of] whether international law extends the scope of liability for a violation

of a given norm to the perpetrator being sued, if the defendant is a **private** actor." 542 U.S. 692, 732 & n.20 (emphasis added). Pre- and post-*Sosa* courts have held that **crimes against humanity are not actionable against non-state actors**.

"The general rule is that international law only binds state actors." *Estate of Rodriquez v. Drummond Co., Inc.*, 256 F. Supp. 2d 1250, 1260-61 (N.D. Ala. 2003). However, the Restatement (Third) of Foreign Relations Law recognizes that, in certain limited circumstances, "[i]ndividuals may be held liable for offenses against international law, **such as piracy, war crimes, or genocide**." Restatement (Third) of Foreign Relations Law II, Introductory Note (1987) (emphasis added). As such, "there exists a 'handful of crimes to which the law of nations attributes individual responsibility.'" *Kadic v. Karadzic*, 70 F.3d 232, 240 (2d Cir. 1995) (quoting *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 795 (D.C. Cir. 1984) (Edwards, J. concurring)). "[B]ut **no court has found more in that 'handful' than war crimes, crimes committed in pursuit of genocide, slave trading, aircraft hijacking, and piracy**." *Doe v. Islamic Salvation Front*, 257 F. Supp. 2d 115, 120 (D.D.C. 2003) (emphasis added) (citing *Kadic*, 70 F.3d at 240).

Thus, "courts interpreting the [Alien Tort Statute] have found that certain forms of conduct – **piracy, the slave trade, slavery and forced labor, aircraft hijacking, genocide, and war crimes** – violate the law of nations 'whether undertaken by those acting under the auspices of a state or only as private individuals.'" *Estate of Rodriquez*, 256 F. Supp. 2d at 1260-61 (emphasis added) (allowing claims of extrajudicial killing to proceed against non-state actor under Alien Tort Statute only because killings were adequately alleged to be part of war crimes) (quoting *Kadic*, 70 F.3d at 239). In *Kadic*, the Second Circuit found that genocide and war crimes were within the "handful of crimes" actionable against non-state actors under the Alien Tort Statute, as were torture and summary execution **when committed in the course of genocide or war crimes**. 70 F.3d at

241-244. The Second Circuit permitted claims of torture and killing against a non-state actor, but only because they were adequately alleged to have been committed in the course of genocide or war crimes. *Id*. at 244.

Other courts have routinely dismissed claims against non-state actors under the Alien Tort Statute which do not fall within the limited "handful of [recognized] crimes," including, specifically, crimes against humanity. *See e.g., Islamic Salvation Front,* 257 F. Supp. 2d at 120 (granting summary judgment on claim for crimes against humanity under Alien Tort Statute, because only plaintiff's airplane hijacking claim "can be found on that short list" of international torts actionable against non-state actors); *South African Apartheid,* 617 F. Supp. 2d at 251-52 (dismissing direct liability claims under Alien Tort Statute, because "[a]lthough the establishment of state-sponsored apartheid and the commission of inhumane acts needed to sustain such a system is indisputably a tort under customary international law, the international legal system has not thus far definitively established liability for non-state actors") ("this Court declines to recognize a tort of apartheid by a non-state actor").

In *Beanal v. Freeport-McMoRan, Inc.,* the court dismissed an Alien Tort Statute claim for crimes against humanity brought against a private actor, concluding that "[c]ertain conduct … only violates the law of nations if committed by a state actor." 969 F. Supp. 362, 371 (E.D. La. 1997) *aff'd, Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161 (5th Cir. 1999). "[Plaintiff] **must allege state action in order to state a claim under § 1350 for non-genocide related human rights violations abuses**." *Id*. at 373 (emphasis added). "**State action is required to state a claim for violation of the international law of human rights**." *Id*. at 380 (emphasis added).[32]

[32] In his "definitive volume" on crimes against humanity, Bassiouni states, aspirationally, "the need exists to include nonstate actors within the meaning of CAH." Bassiouni, *Contemporary Application, supra,* at XXXIV.

The same outcome must obtain here. SMUG attempts to bring a direct liability claim for the crime against humanity of persecution against Lively, whom SMUG concedes is a private citizen, not a state actor. (Am. Compl., dkt. 27, ¶ 22). Because neither crimes against humanity in general, nor persecution in particular, is on the "short list" of the "handful of crimes" actionable against non-state actors, Lively is entitled to judgment as a matter of law on this claim.[33]

b. SMUG Has No Evidence That Lively Persecuted Anyone.

SMUG's direct liability claim of persecution against Lively fails for still another, more basic reason: SMUG has no evidence Lively has committed any act of persecution **himself**. In *Liu*, the Second Circuit affirmed the dismissal of a direct liability claim of torture and inhuman treatment under the Alien Tort Statute. 421 Fed. App'x at at 92. Similarly to SMUG here, the plaintiff in *Liu* alleged that the police committed various acts of unlawful unrest, torture and inhuman treatment. *Id*. Also like SMUG, the plaintiff in *Liu* did not sue the police, but sued a private bank, and alleged that the bank provided the police with the false information leading to his unlawful arrest and eventual torture. *Id*. Also like SMUG, the plaintiff in *Liu* alleged inhuman treatment only by the police, not by the bank. *Id*. Said the Second Circuit: "Like the district court, we conclude that these allegations are insufficient to support a reasonable inference of direct liability by the Bank for conduct—torture, cruel treatment, and prolonged arbitrary detention—that the amended complaint repeatedly asserts was committed by the Chinese government police." *Id*.

[33] Even if SMUG is able to show that some nations or some courts have recognized direct liability claims for persecution against non-state actors, in light of the authorities above SMUG certainly cannot meet its burden of showing that such causes of action are "universally recognized" in the international community. As such, the Court would lack subject-matter jurisdiction over a claim on that theory. (*See* Section IV, *supra*.)

SMUG has sued Lively for "persecution," but has failed to produce a shred of evidence that he, himself, committed any of the fourteen instances of persecution alleged in its Amended Complaint and interrogatory answers. (MF ¶¶ 102-117, 132-146). Accordingly, Lively is entitled to judgment as a matter of law on SMUG's direct liability claim.

2. SMUG Has No Evidence That Lively Aided And Abetted Any Persecution.

Having failed to produce any evidence of direct persecution by Lively, SMUG will no doubt claim Lively still, somehow, aided and abetted someone else's. In the Amended Complaint, SMUG purports to assert a claim for purposefully "aid[ing], abet[ing], or otherwise assist[ing] in the commission or attempted commission of the crime [of persecution], including by providing the means for its commission." (Am. Compl., dkt. 27, ¶ 238). However, this claim fares no better than the direct liability claim, and Lively is entitled to judgment as a matter of law for two reasons: (a) SMUG has no evidence of any aiding and abetting conduct by Lively; and (b) SMUG has no evidence that Lively had the requisite intent to aid and abet.

a. SMUG Has No Evidence Of Any Aiding And Abetting Conduct By Lively.

The conduct (*actus reus*) element of aiding and abetting a crime requires proof of "**practical assistance** to the principal which has a **substantial effect** on the perpetration of the crime." *Presbyterian Church*, 582 F.3d at 259 (emphasis added); *see also Liu*, 421 Fed. App'x at 94 (allegations failed to show practical assistance or substantial effect on the perpetration of the crime). The absence of any "substantial effect" of Lively's conduct on any alleged instance of persecution is demonstrated in Section VIII, *supra*, showing a failure of evidence on causation as to each and every claim asserted by SMUG. There is likewise no evidence to support the "practical assistance" prong.

SMUG has expressly and conclusively disclaimed knowledge of any agreement, assistance, or coordination between or among Lively and the perpetrators of the fourteen instances of alleged persecution.[34] (MF ¶¶ 102-118, 125-126, 130-148). Nor has SMUG produced any evidence of how Lively aided, abetted, or assisted any of his alleged "co-conspirators" – Langa, Ssempa, Buturo, and Bahati— in the alleged persecutory acts that were carried out by others. (MF ¶¶ 102-118, 130-148). In short, there is no evidence whatsoever of practical assistance.

Furthermore, even if it were plausible on the record before the Court that the actual perpetrators of the alleged persecutory acts (or other anonymous aiders and abetters) were somehow encouraged or inspired by Lively's *speech*, such "encouragement" is an insufficient basis for liability as a matter of law. *See Liu*, 421 Fed. App'x at 94 (holding allegations of "encouragement and support" do not amount to practical assistance and substantial effect). Merely exercising one's First Amendment rights by expressing opinions to citizens and government officials cannot constitute aiding and abetting. *See Aziz v. Alcolac, Inc.*, 658 F.3d 388, 401 (4th Cir. 2011). It is likewise insufficient for aiding and abetting liability that Lively was friendly with people SMUG deems enemies of the human race. *See South African Apartheid*, 617 F. Supp. 2d at 257 ("It is (or should be) undisputed that simply doing business with a state or individual who violates the law of nations is insufficient to create liability under customary international law. International law does not impose liability for declining to boycott a pariah state or to shun a war criminal.").

[34] With respect to Uganda's enactment of the AHA, there is evidence of Lively's attempt to lodge his objections to the law with the Ugandan Parliament, which objections were disregarded. (MF ¶¶ 79-93).

b. SMUG Has No Evidence That Lively Had The Requisite Intent To Aid And Abet.

Not only has SMUG failed to produce evidence that Lively committed any specific act of aiding and abetting, but SMUG has also failed to produce any evidence that Lively acted with the **purpose** of aiding any perpetrator to persecute **specific victims**. Without meeting these basic requirements, the aiding and abetting claim fails on the *mens rea* ground alone.

Adhering to *Sosa*'s guiding principle, the *mens rea* standard for secondary liability, including aiding and abetting, requires a demonstration of purpose. *Presbyterian Church*, 582 F.3d at 255 ("The decisive issue in this case is whether accessorial liability can be imposed absent a showing of purpose," a question the court emphatically answered in the negative); *Aziz v. Alcolac, Inc.*, 658 F.3d 388, 400-01 (4th Cir. 2011) (adopting the purpose *mens rea* standard and noting that, although not dispositive, the Supreme Court "chose not to disturb the Second Circuit's specific intent analysis [in *Presbyterian Church*] when it declined" to grant certiorari); *Abecassis v. Wyatt*, 704 F. Supp. 2d 623, 655 (S.D. Tex. 2010) (applying *Presbyterian Church*) ("[T]he [Alien Tort Statute] will only confer jurisdiction if there are allegations of purposefulness.").[35]

To prove secondary liability for crimes against humanity, a plaintiff must prove that the defendant actually **intended** for **specific** harm to occur to **specific** victims. *Chiquita*, 792 F. Supp. 2d at 1349 ("With respect to [defendant]'s secondary liability for the [perpetrator]'s crimes against humanity, Plaintiffs must allege that [defendant] not only intended for the [perpetrator] to torture and kill, but that [defendant] intended for the [perpetrator] to torture and kill civilians").

[35] Even if the Court were to apply the minority standard and assume that the *mens rea* element is satisfied on the basis of mere knowledge of the persecution, SMUG's allegations nevertheless fail as a matter of law, because they do not show that Lively knew that his speech (or alleged "conduct") would provide practical assistance to, or substantially affect, the perpetrators of the alleged persecution.

In *Liu*, the plaintiff brought claims under the Alien Tort Statute against the defendant bank for aiding and abetting (1) torture, (2) cruel, inhumane, and degrading treatment, and (3) prolonged arbitrary detention, by alleging that the bank had aided the police in committing these torts. 421 Fed. App'x at 90. Specifically, the plaintiff "allege[d] that the Bank falsified evidence and induced the police to arrest [the plaintiff] in retaliation for his release of [an] audit [of the Bank]." *Id.* at 94. The Second Circuit nevertheless upheld the dismissal of the complaint:

> Notwithstanding Liu's assertions that the Chinese government exercised a 'high degree of control' over the Bank and 'shared the goal of silencing Liu,' . . . the amended complaint fails plausibly to allege that the Bank acted with the **purpose** that Liu be subjected to torture, cruel treatment, or prolonged arbitrary detention by the police. . . . Although 'intent must often be demonstrated by the circumstances,' **Liu's allegations do not support a reasonable inference that the Bank acted with the purpose to advance violations of customary international law** . . . .

Id. (emphasis added) (internal citations omitted) (quoting *Presbyterian Church*, 582 F.3d at 264).

Much like the plaintiff in *Liu*, SMUG's allegations imply that Lively's pure speech somehow induced Ugandan perpetrators to persecute SMUG. (Am. Compl., dkt. 27, ¶¶ 92-93). However, even with the allegation of a "high degree of control" over the perpetrators, something SMUG has not proved, the *Liu* plaintiff failed to warrant a plausible inference that the defendant "acted with the purpose to advance violations of customary international law." *Liu*, 421 Fed. App'x at 94.

Critically, SMUG has expressly and unambiguously disclaimed any knowledge of any connection whatsoever between Lively and the fourteen alleged instances of persecution. (MF ¶¶ 104-117, 132-146). SMUG certainly cannot prove Lively intended the persecutory acts to occur, or exercised any control over the alleged perpetrators. (MF ¶¶ 103, 118, 129-131). Accordingly,

SMUG cannot show the requisite intent for aiding and abetting liability, and Lively is entitled to judgment as a matter of law.

3. SMUG Cannot Recover For Persecution In Its Own Right, Because It Is An Organization, Not An Individual.

In its "First Claim for Relief," SMUG attempts to assert a claim of persecution not only in a representative capacity, but also on its own behalf. (Am. Compl., dkt. 27, ¶¶ 236-239). Lack of standing aside, the "tort" of "persecution" can only be claimed by natural persons, not organizations. SMUG defines "[p]ersecution as a crime against **humanity**" (*id*. at ¶ 3) (emphasis added), and repeatedly and exclusively refers to it as such in the Amended Complaint. SMUG, however, is obviously not a human being, so it cannot claim to be the victim of a "crime against **humanity**."

SMUG also defines persecution as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of [] identity" (*id*.), and claims that it was itself "deprived of these rights **on the basis of gender and/or sexual orientation and gender identity**." (*Id*. at ¶¶ 232, 237-238). However, because it is not a human being, SMUG can have neither a "gender" nor "gender identity." Equally obvious, because SMUG is not a human being, it can have neither sexual relations, nor "sexual orientation" nor "sexual identity." Even SMUG apparently recognizes these irrefutable facts, because, notwithstanding its claim that it has been persecuted, it ultimately admits in its Amended Complaint that "[t]he prohibition on persecution protects **individuals** on the basis of their identity." (*Id*. at ¶ 3) (emphasis added). Since SMUG also admits that it is an "umbrella **organization**," and not an individual (*id*. at ¶ 1) (emphasis added), there is no dispute that SMUG has no standing to claim persecution on its own behalf.

Beyond unassailable logic, SMUG's inability to claim persecution as an organization is confirmed by the dictates of international law:

> The contemporary international law of human rights has developed largely since the Second World War. **It is concerned with natural persons only**, and **it applies to all human beings**, not to aliens alone. It reflects general acceptance that every **individual** should have rights in his or her society which the state should recognize, respect, and ensure.

Restatement (Third) of Foreign Relations Law VII, Introductory Note (1987) (emphasis added).

The Restatement specifically defines "Human Rights" as the "freedoms, immunities, and benefits which, according to widely accepted contemporary values, every **human being** should enjoy in the society in which he or she lives." Restatement (Third) of Foreign Relations Law § 701 cmt. a (1987) (emphasis added). And, while subsections (1) and (2) of § 703 of the Restatement provide that **States** may pursue certain remedies, the last subsection, (3), provides: "An **individual** victim of a violation of a human rights agreement may pursue any remedy provided by that agreement or by other applicable international agreements." Restatement § 703 (emphasis added). SMUG is neither a "state," nor an "individual." Nowhere are corporations, organizations or associations granted a similar right or remedy. (*Id*.)

Even more on point, in *Chowdhury v. WorldTel Bangladesh Holding, Ltd.*, 588 F. Supp. 2d 375 (E.D.N.Y. 2008), two alien corporations sought to bring various tort claims against a United States citizen and others under the Alien Tort Statute. *Id*. at 378-79. The corporations alleged that one of their officers had been tortured and subjected to cruel, inhuman or degrading treatment. *Id*. at 378. The corporations pleaded the same claims as the individual officer, and sought to recover in their own right for damages they claimed to have incurred in connection with the ill treatment of their officer. *Id*. The court allowed some of the **individual** plaintiff's claims to proceed, but **dismissed with prejudice all of the claims brought by the corporation**:

> [T]here is no viable theory under the [Alien Tort Statute] upon which the corporate plaintiffs here can recover. **Corporations are not tortured; they are not subject to cruel, inhuman or degrading treatment**. . . . There is no domestic law norm that would recognize such a claim, let alone an international law norm.

Id. at 387 (emphasis added).

If an organization cannot be tortured or subjected to cruel, inhuman or degrading treatment, then it cannot be persecuted. Accordingly, SMUG failed to state a persecution claim for itself, and Lively is entitled to judgment as a matter of law on all persecution claims.

4. SMUG Has No Evidence That Any Crime Against Humanity of Persecution Has Occurred.

Finally, even if Lively and SMUG were proper parties to SMUG's persecution claims, SMUG still has not produced evidence of the crime against humanity of persecution. "[T]he [Alien Tort Statute] 'applies only to **shockingly egregious** violations of universally recognized principles of international law.'" *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 167 (5th Cir. 1999) (emphasis added) (quoting *Zapata v. Quinn*, 707 F.2d 691, 692 (2d Cir. 1983)). SMUG purports to charge Lively with the "crime against humanity of persecution," but "a crime against humanity … is reserved for **the most egregious violations of international law, such as genocide and slavery**." *Villeda Aldana v. Fresh Del Monte Produce, Inc.*, 305 F. Supp. 2d 1285, 1300 (S.D. Fla. 2003) (emphasis added), *aff'd in part, vacated in part on other grounds, remanded sub nom. Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242 (11th Cir. 2005). "Most [Alien Tort Statute] cases have determined liability for 'crimes against humanity' **only for the most heinous of crimes**, such as **murder and extermination, slavery, ethnic cleansing, and torture**, which are undertaken as part of a widespread or systematic attack against a civilian population." *Villeda Aldana*, 305 F. Supp. 2d at 1300 (emphasis added).

SMUG purports to plead persecution under the Rome Statute of the International Criminal Court ("ICC"). (Am. Compl., dkt. 27, ¶ 3). The relevant part of the Rome Statute provides:

> 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
>
> (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) **Persecution** against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, **in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court**; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Rome Statute, Art. 7(1) (emphasis added) (available at http://untreaty.un.org/cod/icc/statute/romefra.htm, last visited June 20, 2012). "Persecution" is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." *Id.*, at Art. 7(2)(g).

The ICC, responsible for enforcing the Rome Statute, has cautioned:

> Since article 7 pertains to international criminal law, its provisions, consistent with article 22, **must be strictly construed**, taking into account that crimes against humanity as defined in article 7 are among **the most serious crimes of concern to the international community** as a whole.[36]

[36] *Rome Statute: Elements of Crimes*, p. 5, Art. 7, Crimes Against Humanity, Introduction #1 (emphasis added) (published by the International Criminal Court and available at http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element_of_Crimes_English.pdf, last visited June 20, 2012).

By the plain terms of the Rome Statute, one cannot commit "persecution" in the abstract. Art. 7(1)(h). To be liable for "persecution," the persecutor must also commit "**any act referred to in this paragraph or any crime within the jurisdiction of the Court**." *Id*. (emphasis added). This is also made clear in the *Elements of Crimes* manual of the International Criminal Court, which provides six separate elements for the crime of "Persecution," the fourth of which is that "[t]he conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court." *Rome Statute: Elements of Crimes*, p. 11, Art. 7(1)(h), Crime Against Humanity of Persecution: Elements.

Bassiouni confirms that the additional crime requirement of the Rome Statute applies across all formulations of the crime against humanity of persecution:

> "Persecution" is more likely to take the form a [sic] motive, policy, or goal; **it is not an act in and of itself**. To accomplish "persecution" requires the intent to discriminate on prohibited grounds **in conjunction with other acts, which are also usually criminal.** Consequently, there has always been a historical difficulty in identifying and defining persecution as a stand-alone crime without connecting it to other specific criminal acts. This is why **there has never been a case involving the charge of "persecution" that has not involved other specific criminal acts.**

Bassiouni, *Contemporary Application, supra*, at 405 (emphasis added).

Thus, to prove the crime against humanity of "persecution," SMUG would have to prove that Lively severely and intentionally deprived a protected class of fundamental rights, **and also that he committed another international crime as an act of persecution, such as one of the other enumerated acts in Article 7(1), or one of the other three general crimes within the jurisdiction of the International Criminal Court (*i.e.*, genocide, war crimes or military aggression)**. *Rome Statute: Elements of Crimes*, p. 11, Art. 7(1)(h), Crime Against Humanity of Persecution: Elements. SMUG has no evidence of such a crime—that Lively committed genocide or war crimes, or that he tortured, murdered, enslaved, raped or imprisoned anyone.

Furthermore, SMUG has no evidence of a widespread or systematic attack against a population. SMUG's member organizations account for approximately one tenth of one percent of all LGBTI people in Uganda, and SMUG does not purport to represent or speak for any other members of Uganda's LGBTI population. (MF ¶ 193). SMUG claims fourteen instances of persecution since 2002. (MF ¶ 102). So, that's **fourteen instances in fourteen years, affecting some fraction of one tenth of one percent of the LGBTI people in Uganda**. If any "persecution" has occurred, it is clear it does not rise to the level of a crime against humanity under any formulation of its elements. Lively is entitled to judgment as a matter of law on SMUG's persecution claims.

B. SMUG's Joint Criminal Enterprise and Conspiracy Claims Fail for Lack of Evidence.

SMUG's second and third "claims" against Lively are for Lively's alleged participation in a "Joint Criminal Enterprise" and a "Conspiracy", respectively, to commit persecution. (Am. Compl., dkt. 27, ¶¶ 240-250.) As shown in Section IV, *supra*¸ this Court has no jurisdiction over these claims under the ATS because they lack "universal recognition" in international courts. The claims also fail, however, for lack of evidence.

1. SMUG Has No Evidence Of Conduct Which Could Be Deemed A Joint Criminal Enterprise Or Conspiracy.

The same lack of evidence of conduct supporting aiding and abetting liability is fatal to any theory of joint criminal enterprise or conspiracy to commit persecution. *See* section IX.A.2.a, *supra*.

2. SMUG Has No Evidence Of The Requisite Intent For Joint Criminal Enterprise Or Conspiracy Liability.

Both joint criminal enterprise and conspiracy liability require the same proof of mens rea as aiding and abetting. *See Presbyterian Church,* 582 F.3d at 260 (affirming dismissal of joint

criminal enterprise theory for failure to satisfy same *mens rea* requirement as aiding and abetting); *Liu*, 421 Fed. App'x at 93-94 & n.6 ("Assuming, without deciding, that [plaintiff] might assert a claim under the [Alien Tort Statute] for conspiracy," and affirming dismissal of such claim for failure to plead sufficient facts to infer requisite *mens rea*) (citing *Presbyterian Church*, 582 F.3d at 260). SMUG has failed to plead sufficient facts from which the requisite *mens rea* could be inferred, either for aiding or abetting, joint criminal enterprise, or conspiracy. *See* Section IX.A.2.b, *supra.* Accordingly, SMUG's claims for joint criminal enterprise and conspiracy must meet the same fate as its claim for aiding and abetting, and Lively is entitled to judgment as a matter of law.

C. SMUG's Civil Conspiracy Claims Fails For Lack Of Evidence.

SMUG's allegations concerning civil conspiracy (Count IV) involve the "more exceptional" and therefore more difficult to demonstrate type of civil conspiracy. (MTD Order at 73.) SMUG's claims involve the "coercive type" of conspiracy, *Aetna Cas. Sur. Co. v. P & B Autobody*, 43 F.3d 1546, 1563 (1st Cir. 1994), which is "sometimes called 'true conspiracy.'" *Massachusetts Laborers' Health & Welfare Fund v. Philip Morris, Inc.*, 62 F. Supp. 2d 236, 244 (D. Mass. 1999). This is a "rare and very limited cause of action in Massachusetts." *Id*. (quoting *Aetna*, 43 F.3d at 1563) (internal citations and quotes omitted). "The plaintiff must allege and prove that by mere force of numbers acting in unison the defendants exercised some peculiar power of coercion of the plaintiff which any individual standing in a like relation to the plaintiff would not have had." *Id*. (quoting *Fleming v. Dane,* 304 Mass. 46, 50 (1939)) (internal quotes omitted). "**The 'peculiar power' conspiracy is rarely proven**." *Wajda v. R.J. Reynolds Tobacco Co.*, 103 F. Supp. 2d 29, 37 (D. Mass. 2000) (emphasis added).

1. SMUG Admits That Lively Did Not Coerce It To Do Anything.

Massachusetts courts have applied the "rare and very limited" coercive conspiracy cause of action "**principally** to remedy **direct economic coercion**, as in the combined action of groups of employers or employees, where through the power of combination pressure is created and results brought about different in kind from anything that could have been accomplished by separate individuals or in other kinds of concerted refusals to deal." *Philip Morris*, 62 F. Supp. 2d at 244 (emphasis added).[37] In its Amended Complaint, SMUG does not specify exactly what Lively coerced it to do, which is by itself reason for dismissing the claim. *Wajda*, 103 F. Supp. 2d at 37 (dismissing complaint because "the pleadings fail to explain how this conspiracy had a 'coercive' effect upon plaintiff").

Having survived dismissal, however, it was incumbent upon SMUG to explain in discovery that which it failed to explain in its Amended Complaint. But at its Rule 30(b)(6) deposition, SMUG conceded that Lively has not coerced SMUG to do anything. (MF ¶ 128). In particular:

> Q: Has Scott Lively coerced SMUG to do anything?
> [SMUG Counsel]: Objection to form.
> A: No.

(Onziema 374:22-375:2). With fact discovery closed, SMUG has never identified anything that Lively coerced it to do, economically or otherwise, but instead has testified, under oath, that it hasn't been coerced by Lively to do anything. (*Id.*) As a matter of law, SMUG's civil conspiracy claim is foreclosed by its own testimony and evidentiary failure.

[37] While this Court asserted that direct economic activity may not necessarily be required (MTD Order at 76), it is certainly the principal reason for civil conspiracy claims. As such, a federal court "cannot in the context of a diversity case expand the tort law of Massachusetts beyond its present state." *Taylor v. Am. Chemistry Council*, 576 F.3d 16, 37 (1st Cir. 2009). In any event, as shown herein, SMUG was not able to identify any coercion, economic or otherwise.

2. SMUG Has No Evidence That Lively Peculiarly Focused Any Coercion Against SMUG Itself.

To be actionable, the alleged coercion **must be directed specifically at, and "peculiarly focused against" the plaintiff**. *Philip Morris*, 62 F. Supp. 2d at 245 (emphasis added). Where the alleged coercion is "directed at the public generally," or even to an entire segment of the population that engages in particular conduct (*e.g.*, "all smokers"), rather than specifically at the plaintiff itself, the coercion is not actionable even if many of the individuals in the targeted group are members of the plaintiff. *Id*. at 245 & fn.6. In *Philip Morris*, plaintiff was an employee benefit plan which claimed that defendant cigarette manufacturer conspired with others to coerce all smokers into smoking. *Id*. at 239. Plaintiff contended that the coercion was directed at it, because some smokers were members of its plan. *Id*. This District dismissed the coercive conspiracy claim, because it found that any coercion would have been directed at smokers in general, and was not "peculiarly focused" against the individual plaintiff. *Id*. at 246. "**There is no question that an allegation of a generally exerted and generally felt power of coercion is not sufficient to plead the independent tort of 'true conspiracy' as recognized in Massachusetts**." *Id*. at 245 (emphasis added).

Here, SMUG's admission that no coercion has taken place necessarily ends the inquiry, because non-existent coercion cannot be "peculiarly focused" against anyone. Nevertheless, if SMUG had identified some cognizable coercion, its civil conspiracy claim would still fail because SMUG has no evidence that Lively directed any efforts specifically at SMUG, as opposed to the LGBTI community at large, or even LGBTI advocacy groups in general. SMUG had an opportunity in over three years of discovery to seek such evidence, and it has none. Indeed, SMUG cannot even establish that Lively even knew what or who SMUG was when he visited Uganda in 2002 and 2009, or at any time before SMUG sued him, let alone that he "peculiarly focused" any

non-existent coercion against SMUG itself. How could Lively "peculiarly focus" anything against an entity that he did not even know existed until it sued him? SMUG can't say. Accordingly, summary judgment should be granted on SMUG's civil conspiracy claim.

3. SMUG Has No Evidence To Prove Any Combined Efforts Between Lively And The Alleged Perpetrators Of The Persecutory Acts.

As this Court recognized at the motion to dismiss stage, under SMUG's alleged civil conspiracy, "the injury to a plaintiff must be the result of the combination of the defendants and not just the product of actions taken by more than one individual. (MTD Order at 74 (emphasis in original).) SMUG has utterly failed to demonstrate any connection between Lively and the alleged perpetrators of the fourteen persecutory acts in suit. In fact, SMUG has not an inkling of evidence to support any of its wild accusations that Lively is the criminal mastermind of some grand conspiracy against SMUG.

This element requires, *inter alia,* that the injuries flowing to a plaintiff be something that "[n]one of the defendants could have accomplished the injurious result themselves." (MTD Order at 74.) SMUG was required to plead and demonstrate that neither Lively nor the Ugandan officials and individuals allegedly responsible for the alleged acts of persecution could have accomplished these acts absent the requisite **combined efforts**. (*Id.*) SMUG falls well short of this mark, and the evidence has not been and cannot be produced to prove this required element.

In fact, the undisputed evidence is that, between 1999 and 2009, there was already a "fierce attack" on homosexual conduct; there were already "homophobia" and "persecution" according to SMUG; there were already many calls to ban "promotion" of and "recruitment" into homosexuality, and there were already some "raids" and arrests being perpetrated by Ugandan police. (MF ¶¶ 25-26, 29, 31, 33-36, 42-44, 106, 108, 109). Critically, SMUG knows of no connection between any of these alleged hardships and Lively, (MF ¶¶ 21, 25, 29, 31, 33-36, 42-

44, 106, 108, 109, 132, 135, 137), and therefore SMUG cannot explain how the alleged perpetrators of the fourteen persecutory acts could not have accomplished without Lively after 2009, what was already allegedly being accomplished without him prior to 2009.

More importantly, SMUG admits even more directly that it has no knowledge of "any assistance at all" provided by Lively to, or any involvement by Lively in, or any connection by Lively with, any one of the fourteen persecutory acts in suit. (MF ¶¶ 102, 104-117, 132-146) It strains credulity for SMUG to insist that the alleged perpetrators of the persecutory acts could not have accomplished without Lively the things with which Lively admittedly had no connection or involvement. SMUG's civil conspiracy claim is foreclosed as a matter of law by SMUG's own testimony.

4. SMUG Has No Evidence That Lively Exercised Any "Peculiar Commanding Influence" Over Anyone.

As this Court has noted, "[i]n successful claims offered under [SMUG's] theory, the plaintiff has shown that defendants had a 'peculiar commanding influence' either through some type of unique power or fiduciary relationship or even 'mere numbers acting simultaneously' that injured a plaintiff and lack 'an excuse of justification.'" (MTD Order at 75 (quoting *Johnson v. E. Boston Savings Bank*, 195 N.E. 727, 729-30 (Mass. 1935).) For the same reasons discussed above, SMUG cannot prove that Lively exercised any "peculiar commanding influence" over SMUG, or anyone else in Uganda for that matter. Lively obviously has never had any fiduciary relationship with SMUG. And SMUG knows of no connection between Lively and the perpetrators of the fourteen persecutory acts in suit, such that SMUG could show that the "mere numbers" of Lively and those perpetrators, acting simultaneously, injured SMUG.

For anyone of the above four independent reasons (not to mention SMUG's failure to prove damages and causation – central to the tort of civil conspiracy), summary judgment should be granted.

D. SMUG's Negligence Claim Fails For Lack Of Evidence.

This Court previously recognized that SMUG's "state law negligence claim appears to be substantively the most fragile," because Lively's argument that there is no legally cognizable duty to avoid creating a "virulently hostile environment" "certainly has force." (MTD Order at 78.) The Court also noted that "it will be difficult for Plaintiff to assemble facts during discovery to justify a finding of liability," and that "the First Amendment may make this count particularly difficult to defend at the summary judgment stage." (*Id*. at 78-79). The Court was right.

Just how fragile SMUG's claim for negligence became readily apparent from its utter failure to demonstrate with evidence that it can satisfy any of the essential elements. SMUG's failure to establish damages and causation, as well as its irreconcilable conflict with the First Amendment are all detailed above.

In addition to those critical failures, SMUG still cannot establish the legal duty it is advancing. There is no such thing as a duty of care arising out of a "virulently hostile environment" (Amended Complaint ¶ 258), in Massachusetts (or any other State of the Union), and certainly not when the alleged "hostile environment" was created through the civil, peaceful expression of core political speech on a matter of public concern, entitled to the highest First Amendment protection. As demonstrated in Section V.C.2, *supra*, speech likely to cause **imminent violence** is actionable. Speech likely to cause a "virulently hostile environment" is not. As mentioned above, SMUG cannot ask this Court to so radically expand Massachusetts common law torts in a diversity jurisdiction case. *See Taylor v. Am. Chemistry Council*, 576 F.3d 16, 37 (1st Cir. 2009).

Finally, without a legally cognizable duty of care, there can be no breach. SMUG's negligence claim fails as a matter of law.

X. SMUG'S STATE LAW CLAIMS ALSO FAIL AS MATTER OF LAW BECAUSE THE COURT LACKS JURISDICTION AND THEY ARE TIME BARRED.

In addition to the jurisdictional extraterritorial bar (Section II, *supra*), the jurisdictional standing bar (Section VI, *supra*), and SMUG's failure of proof as to damages (Section VII, *supra*) causation (Section VIII, *supra*), and all of the other essential elements (Section IX, *supra*), SMUG's claims of civil conspiracy (Count IV) and negligence (Count V) under state law also fail because the Court lacks diversity jurisdiction, and because they are time barred.

A. The Court Lacks Diversity Jurisdiction And Should Not Exercise Supplemental Jurisdiction Over SMUG's State Law Claims.

"Where a party seeks to invoke diversity jurisdiction under section 1332, the parties must be of complete diversity and the amount in controversy must exceed $75,000." *Fagan v. Mass Mut. Life Investors' Servs., Inc.*, No. 15-30049, 2015 WL 3630277, at *6 (D. Mass. June 10, 2015) (Ponsor, J.). "The burden is on the federal plaintiff to establish that the minimum amount in controversy has been met." *CE Design Ltd. v. Am. Econ. Ins. Co.*, 755 F.3d 39, 43 (1st Cir. 2014).

Without proof of any damages (*see* Section VII, *supra*), SMUG cannot establish diversity jurisdiction over its state law claims. Although the jurisdictional inquiry of the amount in controversy typically focuses on the circumstances present at the time suit was filed, "if, from the proofs, the court is satisfied to a [legal] certainty that the plaintiff never was entitled to recover [the jurisdictional threshold] amount … the suit will be dismissed." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938). Here, it is now readily apparent that SMUG never was entitled to recover the jurisdiction amount. Notwithstanding the writings of counsel in SMUG's Complaint, SMUG's own Chairman of the Board, who is "supposed to approve the budgets," and who is described as the "backbone of the LGBT movement in Uganda," was not able to identify

even one way that Lively has damaged SMUG monetarily. (MF ¶ 177). SMUG's failure to produce any calculation of damages during fact discovery, and its subsequent failure to provide any of the expert testimony it agreed was necessary and promised to provide, serve only to confirm that SMUG had no damages from the beginning (and certainly no damages caused by Lively). Therefore, SMUG's state law claims should be dismissed for lack of jurisdiction.

Moreover, "[i]f the court has 'dismissed all claims over which it has original jurisdiction,' the court may also 'decline to exercise supplemental jurisdiction' over the remaining claims." *South Commons Condominium Ass'n v. City of Springfield*, 967 F. Supp. 2d 457, 469 (D. Mass. 2013) (Ponsor, J.) (citing 28 U.S.C. § 1367(c)(3)); *see also Camelio v. Am. Federation*, 137 F.3d 666, 672 (1st Cir. 1998) (noting that a federal court granting summary judgment on federal claims "must reassess its jurisdiction, this time engaging in a pragmatic and case-specific evaluation of a variety of considerations that may bear on the issue"). "When federal claims are dismissed before trial, state claims are normally dismissed as well." *McInnis–Misenor v. Maine Med. Ctr.*, 319 F.3d 63, 74 (1st Cir. 2003). "[A] federal court should be especially cautious about exercising supplemental jurisdiction 'when the state law that undergirds the nonfederal claim is of dubious scope and application.'" *Partelow v. Massachusetts*, 442 F. Supp. 2d 41, 53 (D. Mass. 2006) (Ponsor, J.) (dismissing negligence-based claims) (citing *Rodriguez v. Doral Mortgage Corp.*, 57 F.3d 1168, 1177 (1st Cir. 1995)).

There is no good reason for this Court to retain supplemental jurisdiction over SMUG's defunct state law claims, particularly given troubling First Amendment implications and SMUG's total failure of proof as to causation, damages and other essential elements. The Court should enter summary judgment for lack of supplemental or diversity jurisdiction.

B. SMUG's State Law Claims Are Time Barred.

A federal court determining claims brought under 28 U.S.C. § 1332 "must apply the substantive law of the forum in which it sits, including that state's conflict-of-laws provision." *Dykes v. DePuy, Inc.*, 140 F.3d 31, 39 (1st Cir. 1998). Under Massachusetts conflict-of-laws rules, the statute of limitations under Massachusetts law is applied whenever it would bar the claims in suit. *Shamrock Realty Co., Inc. v. O'Brien*, 72 Mass. App. Ct. 251, 256 (2008) ("The forum will apply its own statute of limitations barring the claim.") (holding that shorter Massachusetts limitations period must be applied to bar claims brought in Massachusetts that were otherwise governed by Rhode Island law (quoting Restatement (2d) of Conflict of Laws § 142(1) (1988)).

Under Massachusetts law, the limitations period for civil conspiracy and negligence is three years. *See* Mass. Gen. Laws Ann. ch. 260, § 2A (West); *see also Pagliuca v. City of Boston*, 35 Mass. App. Ct. 820, 823 (1994). SMUG filed this lawsuit on March 14, 2009. (Compl., dkt. 1). This Court has held that SMUG's claims are time barred if SMUG "knew or could have reasonably discovered the source of its injury before March 14, 2009." (MTD Order at 72; *see also, id*. at 77-78.) This Court has further concluded that, if SMUG "had (1) knowledge or sufficient notice that [it] was harmed and (2) knowledge or sufficient notice of what the cause of the harm was" prior to March 14, 2009, its state law claims are barred. (*Id*. at 77).

Lively has previously asked the Court to adopt a different accrual standard, specifically, that of the "first overt act," and does so again here. (*See* Lively MTD Mem., dkt. 33 at 70-71) *see also Nieves v. McSweeney*, No. 9905457J, 2001 WL 147497, *3 (Mass. Super. Oct. 3, 2001), *aff'd*, 60 Mass. App. Ct. 1107 (2003) ("[t]he injury and the damage alleged in the tort of civil conspiracy **flow from the first overt act**.") (emphasis added); *Lamoureux v. Smith*, No. 07953B, 2007 WL 4633272, *2 (Mass. Super. Nov. 5, 2007) ("**a civil conspiracy claim accrues on the date of the**

first allegedly wrongful act.") (emphasis added). This Court disagreed, concluding instead that the "first overt act" theory of accrual applies only "to federal and state statutory civil rights claims." (MTD Order at 71.) But nothing in *Nieves* or *Lamoureux* limits the "first overt act" theory of accrual to federal and statutory civil rights claims. On the contrary, in *Lamoureux*, the Court specifically applied this theory to common law "civil conspiracy claim" which was brought in addition to section 1983 and was treated independently for the purposes of the court's discussion on accrual. 2007 WL 4633272 at *2. Under the "first overt act" theory of accrual, SMUG's state law claims were more than ten years late, because SMUG alleges that Lively committed overt acts in 2002, and SMUG admits that it knew of those acts back in 2002, when they occurred. (MF ¶¶ 15, 195).

But even under the accrual standard adopted by this Court, SMUG's claims are still clearly time barred. Critically, this Court has concluded, correctly, that SMUG "was undoubtedly aware that some injuries occurred prior to 2009," (*id*. at 72-73), but the Court was not satisfied, at the motion to dismiss stage, that SMUG "had adequate notice before March 14, 2009, that Defendant contributed to these harms." (*Id*. at 73). However, SMUG has since admitted under oath that it did, in fact, believe earlier than March 14, 2009 that it was injured **and that Lively was responsible for its injury**. Specifically, SMUG has admitted that it had five representatives at the March 5-7, 2009 conference attended by Lively, and thus SMUG knew everything that Lively said at the moment he said it. (MF ¶¶ 196-197). More importantly, SMUG has admitted that, **upon hearing Lively's speeches prior to March 7, 2009, SMUG believed that it was being persecuted and harmed by Lively**. (MF ¶ 198). And, SMUG was even considering suing Lively while Lively was still present in Uganda, prior to March 7, 2009. (MF ¶ 199).

Under these facts, there is no longer any doubt that, as of at least March 7, 2009, SMUG believed that Lively was persecuting and injuring it, and SMUG was considering suing Lively. However, SMUG did not file suit until March 14, 2012, more than three years later. Accordingly, SMUG's state law claims are time barred, and summary judgment should be granted.

CONCLUSION

For the foregoing reasons, Defendant Scott Lively's Motion for Summary Judgment should be granted.

Respectfully submitted,

/s/ Roger K. Gannam

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court on July 6, 2016. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

/s/ Roger K. Gannam
Roger K. Gannam
Attorney for Defendant Scott Lively

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

SEXUAL MINORITIES UGANDA,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	**3:12-CV-30051-MAP**
	:	
v.	:	**JUDGE MICHAEL A. PONSOR**
	:	
SCOTT LIVELY, individually and as president of Abiding Truth Ministries,	:	
	:	
Defendant.	:	

DECLARATION OF SCOTT LIVELY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

I, SCOTT LIVELY, declare under oath as follows:

1. I am over the age of 18 years, and have personal knowledge of the matters below.

2. I have read, among other filings in this case by Plaintiff, Sexual Minorities Uganda ("SMUG"), the First Amended Complaint (Doc. 27, the "Amended Complaint"), and SMUG's Second Supplemental Responses to Defendant Scott Lively's First Set of Interrogatories Containing Confidential Information Subject to the Terms of Protective Order (the "Second Supplemental Answers").

Background and Testimony

3. I hold a bachelor of science degree in management and communications from Western Baptist College in Salem, Oregon; a juris doctor degree from Trinity Law School in Santa Ana, California; and a doctor of theology degree from the Pentecostal Assemblies of God School of Bible Theology in San Jacinto, California.

4. I have been a pro-family activist for over twenty-five years. I began studying and speaking on homosexuality after a painful personal experience involving two males who were very close to me. One, who was nineteen years old, sexually molested the other, who was four years old. I observed how the trauma of the experience transformed the victim from a sweet and innocent child into a tortured and tormented person, filled with anger and rage, who never recovered from the experience. I also observed how the nineteen-year-old fully immersed himself into a homosexual culture and lifestyle.

5. Prior to my becoming a pro-family activist, for a period of about sixteen years beginning when I was twelve years old, I was an alcoholic and drug addict. I was delivered and healed from my alcoholism and drug addiction only by the grace of God, when I surrendered by life to, and put my faith in, Jesus Christ.

6. My views on homosexuality are rooted in my Christian faith and traditional Christian doctrine. Specifically, I believe:

a. The purpose of life is to be conformed to the character of Jesus Christ, through a life-long series of challenges uniquely designed for each person by God Himself. These challenges come in many forms but each one is tailored to meet our specific strengths and weaknesses as individuals.

b. Same-sex attraction is a challenge faced by many. It is no more or less immoral than the temptation to steal or to commit adultery. It is just one of many forms of testing that human beings can encounter. As with any other temptation, one must choose whether to indulge in it or struggle to overcome it. What distinguishes homosexuality (the indulgence of same-sex attraction) from other sins is that some

of those who practice it have created a social and political movement to normalize and legitimize it, sometimes referred to, variously, as the "homosexual movement", "homosexual agenda", "gay movement", or "gay agenda".

c. Advocates of the gay agenda deny that homosexuality is a sin and insist that society embrace homosexual relationships as equivalent to marriage and the natural family. Their goal for society is to replace Judeo-Christian sexual morality (monogamous, heterosexual marriage and the natural family) with an alternative moral system that embraces "sexual freedom," by promoting sexual promiscuity and fostering hostility against the chief opponent of promiscuity, the Christian church.

d. Homosexuality, *per se*, is not a greater sin than any other. Nor should homosexuals (those who indulge same-sex attraction) be singled out for condemnation, and certainly never for threats or violence. I too am a sinner, saved from the eternal condemnation I deserve for my sins only by the grace of God, through my acceptance of the sacrifice of Jesus Christ on the cross for my sins (John 3:16-18; Ephesians 2:1-9). From the eternal perspective, the only difference between homosexuals and me is that I admit my sin is sin and seek to turn away from it, while homosexuals claim that the choice to indulge same-sex attraction is not sin but an act of righteousness or, at bottom, morally neutral.

e. Any homosexual can, by the grace of God, through faith in Jesus Christ, turn away from homosexuality. This belief is based on God's Word, contained in the Holy Bible (*see, e.g.*, 1 Corinthians 6:9-11 ("And such were some

of you: but ye are washed, but ye are sanctified, but ye are justified in the name of the Lord Jesus, and by the Spirit of our God.")), and my own experiences working with dozens of people seeking an exit from homosexuality over the years, including my own sister who turned away from homosexuality.

f. I am joyfully compelled by Jesus Christ to love as individuals all persons who identify as homosexual or commit the sin of homosexuality. However, I am strongly opposed to the gay agenda because I believe the agenda is a threat to the continuation of historically Judeo-Christian, marriage-based civilization as God designed and intended it for the benefit of mankind.

g. I believe the law should allow consenting adults to make wrong choices in their private sexual conduct. To encourage traditional man-woman marriage, which I believe to be the best and most optimal societal arrangement for the raising of children, I would favor misdemeanor criminalization of any sexual act outside of marriage, including adultery, fornication, and homosexual conduct. While I would be in favor of very modest penalties for such conduct in the letter of the law, I would urge even more relaxed and minimal application of such laws to preserve the ability of all individuals to live their lives privately and discretely.

h. I would not be in favor of the government's spying on people, barging into bedrooms, or otherwise intruding into private sexual conduct between consenting adults.

i. I have always been, and remain, firmly opposed to any violence against, or ridicule, ostracism or vilification of any person, including any person who identifies as homosexual.

j. I abhor the idea of forcibly "outing" persons who want to keep their consensual, adult sexual activities private and discrete.

k. I have always been, and remain, firmly opposed to any attempt to criminalize or punish any form of "status" or sexual "identity" or "orientation," separate and apart from sexual conduct.

l. While I would be in favor of prohibiting promotion of homosexual conduct or lifestyle to children and youth, I would not prohibit homosexual persons or organizations from using legal means and the democratic process to advocate for changes to laws they oppose.

2002 Visits to Uganda

7. I first traveled to Uganda in March and June of 2002.

8. I was invited to speak at a March 2002 conference in Kampala, Uganda, on "The Threat of Pornography and Obscenity in Uganda." I was invited to speak by Warren Willis, an American, whom I met after I spoke at a conference in the United States. I was to speak on short notice, as a substitute for another speaker who had dropped out. The March 2002 conference was organized by Ugandan Stephen Langa, through his organization Family Life Network. I met Langa for the first time when I arrived in Uganda for the conference.

9. My presentation at the March 2002 conference was about the role of pornography and obscenity in softening a society to the sexual revolution. Any discussion of homosexuality was in the context of its place in the broader sexual revolution, and secondary to the conference topic of the role of pornography in the sexual revolution.

10. I returned to Uganda in June 2002, on Langa's invitation, to continue speaking publicly against the spread of pornography, and in support of abstinence before and outside of God's design for marriage.

11. During the six days of my June 2002 visit to Uganda, I spoke to an assembly of university students regarding pornography, to another university student assembly regarding Christian leadership, to a church assembly of teenagers regarding abstinence, to another church teenager assembly regarding abstinence and pornography, to a seminar for married-couples regarding God's design for marriage and family, to a pastor's conference regarding holiness and Christian living, to members of the Kampala City Council regarding pornography and sex-related businesses, and in a private meeting with the Kampala mayor regarding God's design for the family.

12. In between my several presentations I made a total of four radio appearances, during which I discussed various topics relating to God's design for marriage and family-based society, and at times took calls from listeners.

13. I also made two television appearances during my June 2002 Uganda trip, consisting of one interview by a secular television reporter, and one appearance on a Christian television network show hosted by Martin Ssempa, whom I met for the first time in 2002. The subject of our discussion on the show was the same as at the March 2002

conference – the role of pornography in the overall advance of the sexual revolution. The gay agenda was not the focus of the television show discussion.

14. In the course of my June 2002 speaking and media appearances in Uganda, homosexuality was but one topic I discussed among many within the broader context of preserving a Judeo-Christian marriage- and family-based culture, and speaking about homosexuality was in no way a primary purpose of my visit.

15. During my 2002 visits to Uganda, I did not discuss the concepts of "promotion of homosexuality" or "recruitment" of youth into homosexuality. I did not discuss changes in Uganda's laws with respect to homosexual conduct. I did not discuss or advocate strategies on the criminalization of promotion of homosexuality.

16. Following my second visit to Uganda in 2002, I did not return to Uganda until March 2009.

Between 2002 and 2009 Visits to Uganda

17. Between my June 2002 Uganda visit and March of 2007, I had no contact with Uganda. I did see Langa very briefly in 2005 or 2006 when he visited the United States. My wife and I took Langa to a museum on a purely social outing, and did not engage in any ministry, advocacy, or other public activities.

18. My only meaningful contact with Uganda prior to March 2009 was sporadic e-mail communication with Langa beginning in March 2007, and one e-mail exchange with a representative of Ssempa in December 2008:

a. In March 2007 Langa e-mailed me with his ideas for a conference in Uganda, and requested that I participate as a speaker. Langa's stated purpose for the

conference was to provide truthful information about homosexuality to members of Ugandan society; there was no mention of enacting or changing Ugandan laws regarding homosexuality. (A true and correct copy of Langa's March 2007 e-mail to me and our subsequent exchange, which I previously produced to SMUG as LIVELY 3194-96, is attached hereto as Exhibit 1.)

b. I had sporadic subsequent communication with Langa in 2007 and 2008 regarding a Uganda conference on homosexuality. I proposed a conference to "focus strictly on the business of promoting family values and stopping the 'gay' agenda." Langa at first suggested a broader conference, "on a neutral/open platform," involving "politicians across the continent," but later suggested a smaller conference involving Ugandans only. We ultimately agreed, in February 2008, to put on the conference in March 2009. None of our communications involved enacting or amending Ugandan laws regarding homosexuality. (A true and correct copy of representative communications between Langa and me during this period, which I previously produced to SMUG as LIVELY 3210-14, is attached hereto as Exhibit 2.)

c. In December 2008, a representative of Ssempa wrote by e-mail requesting written materials on homosexuality. I had not communicated with Ssempa since meeting him in Uganda in 2002. I replied with an invitation for Ssempa to join in the planning of the proposed 2009 conference. (A true and correct copy of my December 2008 e-mail exchange with Ssempa's representative, which I previously produced to SMUG as LIVELY 3223-28 (and SMUG previously marked as Pl. Ex. 27), is attached hereto as Exhibit 3.)

d. In the weeks leading up to the March 2009 conference, I communicated with Langa by e-mail regarding conference logistics. On February 24, 2009, less than ten days before the conference, Langa e-mailed with a tentative conference schedule, and requested that I provide him with the proposed content of my portion of the conference. By reply e-mail I provided Langa the proposed outline of my presentation, which did not include any advocacy for the enactment or amendment of any Ugandan laws, and Langa approved my presentation outline. (A true and correct copy of the e-mail exchange beginning on February 24, 2009, which I previously produced to SMUG as LIVELY 3241-42, is attached hereto as Exhibit 4.)

e. Other than the presentation outline I provided Langa in late February 2009, the above communications with Langa and Ssempa's representative between 2007 and 2009 did not involve substantive discussions of strategies, policies or laws regarding homosexuality.

2009 Uganda Conference

19. When I agreed to speak at the March 2009 conference in Uganda, I did not contemplate Ugandan law regarding homosexual conduct, and I had no intention of influencing any new Ugandan laws regarding homosexuality. In an e-mail from Langa regarding final arrangements for the conference, sent the week before my arrival, Langa mentioned in passing that homosexuality is illegal under Ugandan law. At the time of my arrival in Uganda in March 2009, I knew no more than that about Ugandan law regarding

homosexuality, and had no knowledge of any desire or effort, by any Ugandans, to change Ugandan laws on homosexuality.

20. The day after I arrived in Uganda for the 2009 conference, I attended a meeting of about 50-100 people, including a few members of the Uganda Parliament and the Uganda Minister of Ethics and Integrity. My presentation lasted for about an hour. By this time, Langa had informed me that some members of parliament were considering enacting a new law regarding homosexuality. With that in mind, I shared at the meeting my longstanding position that any criminalization of homosexual conduct should focus on rehabilitation and not punishment, and I urged them to liberalize Ugandan law to allow voluntary counseling instead of incarceration for those convicted of homosexual conduct. I also shared my personal testimony about having been an alcoholic and drug addict who was arrested for drunk driving in Oregon years ago, and was given the opportunity to have counseling for my addiction. I shared further that I accepted the counseling offered to me, and that it was one of the best decisions of my life. I explained to them my view that those engaged in homosexual conduct are struggling with a very difficult to overcome form of behavior, analogous to the addictive behavior that I previously struggled with, and that those struggling with homosexuality deserve a chance to be able to overcome it with the help of the government, and they do not deserve to be jailed. (A true and correct copy of my report from Kampala containing an account of this meeting, which I previously produced to SMUG as LIVELY 2766-67 (and SMUG previously marked as Pl. Ex. 25), is attached hereto as Exhibit 5.)

21. While speaking to the gathering at Parliament, I did not advocate for tougher criminal punishments for homosexual conduct. I did not advocate for the death penalty for any form of homosexual conduct or sexual crimes. I did not advocate for the punishment of life imprisonment for any form of homosexual conduct or sexual crimes.

22. I do not recall meeting or speaking with David Bahati at the above meeting or any other time.

23. At the conference itself, I gave a series of three lectures on the final day of the conference, which lectures lasted several hours. Two other speakers had lectured at the conference on the preceding days. Prior to the conference, I had been advised by Langa that both allies and opponents of the gay agenda had been invited and would be present at the conference. In total, about thirty to forty people were in attendance for my lectures. Several attendees appeared to be openly recording my lectures with video recording devices, which I did not mind. (A video recording of portions of two of my three conference lectures, which recording accurately reflects those portions of the lectures contained in the recording, has been produced in this case as KK003016 and is attached hereto as Exhibit 6 (my "2009 Conference Lectures"); a copy of the same recording is also posted online at https://www.youtube.com/watch?v=e9F9k4guN3M.)

24. As I said at the beginning of my conference lectures, the conference presentations before mine were about healing, love, and caring for people who identify as homosexual. At the time, however, I knew there was ongoing media coverage falsely reporting that the conference was about hatred towards homosexuals. (2009 Conf. Lectures at 7:55-8:45.)

25. My lectures included the presentation of a broad range of my research, conclusions, and views regarding homosexuality, including the following:

a. I do not hate anyone and do not want violence against anyone. (2009 Conf. Lectures at 26:20.)

b. There is a clear line of distinction between homosexual *people* and the homosexual *movement*. Whenever we are talking about individual people, we have a duty to be helpful to them, and not pile another burden on them. If someone is dealing with homosexuality, whether or not that person is struggling against it, our responsibility is to treat that person as a fellow human being and creation of God who deserves our respect, even if we disagree with everything that person does and says. We should always care about the person, even if we do not like what the person is doing. Our responsibility to treat with dignity and respect the *people* involved in homosexual conduct, however, is very different from our responsibility towards the homosexual *movement*. We may properly view the gay *movement* as an institution to be opposed, for its goal is to defeat the historical, Judeo-Christian marriage-based society, and replace it with a society having no limitations on sexual conduct except for the principle of mutual choice. This does not mean that all *people* who identify as homosexual share the goals of the gay *movement*. Thus, we must maintain a clear distinction between homosexual *people*, whom we love, and the homosexual *movement*, which we hate. (2009 Conf. Lectures at 57:00-59:00, 2:04:08-2:04:30.)

c. There are generally two ways that young people are recruited into a homosexual "identity." The first is where a child who experiences same-sex

attraction is told that the attraction flows from an immutable homosexual "identity" which is to be embraced and indulged, and the resulting homosexual experimentation with peers cements and magnifies homosexual impulses, whereas such initial homosexual attractions in the vast majority of cases would not have persisted beyond puberty but for the normalizing influence of those promoting homosexual conduct as the right and natural response to homosexual "identity." A second scenario arises less frequently, though still often, where a predatory adult exploits the emotional weakness of a young person, such as a child from a broken home, by offering companionship through sex. In the second scenario, the exploited young person's normal sexual development is corrupted, inculcating homosexual impulses that would not have developed but for the sexual exploitation by the adult. (2009 Conf. Lectures at 44:05-47:50.) (The presence in Uganda of both of these modes of recruitment into homosexual "identity" was corroborated by the several accounts I heard from various people in Uganda regarding the involvement of children in homosexuality. (2009 Conf. Lectures at 54:25-54:45; Exhibit 5.)

d. Based on my own observations, in my opinion there are broad generalizations that can be made about categories of persons who identify as homosexual based on the degree of their variance from what I call "gender normalcy." My categories occur along a continuum, and include some extreme categories that do not represent the vast majority of persons who identify as homosexual. For example, on my continuum, the categories of men who identify as homosexual include two extreme, unusual categories of men I refer to as "super

machos" and "monsters." Very few homosexual men fit into these categories. By way of example, "monsters" would include serial killers, mass-murderers, and other rare sociopaths, the kind of people who could operate a gas chamber. Even men in the extreme categories, however, are human beings deserving of our sympathy because they are struggling with extreme forms of dysfunction. (To an American audience I would have given Jeffery Dahmer as an example of a "monster" on my continuum. I realized as I was speaking, however, that a Ugandan audience may not understand the Dahmer example, so in the moment I suggested the Rwandan genocide as an event that "probably involved" men I classified as "monsters" on my continuum, based on my understanding of the brutality involved in the event, not on any understanding that there was a homosexual aspect to the event. I had also made clear to the audience that the "monster" category was defined primarily by the brutality of its behavior and had very little to do with sexuality. I was careful to emphasize that "I don't want anybody to get the wrong idea . . . I don't want to dehumanize these people. They are human beings suffering extreme forms of dysfunction.") (2009 Conf. Lectures at 2:14:33-2:28:21.)

26. As I mentioned above, there were people in the audience who were supporters of or advocates for homosexual rights, and who did not agree with my views. We had an open and cordial exchange of opposing viewpoints and differing ideas. For example, when someone took the position that homosexuality is genetic, I responded that this was an honest position for them to take, but that I disagreed with it. (2009 Conf. Lectures at 31:44-33:50.) Also, Bishop Christopher Senyonjo – a highly visible local religious figure who advocates

for homosexual rights in Uganda, and who was excommunicated by the Anglican Church of Uganda – was in attendance, and was allowed to freely express his viewpoints, some of which were quite contrary to mine. In the end, however, he thanked me for being there and for expressing my views. He said he was "very, very grateful" for becoming "more educated in this area." "We may have different views, be we need to learn from each other," he said. (2009 Conf. Lectures at 2:39:21-2:41:21.)

27. In connection with the March 2009 conference, I also spoke to several church, university, and school assemblies, met with local Christian leaders, and made several media appearances. When discussing homosexuality, I repeated my message that those involved in homosexual conduct should be treated with dignity and respect because they are fellow human beings made in the image of God.

Activities After 2009 Uganda Conference

28. Both during and after the 2009 conference, it was reported falsely that I advocated for forced therapy of homosexuals and tougher laws against homosexuality. What I actually said in Uganda was that Uganda's laws against homosexuality should be liberalized to allow counseling instead of imprisonment. I immediately challenged the false reports with the truth, both in my first communication to supporters from the conference, and in my first communication to supporters after returning to the United States. (True and correct copies of these reports are attached hereto, the first as Exhibit 5, and the second, which I previously produced to SMUG as LIVELY 2768-69, as Exhibit 7.)

29. Given the false reports about the content of my presentation with respect to Ugandan laws against homosexuality, I asked Langa by e-mail for details on Uganda's

existing laws against homosexuality. Langa forwarded me a copy of Section 145 of the Ugandan penal code. On April 14, 2009, I told Langa that Section 145's sentence of life imprisonment for a conviction of homosexual conduct "is an overly harsh punishment." (A true and correct copy of this e-mail exchange, which I previously produced to SMUG as LIVELY 3500-03, is attached hereto as Exhibit 8.) I believed at that time, and continue to believe, that life imprisonment for homosexual conduct is an exceedingly harsh and unjust punishment.

30. Over a month after the conference, on April 23, 2009, I received an e-mail from Martin Ssempa requesting my input for a forthcoming "strong deterrent law against homosexuality in Uganda." This was the first time I had been asked to provide input on any specific law in Uganda. I did not want to be involved with a new law, and I did not respond. (A true and correct copy of the April 23, 2009 e-mail, which I previously produced to SMUG as LIVELY 3228-29 (and SMUG previously marked as Pl. Ex. 34), is attached hereto as Exhibit 9.)

31. I then received a second e-mail request with a more forceful plea for my input, which included a new draft law which would later come to be known as the Anti-homosexuality Bill of 2009 (the "AHB"). I had no involvement whatsoever in the drafting of the AHB up to that point, and I still did not want to be involved with new legislation in Uganda, but I reluctantly agreed to look at the draft. When I read the draft, which included the imposition of the death penalty for some forms of "aggravated homosexuality," such as sexual abuse of minors or the disabled, I was appalled. The AHB draft was not at all consistent with my beliefs or advocacy. I made one pass through the draft AHB, marking for

reduction the most draconian penalties, especially the death penalty. I accompanied these revisions, however, with a blanket admonishment to reconsider the approach of the AHB to focus on counseling instead of punishment, and I provided two proposed sections to be added to the AHB consistent with my criticism of the bill as being too harsh. (A true and correct copy of this e-mail exchange, including my proposed revisions to the draft AHB, which I previously produced to SMUG as LIVELY 1252-1261 (previously marked by SMUG as Pl. Ex. 36) and LIVELY 4514-4522 (color version of LIVELY 1252-1261/Pl. Ex. 36, previously marked by SMUG as Pl. Ex. 37) is attached hereto as composite Exhibit 10.)

32. After returning the draft AHB to Ssempa with my objections and proposed revisions, I continually pleaded with the Ugandans—for the ensuing five years—to pull back on the excessive severity of their proposed law and revamp it to focus on counselling rather than incarceration and other punishments:

a. On October 28, 2009, after hearing initial news reports in the United States regarding the proposed AHB, I notified Langa and Ssempa that "it sounds excessively harsh" and inquired whether it included "a treatment/recovery component." (A true and correct copy of my e-mail to Langa and Ssempa and subsequent exchange, which I previously produced to SMUG as LIVELY 3537, is attached hereto as Exhibit 11.)

b. I gave an interview to the Wall Street Journal on November 11, 2009, in which I stated my positions that "the proposed law should be further liberalized so it is not so harsh" and "the death penalty or even life imprisonment is far too excessive for sexual crimes," and I "stressed the therapeutic angle." (A true and

correct copy of my e-mail to Langa and Ssempa reciting my interview positions, which I previously produced to SMUG as LIVELY 3548-49, is attached hereto as Exhibit 12.)

c. On November 21, 2009, I wrote to Langa and Ssempa, "I believe the law should be dramatically liberalized . . . ." (A true and correct copy of my e-mail to Langa and Ssempa, which I previously produced to SMUG as LIVELY 3567, is attached hereto as Exhibit 13.)

d. On December 3, 2009, I forwarded to Langa and Ssempa an editorial I penned on the AHB, requesting that they pass it along to the members of parliament, with my exhortations, "I sincerely hope . . . that the law is seriously modified before passage." I told them, "I'm happy to stand for Christ despite persecution, but I'd rather it be for what I actually support, not something that I agree is too extreme." (A true and correct copy of my e-mail to Langa and Ssempa, which I previously produced to SMUG as LIVELY 3574-75, is attached hereto as Exhibit 14.)

e. On March 8, 2010, I wrote an open letter to the Ugandan Parliament urging the removal of capital punishment from the AHB as "a disproportionately harsh penalty;" the removal of "criminal penalties for failure to report the homosexual activity of others . . . because it targets people who may live as homosexuals in their private lives;" and the addition of an option for therapy and rehabilitation instead of incarceration, noting that I "remain personally opposed" to incarceration for homosexual conduct. (A true and correct copy of my e-mail letter

to the Ugandan Parliament, which I previously produced to SMUG as LIVELY 3664-70, is attached hereto as Exhibit 15.)

f. On March 10, 2010, Ugandan Parliament Research Officer Charles Tuhaise responded to my March 8, 2010 letter, disagreeing with all of my suggestions except for the removal of the death penalty (though only if "replaced by equally strong and deterrent penalties"). (A true and correct copy of my letter and Tuhaise's response, which I previously produced to SMUG as LIVELY 3661-63, is attached hereto as Exhibit 16.)

g. After hearing that the AHB had been modified to remove the death penalty and add provision for counseling, on December 5, 2012, I wrote to Langa, Ssempa, Tuhaise, and David Bahati, the sponsor of the AHB, expressing my approval of the changes so far, but "reiterat[ing] my suggestion that the bill emphasize therapy and prevention rather than punishment," and "resubmitting suggested language that I drafted on April 28, 2009." Tuhaise again responded, however, that the AHB should remain "simply a penal law, without any provision for counselling." (A true and correct copy of my December 5, 2012 e-mail and subsequent exchange with Tuhaise, which I previously produced to SMUG as LIVELY 3728-31, is attached hereto as Exhibit 17.)

h. On August 9, 2013, I shared with Langa, Ssempa, and Tuhaise a copy of a letter I had drafted to Russian President Vladimir Putin regarding the law that had just been passed in Russia prohibiting homosexual propaganda towards children, and suggested that Uganda scrap the AHB altogether and adopt the Russian anti-

propaganda law instead, resulting in "preserving basic civil rights of homosexuals to live their lives privately and discreetly in the society." (A true and correct copy of my e-mail to Langa, Ssempa, and Tuhaise, which I previously produced to SMUG as LIVELY 3737-39, is attached hereto as Exhibit 18.)

i. On October 18, 2013, I wrote to Langa, Ssempa, Tuhaise, Bahati, and others, including Ugandan Minister of Ethics and Integrity Nsaba Buturo, again recommending that Uganda abandon the AHB in favor of the far less restrictive Russian anti-propaganda law. Again, however, Tuhaise rejected my plea, and so did Buturo, stating, "we must not give up on the AHB." (A true and correct copy of my e-mail of October 18, 2013, along with the responses of Tuhaise and Buturo, which I previously produced to SMUG as LIVELY 3740-43, is attached hereto as Exhibit 19.)

j. On February 25, 2014, following Uganda's enactment of a revised version of the AHB (the "Anti-Homosexuality Act" or "AHA"), I posted comments on my blog, continuing my criticism of the AHA's approach of punishment over rehabilitation, urging "Ugandans to exercise mercy and compassion for homosexual strugglers in their enforcement of the new law," and offering to "stand ready to assist in any future effort to shift the emphasis of the law from punishment to rehabilitation and prevention." (A true and correct copy of my blog post, "My Comments on the Passage of the Uganda Anti-Homosexuality Law," which I previously produced to SMUG as LIVELY 1897, is attached hereto as Exhibit 20.)

33. By the time SMUG filed its lawsuit against me in 2012, after I had already spent years pleading with the Ugandans to drastically soften the draft AHB, I had surmised that at least some people in Uganda, unknown to me, intended to use the March 2009 conference to advance a new law against homosexuality. After extensive discovery in this case, however, I still have no direct knowledge of any such plan in existence prior to the conference. If I had known prior to the March 2009 conference that anyone intended to use my participation to advance a bill containing the death penalty for homosexual conduct, I would not have participated in the conference.

SMUG's Alleged Acts of "Persecution"

34. I had no knowledge of, provided no support or assistance for, and did not otherwise participate whatsoever in, whether directly or indirectly, any of the following events claimed by SMUG to be instances of "persecution":

a. The June 18, 2012 Raid. SMUG claims that Ugandan police raided a "skills-building workshop for LGBTI rights advocates" on June 18, 2012 (hereinafter the "June 18, 2012 Raid"). (Am. Compl., ¶¶ 165-175.)

b. The February 14, 2012 Raid. SMUG claims that Simon Lokodo and the Ugandan police raided an LGBTI conference on February 14, 2012 (hereinafter the "February 14, 2012 Raid"). (Am. Compl., ¶¶ 176-185.)

c. The June 4, 2008 Arrests. SMUG claims that Ugandan police arrested three LGBTI rights activists on June 4, 2008, charged them with trespass, and released them after two days (hereinafter the "June 4, 2008 Arrests"). (Am. Compl., ¶¶ 186-193).

d. The Threats to Criminalize Health Services for LGBTI Persons. SMUG claims that on July 11, 2012, Minister Lokodo "told a news conference that he intends to investigate" a health clinic opened by SMUG to service LGBTI people (hereinafter the "July 11, 2012 Threat to Criminalize Health Services"). (Am. Compl., ¶¶ 194-198).

e. The 2007 Crack Down. SMUG alleges that, as a result of a media campaign it conducted in August 2007, it experienced a general backlash and "crack-down" in Uganda (hereinafter the "2007 Crack Down"). (Am. Compl., ¶¶ 199-208.) According to SMUG, the 2007 Crack Down consisted of:

i. Deputy Attorney General Fred Ruhindi called upon government agencies to take appropriate action because homosexual was illegal in Uganda. (Am. Compl., ¶ 200.)

ii. Minister Buturo stated that government was "considering changing the law so that promotion itself becomes a crime." (Am. Compl., ¶ 201.)

iii. Martin Ssempa held an anti-gay rally. (Am. Compl., ¶¶ 202-204.)

iv. The Ugandan Broadcasting Council suspended a radio station manager for interviewing a lesbian activist. (Am. Compl., ¶ 205.)

v. The Ugandan tabloid Red Pepper published the names and photos of LGBTI activists. (Am. Compl., ¶ 206.)

f. The July 20, 2005 Raid. SMUG alleges that, on July 20, 2005, local Ugandan authorities raided the home of Victor Mukasa, a founding member of SMUG, seized documents and files, and arrested Mukasa's house guest and took her to the police station where she was "touched and fondled" before being released the same day (hereinafter the "July 20, 2005 Raid"). (Am. Compl., ¶¶ 209-214.)

g. The Tabloid Outings. SMUG alleges that Ugandan tabloids frequently published lurid stories about, and the photos and addresses of, LGBTI persons (hereinafter the "Tabloid Outings"). (Am. Compl., ¶¶ 215-225; 2d Supp. Resps., at 4-6.)

h. Discrimination by Private Actors. SMUG alleges that the criminalization of homosexuality in Uganda along with discriminatory government policies, media outings and public statements against homosexuals contributes to discrimination by private actors in housing, employment, health and education (hereinafter "Private Discrimination"). (Am. Compl., ¶¶ 226-228.)

i. The August 4, 2012 Raid. SMUG alleges that Ugandan police raided an August 4, 2012 gay pride parade and arrested several of the participants (hereinafter the "August 4, 2012 Raid"). (2d Supp. Resps., at 3.)

j. Investigation of the Refugee Law Project. SMUG alleges that in 2014, the Refugee Law Project at Makerere University was investigated in connection with the passage of the AHA (hereinafter "RLP Investigation"). (2d Supp. Resps., at 3-4.)

k. The Walter Reed Clinic Raid. SMUG alleges that, on April 3, 2014, Ugandan police raided a U.S.-funded clinic in Kampala and arrested one staff member (hereinafter the "Walter Reed Clinic Raid"). (2d Supp. Resps., at 4.)

l. Surveillance of LGBTI Organizations. SMUG alleges that, following the enactment of the AHA, SMUG and some of its member organizations were put under surveillance and threatened with closure (hereinafter the "Surveillance of LGBTI Organizations"). (2d Supp. Resps., at 4.)

m. The 2014 Arrests. SMUG alleges that, in 2014, four individuals were arrested and charged with violations of Penal Code 145, a law that has been on the books in Uganda for several decades (hereinafter the "2014 Arrests"). (2d Supp. Resps., at 6-7.) Charges against three of the four individuals were dismissed. (*Id.*)

Alleged Domestic Conduct

35. I did not engage in any conduct whatsoever in the United States (or anywhere else in the world) in connection with any campaign, agreement, conspiracy, enterprise, or other effort to effect, incite, or facilitate—

a. The persecution of any LGBTI or other person in Uganda, including without limitation any alleged event or instance of "persecution" described *supra* in paragraph 34;

b. The deprivation of fundamental rights of any LGBTI or other person in Uganda;

c. The criminalization or punishment of any form of sexual "identity" or "orientation" of any LGBTI or other person in Uganda;

d. The criminalization or punishment of the "status" or existence of any LGBTI or other person in Uganda; or

e. Violence against, or hatred, ridicule, ostracism, or vilification of, any LGBTI or other person in Uganda.

Alleged Intent to Persecute

36. When I travelled to Uganda in March and June 2002 and in March 2009, and at all times before, during, in between, and after such travels, I never had any intention to effect, incite, or facilitate —

a. The persecution of any LGBTI or other person in Uganda, including without limitation any alleged event or instance of "persecution" described *supra* in paragraph 34;

b. The deprivation of fundamental rights of any LGBTI or other person in Uganda;

c. The criminalization or punishment of any form of sexual "identity" or "orientation" of any LGBTI or other person in Uganda;

d. The criminalization or punishment of the "status" or existence of any LGBTI or other person in Uganda; or

e. Violence against, or hatred, ridicule, ostracism, or vilification of, any LGBTI or other person in Uganda.

37. At no time when I travelled to Uganda in March and June 2002 or in March 2009, or at any time before, during, in between, or after such travels, did I ever enter into

any campaign, agreement, conspiracy, or enterprise with Langa, Ssempa, Buturo, or Bahati, or any other person, to effect, incite, or facilitate—

a. The persecution of any LGBTI or other person in Uganda, including without limitation any alleged event or instance of "persecution" described *supra* in paragraph 34;

b. The deprivation of fundamental rights of any LGBTI or other person in Uganda;

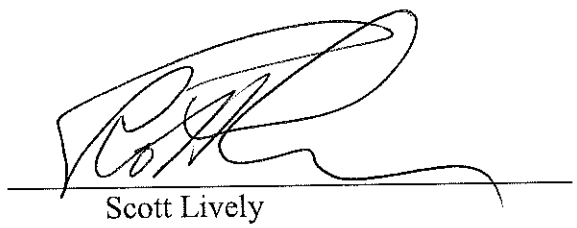
c. The criminalization or punishment of any form of sexual "identity" or "orientation" of any LGBTI or other person in Uganda;

d. The criminalization or punishment of the "status" or existence of any LGBTI or other person in Uganda; or

e. Violence against, or hatred, ridicule, ostracism, or vilification of, any LGBTI or other person in Uganda.

38. I have no intention to return to Uganda at any time in the future, to speak publicly regarding homosexuality or for any other reason.

I hereby certify under penalty of perjury that the foregoing is true and correct. I executed this Declaration on this 1st day of July, 2016.



Scott Lively

LIVELY DECLARATION
EXHIBIT 1

Gmail by Google

Scott Lively <sdllaw@gmail.com>

RE: INVITATION TO UGANDA IN JUNE 2007

4 messages

Stephen Langa <stephenlanga@yahoo.com> Tue, Mar 6, 2007 at 12:51 PM
To: sdllaw@gmail.com

Dear Scott.

Let me hope that this email finds you and your family in good health.

If you remember last year I indicated to you that we would like to hold a "Homosexuality Conference" or awareness week or something of that sort.

The purpose would be to provide correct information on homosexuality and expose the homosexual lies, agenda and propaganda. Homosexuality is spreading in our schools being fuelled with funding from homosexuals in the Western world, and nobody knows how to deal with it. The school authorities, the government, counselors and parents are helpless. So we want to use this conference to set the record straight and also to provide some expertise to help victims of this vice.

I was in South Africa in December with my Pastor and we were invited by a political party there that was very angry that S.Africa legalized gay marriages last year. They want to work with the churches there to try and reverse this situation. I could arrange to invite some of them to come to this conference as well to get equipped. We would also need adequate literature on the subject.

We are thinking of four full days during which time meetings would be held with counselors, parents, church leaders, the public (lecture), students and teachers. We would wish to have you come with two former homosexuals who have changed and can help counselors and others understand how homosexuality can actually be corrected or is correctable. If you could have both a man and woman, that would be great.

We are tentatively thinking of the dates of June 13-16, 2007 or there about. That would mean that you could arrive on the 11th and be free to leave on 18th. You would need to allow for about 6-7 days total although the main items would only take 4. This would give your team enough time to rest after arrival here before starting the meetings.

We would request that you kindly fund the airfare for your team.

Sorry for writing a lot, but please let me know you thoughts on this matter.

God bless.

Stephen Langa

Scott Lively <sdllaw@gmail.com> Tue, Mar 6, 2007 at 1:44 PM
To: Stephen Langa <stephenlanga@yahoo.com>
Cc: Igor at NG Riga <newgen@mailbox.riga.lv>, Vadim Privedenyuk <vadng@hotmail.com>

Dear Stephen,

Thank you for the invitation. I will be in Latvia in June working with the New Generation Church. They may be interested in sending me with a delegation to assist you in this effort. I will forward your request to their office. Have you discussed

this matter with Brother Robert Karanja? He has worked closely with New Generation in the past, and may be interested in joining forces to create a larger event.

Be Blessed,

Scott Lively

On 3/6/07, **Stephen Langa** <stephenlanga@yahoo.com> wrote:

Dear Scott,

Let me hope that this email finds you and your family in good health.

If you remember last year I indicated to you that we would like to hold a "Homosexuality Conference" or awareness week or something of that sort.

The purpose would be to provide correct information on homosexuality and expose the homosexual lies, agenda and propaganda. Homosexuality is spreading in our schools being fuelled with funding from homosexuals in the Western world, and nobody knows how to deal with it. The school authorities, the government, counselors and parents are helpless. So we want to use this conference to set the record straight and also to provide some expertise to help victims of this vice.

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We would request that you kindly fund the airfare for your team.

Sorry for writing a lot, but please let me know you thoughts on this matter.

God bless.

Stephen Langa

Stephen Langa <stephenlanga@yahoo.com> Wed, Mar 7, 2007 at 7:24 AM
To: Scott Lively <sdllaw@gmail.com>
Cc: Igor at NG Riga <newgen@mailbox.riga.lv>, Vadim Privedenyuk <vadng@hotmail.com>

Dear Scott,

This is to be a combined effort by many Christian groups and churches that have a burden in this area. We are yet to eatablish Brother Robert Kayanja's involvement.

When you say that you will be in Latvia in June, are you suggesting that the dates suggested are not good for you or are you still figuring it out. Please advise.

In the meantime we will be praying.

God bless.

Stephen Langa
[Quoted text hidden]

Scott Lively <sdllaw@gmail.com> Wed, Mar 7, 2007 at 7:39 AM
To: Stephen Langa <stephenlanga@yahoo.com>

we're still figuring it out. I'll get back to you next week.
[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 2

Gmail by Google

Scott Lively <sdllaw@gmail.com>

Uganda Conference

12 messages

Scott Lively <sdllaw@gmail.com> Fri, Dec 7, 2007 at 9:04 AM
To: Stephen Langa <stephenlanga@yahoo.com>

Dear Stephen,

Lets talk details about holding a pro-family conference in Uganda in 2008.

I'm personally committed to come to Kampala to hold training seminars for pro-family activists, and to help local activists form chapters of Defend the Family, if they want them. I can pay my own travel if you could arrange lodging and seminar facilities. We can perhaps recoup some of these costs by charging a fee for some of the more specialized seminars, and by selling books and DVDs. We can invite activists from across Africa and focus strictly on the business of promoting family values and stopping the "gay" agenda.

Watchmen on the Walls is another, but more challenging possibility. WOW conferences are higher profile events with live music performances and worship services mixed together with pro-family speakers. This requires a local leadership team to commit to raise the funds locally to hire the hall and cover the costs of the conference. Much of the money needed is raised during the conference.

The Russians won't commit to an African WOW unless they see that the local Christian leaders want it enough to cover most of the cost of it. If they do get involved they would likely bring speakers and musicians and international media attention.

In either case, I would like to come and see what I can do to help.

Blessings,

Scott

Scott Lively <sdllaw@gmail.com> Fri, Dec 7, 2007 at 9:06 AM
To: Melvin Taylor <mtaylo2002@yahoo.com>

Hi Folks,

Forwarding a copy of my latest message to Uganda. If we can pull off a conference or seminars would you like to be a part in some way?

Blessings,

Scott
[Quoted text hidden]
[Quoted text hidden]

Scott Lively <sdllaw@gmail.com> Sat, Dec 8, 2007 at 1:15 PM
To: Vadim Privedenyuk <vadng@hotmail.com>

---------- Forwarded message ----------
From: **Scott Lively** <sdllaw@gmail.com>
Date: Dec 7, 2007 6:04 AM
Subject: Uganda Conference
To: Stephen Langa <stephenlanga@yahoo.com>

[Quoted text hidden]

Stephen Langa <stephenlanga@yahoo.com> Sun, Dec 9, 2007 at 6:18 AM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott.

Thanks a lot for your email. I have read the contents and my response is this:

The kind of event we are looking at is one which should bring together activists from across Africa and other parts of the World. We will try and raise money to cover the local costs, but while it would be great to have musician(s) and possibly fit in some concert(s), we would like to have the even in a setting that is open to both Christians and non-Christians. In other words, while we the organizers are Christian and will promote Christian values, we would like to have the conference on a neutral/open platform. We would like to involve politicians across the continent and if possible put political pressure on S. Africa to reverse their pro-gay position.

As for the dates, we are looking at the week of May 5-9, or 12-16, or possibly in between those two weeks. This is because we would like to combine this event with May 15 the UN International Day of Families (IDF), so that this conference fits in naturally. Family Life Network (FLN) has secured permission from the Ministry of Gender, Labor and Social Development to spearhead the celebrations for the IDF.

Thank you for offering to pay your airfare. What I would now ask are the following:

1. Is it possible to get a popular international music group that can come during that period?
2. If we at this end can offer to pay the accommodation and food bills for such a music group, how would their air ticket and other costs be secured?
3. Is it possible to get some ex-gay men & women who can come and testify?
4. While you will be teaching on activism, we would like to have a resource person who can teach counselors on how to help homosexuals recover. Would you be in a position to help us identify such a resource person(s)?

God bless.

Stephen Langa

----- Original Message ----
From: Scott Lively <sdllaw@gmail.com>
To: Stephen Langa <stephenlanga@yahoo.com>
Sent: Friday, December 7, 2007 5:04:38 PM
Subject: Uganda Conference

Dear Stephen.

Lets talk details about holding a pro-family conference in Uganda in 2008.

I'm personally committed to come to Kampala to hold training seminars for pro-family activists, and to help local activists form chapters of Defend the Family, if they want them. I can pay my own travel if you could arrange lodging and seminar facilities. We can perhaps recoup some of these costs by charging a fee for some of the more specialized seminars, and by selling books and DVDs. We can invite activists from across Africa and focus strictly on the business of promoting family values and stopping the "gay" agenda.

Watchmen on the Walls is another, but more challenging possibility. WOW conferences are higher profile events with live music performances and worship services mixed together with pro-family speakers. This requires a local leadership team to commit to raise the funds locally to hire the hall and cover the costs of the conference. Much of the money needed is raised during the conference.

The Russians won't commit to an African WOW unless they see that the local Christian leaders want it enough to cover most of the cost of it. If they do get involved they would likely bring speakers and musicians and international media attention.

In either case, I would like to come and see what I can do to help.

Blessings.

Scott

Scott Lively <sdllaw@gmail.com> Sun, Dec 9, 2007 at 2:44 PM
To: Stephen Langa <stephenlanga@yahoo.com>

I agree and those dates can work for me. I'll forward your e-mail to my Russian friends. And I'll start looking for ex-"gay" activists willing to come to Africa at their own expense.

Blessings,

Scott

[Quoted text hidden]

Scott Lively <sdllaw@gmail.com> Wed, Dec 12, 2007 at 6:34 AM
To: Stephen Langa <stephenlanga@yahoo.com>

May 5-9 is best. I have to be in Estonia May 14-15 and then St Petersburg.

On 12/9/07, **Stephen Langa** <stephenlanga@yahoo.com> wrote:
[Quoted text hidden]

Stephen Langa <stephenlanga@yahoo.com> Wed, Feb 20, 2008 at 2:16 PM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott,

We are now beginning to put together the plans for the Uganda conference. In light of the time that is left, my thinking is that we would make this meeting a Ugandan meeting and then gain momentum for an international meeting that would take place next year where we would put pressure on the S.African government to reverse their gay position.

If the above is ok with you, I wish to request that we reduce the number of days to 4 days - May 7-10, 2008. Please note that May 10 is a Saturday when we would have a half day parents seminar. This seminar would take place in the morning (9.00am-1.00pm) so that you can be free to leave in the evening or afternoon.

Please let me know what your thoughts are.

God bless.

Stephen Langa

Scott Lively *sdllaw@gmail.com* wrote:
[Quoted text hidden]

Never miss a thing. Make Yahoo your homepage.

Scott Lively <sdllaw@gmail.com> Thu, Feb 21, 2008 at 11:50 AM
To: Stephen Langa <stephenlanga@yahoo.com>

Stephan,

I think May will not work for me. I've started pastoring at a church in Springfield, Massachusetts and have a huge project started to launch an American version of the New Generation movement there. I just sent an e-mail earlier this week to my ministry partners in Estonia and Russia who had planned to host me in May, and asked them to postpone my trip there until 2009.

I have also had some unexpected major expenses recently that would make it nearly impossible for me to pay my own way on an African trip in the next few months.

Can we look at some later dates? What about early December 08 or early January in 09? What is the weather like then? If we set some actual dates I can begin saving money and planning to make it happen.

Also, I want to make sure we have an international gathering, not just a Ugandan event.

I am ready to commit now to dates in early Dec or Jan.

In Jesus,

Scott
[Quoted text hidden]

Stephen Langa <stephenlanga@yahoo.com> Fri, Feb 22, 2008 at 6:08 AM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott,

Thank alot for the updates from your end. It looks loke God is doing some very exciting things in your life and ministry for the kingdom.

Early December I already an international event "AIDS Reversal Intitiative" so for me December is not a good month. January the schools would still be on holiday my best suggestion would be early March. Suggested dates would be March 3-7, 2009. This would give us enough time to really mobilise the international community so that we make this event a global event that can pick off the beginning of taking back grounds gained by homosexuals worldwide.

Please let me know your thoughts.
[Quoted text hidden]

Looking for last minute shopping deals? Find them fast with Yahoo! Search.

Scott Lively <sdllaw@gmail.com> Fri, Feb 22, 2008 at 9:39 AM
To: Stephen Langa <stephenlanga@yahoo.com>

March 3-7 2009 sounds good. I will put it on my calendar and begin planning.

Blessings,

Scott

[Quoted text hidden]

Stephen Langa <stephenlanga@yahoo.com> Sat, Feb 23, 2008 at 7:03 AM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott,

I have put those dates on my calendar and will begin to plan towards that time.

God bless.

Stephen Langa

Scott Lively <sdllaw@gmail.com> wrote:
[Quoted text hidden]
[Quoted text hidden]

Scott Lively <sdllaw@gmail.com> Sat, Feb 23, 2008 at 7:47 AM
To: Stephen Langa <stephenlanga@yahoo.com>

Excellent. May God bless and protect your family and your nation in the interim.
[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 3

Scott Lively < sdllaw@gmail.com>

Uganda Needs Your Help

8 messages

ssempa@aol.com < ssempa@aol.com> Tue, Dec 2, 2008 at 5:26 AM
To: sdllaw@gmail.com

Dear Mr. Scott Lively.

Greetings.

My name is Irene and I am writing on behalf of Pastor Martin Ssempa.

He is still working hard to reclaim this generation from various.

We are in a battle against homosexuality in our nation Uganda, and we need a lot of resources to equip ourselves so as to fight this battle.

The good news is that we are winning, just last week a young man, one of the key leaders of the Ugandan gay Community came to our ministry center and gave his life to Christ. This is just one of them; we have registered a number of them.

And so I am writing to ask for your permission to make copies of your book Seven Steps to Recruit Proof Your Child.

Also if there be any other material that you would recommend, we will be glad.

Thank you.

Irene Mirembe.

For

Pr. Dr. Martin Ssempa
Makerere Community Church
Preventing AIDS and mentoring new leaders on Uganda' college campuses.
www.martinssempa.com

Scott Lively < sdllaw@gmail.com> Tue, Dec 2, 2008 at 10:29 AM
To: ssempa@aol.com
Cc: Stephen Langa <stephenlanga@yahoo.com>

Dear Irene,

Please give my greetings to Pastor Ssempa. We met during my second mission trip to Uganda a few years ago.

You have my permission to reprint copies of the book for your use. In fact, I can send you the original manuscript on disk if you give me your address.

I've been working with Stephen Langa to set up a conference for me on the homosexual issue in Uganda for 2009. I invite Pastor Ssempa to join us in this effort.

What I ask in exchange for the right to reprint the book is for you to set aside a portion of the sales into a fund to help cover my travel expenses when I come. I would like a share of the book sales from the conference as well.

I also have about 100 copies of 7 Steps that I can send for you to sell in advance for this purpose or I can bring them with me to sell at the conference. I think its better to sell them in advance to generate interest for the conference.

I am also ready to publish a new book on the homosexual issue titled Redeeming the Rainbow: A Christian Response to the "Gay" Agenda. It will be out in the Spring of 2009. It is the last book I will write on this topic and so I have incorporated everything I have learned in 20 years of pro-family ministry. I will be looking for a Ugandan sales distributor for this book once it is in print. Stephen has first right to this option if he chooses to exercize it.

As for Seven Steps to Recruit-Proof Your Child, (except for the limited request above) I give all rights freely to my Ugandan brothers as my contribution to your worthy efforts.

In Jesus,

Dr. Scott Lively
[Quoted text hidden]

---

ssempa@aol.com < ssempa@aol.com> Thu, Dec 4, 2008 at 11:41 AM
To: sdllaw@gmail.com

Dear Mr. Scott Lively,

Thanks for the e-mail.

It was wonderful hearing from your positive response.

Pastor Martin is very excited about your response. And about your new book, Redeeming the Rainbow.

He was wondering if you would mind if he gave you some ideas on how to Africanise the book.

He would be pleased to share with you some information.

We would be glad to partner with you in the conference on homosexuality, just keep us posted.

And about your travel expenses next year, whatever we will be able to contribute we will be glad to take part.

Now, ihow possible is it for you to send us another book on how to defeat gay arguments? And a powerpoint that goes with it?

Kindly let me know.

Thanks once again.

The battle continues.

Irene

For

Pr. Martin Ssempa
Makerere Community Church
Preventing AIDS and mentoring new leaders on Uganda' college campuses.
www.martinssempa.com

-----Original Message-----
From: Scott Lively <sdllaw@gmail.com>
To: ssempa@aol.com
Cc: Stephen Langa <stephenlanga@yahoo.com>
Sent: Tue, 2 Dec 2008 6:29 pm
Subject: Re: Uganda Needs Your Help

Dear Irene,

Please give my greetings to Pastor Ssempa. We met during my second mission trip to Uganda a few years ago.

You have my permission to reprint copies of the book for your use. In fact, I can send you the o
riginal manuscript on disk if you give me your address.

I've been working with Stephen Langa to set up a conference for me on the homosexual issue in Uganda for 2009. I invite Pastor Ssempa to join us in this effort.

What I ask in exchange for the right to reprint the book is for you to set aside a portion of the sales into a fund to help cover my travel expenses when I come. I would like a share of the book sales from the conference as well.

I also have about 100 copies of 7 Steps that I can send for you to sell in advance for this purpose or I can bring them with me to sell at the conference. I think its better to sell them in advance to generate interest for the conference.

I am also ready to publish a new book on the homosexual issue titled Redeeming the Rainbow: A Christian Response to the "Gay" Agenda. It will be out in the Spring of 2009. It is the last book I will write on this topic and so I have incorporated everything I have learned in 20 years of pro-family ministry. I will be looking for a Ugandan sales distributor for this book once it is in print. Stephen has first right to this option if he chooses to exercize it.

As for Seven Steps to Recruit-Proof Your Child, (except for the limited request above) I give=2
0all rights freely to my Ugandan brothers as my contribution to your worthy efforts.
[Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Thu, Dec 4, 2008 at 1:06 PM
To: ssempa@aol.com

Irene,

I can send you the Defeating "Gay" Arguments With Simple Logic booklet as well as 7 Steps.
And I would like to know how to Africanize my materials, however, with printing costs so high I don't think I could print a special African edition separate from the one I am publishing for the US market. If you can have an African editionit printed there and cover those costs I would be willing to work out a deal with you, and would certainly invest the time and effort to modify the manuscript.

I don't have any power-point at this time, but that could be prepared for use in our conference.

I request that we have a formal agreement to set aside 25% of your sales of my materials for my travel expenses. You can set these funds aside in an account until I am ready to purchase my travel and then make them available to me via wire transfer. If this is acceptable to you I will begin preparing a shipment of things for your use and sales efforts. I will also send you several items by e-mail that can be printed there.

My Latvian friends from New Generation church based in Riga might want to participate in the conference. I will be in Riga the first week of July. What would be a good week for a Kampala conference?

In Jesus,

Pastor Scott
[Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Thu, Dec 11, 2008 at 3:05 PM
To: ssempa@aol.com

Irene,

I have been awaiting a response from Martin. Was my proposal unacceptable to him?

Believe me I want to help you and do not want to put any roadblocks to our cooperation for ministry.

Blessings,

Pastor Scott

[Quoted text hidden]

---

ssempa@aol.com < ssempa@aol.com> Fri, Dec 12, 2008 at 6:04 AM
To: sdllaw@gmail.com

Dear Pastor Scott.

I sorry we have not gotten back to you.

Pastor Martin has been a little busy but I am passing this message right away and we will get back to you.

Thanks.

Irene.

Pr. Martin Ssempa
Makerere Community Church
Preventing AIDS and mentoring new leaders on Uganda' college campuses.
www.martinssempa.com

-----Original Message-----
From: Scott Lively <sdllaw@gmail.com>
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Sent: Thu, 11 Dec 2008 11:05 pm
Subject: Re: Uganda Needs Your Help

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The battle continues.

Irene

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Pr. Martin Ssempa
Makerere Community Church
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-----Original Message-----
From: Scott Lively <sdllaw@gmail.com>
To: ssempa@aol.com

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Sent: Tue, 2 Dec 2008 6:29 pm
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0A

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As for Seven Steps to Recruit-Proof Your Child, (except for the limited request above) I give=2
0all rights freely to my Ugandan brothers as my contribution to your worthy efforts.

In Jesus,

Dr. Scott Lively

[Quoted text hidden]

Martin Ssempa < ssempa@aol.com> Thu, Apr 23, 2009 at 6:56 PM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott,

Greetings and kindly recieve my appreciation of all the good work. Your work here planted deep seeds and had fuelled adesire for change.

Urgently We need your help on a legislative angle.. We need help in developing a strong detterent law against homosexuality in Uganda.
We have had ex gay people share about serious recruitment in the schools and how human rights gps are using there

LIVELY DECLARATION
EXHIBIT 4

Gmail by Google

Scott Lively < sdllaw@gmail.com>

RE: UP DATE ON UGANDA PREPARATIONS

4 messages

Stephen Langa < stephenlanga@yahoo.com> Tue, Feb 24, 2009 at 3:38 PM
To: Scott Lively <sdllaw@gmail.com>, Don Schmierer <dschmier@inreach.com>

Dear Scott and Don.

This is to inform you that preparations are in full gear at this end and out teams are busy mobilizing and more meetings are coming up. I therefore wish to inform you that your schedules will be full. There is a possibility of having a meeting with some members of parliament the evening of March 4, 2009 (5.00pm-7.00pm) after you have hopefully rested.

I don't know if I mentioned to you gentlemen, but we have managed to get a brother who is a former homosexual to come. He is being sent by Dr. Richard Cohen. The name of the person coming is Lee Brundidge (Caleb) from International Healing Ministries.

Although we might have to fine-tune the program when you arrive, at the moment what it looks like is that Scott will take the first day of the conference, March 5, 2009, and Don will take the last two days March 6&7, 2009. Then Scott you will have other speaking engagements as well as media appearances + speaking to the youth. This is still tentative. I will send you a more accurate program in a couple of days.

For now all I can say is that it will be a busy time for you gentlemen.

Scott, please send me your proposed program for the first day. if you prefer to finalize it when you arrive, that is fine with us. Please also prepare to be the main speaker at the meeting with members of parliament the evening of March 4, 2009.

Both of you please bring as much material as you can.

Meanwhile intercessors are praying and we have mobilized prayer not only in Uganda, but Africa wide.

God bless.

Stephen Langa

Scott Lively < sdllaw@gmail.com> Wed, Feb 25, 2009 at 7:21 AM
To: Stephen Langa <stephenlanga@yahoo.com>

Hi Stephen,

My program will consist of four segments, based on my new book *Redeeming the Rainbow: A Christian Response to the "Gay" Agenda* which is not yet in print but will probably be available in PDF form by the date of the conference.

1. The "Gay" Movement's Agenda for Control of Society: The history, goals and structure of the global homosexual movement.

2. The "Gay" Blueprint for Transforming a Nation: The strategy, tactics and process for homosexualizing a society.

3. An Effective Christian Response to the "Gay" Agenda: Practical strategies, tactics and programs for preserving and strengthening society's family foundations.

4. Building and Strengthening the Pro-Family Movement: Recruiting, organizing and deploying an army of pro-family activists.

I am hoping that you will be able to digitally film my presentation so that I can offer it on DVD in the US through my ministry. This will actually be my first seminar based on this book, although I have lectured on many of the topics in other fora.

I am also hoping that I will have Internet access at my hotel during my stay?

Blessings,

Scott

[Quoted text hidden]

Stephen Langa < stephenlanga@yahoo.com> Thu, Feb 26, 2009 at 12:53 PM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott,

The program you have suggested is very good. We indeed will make video/digital recording of all the sessions.

The meeting for members of parliament has been shifted to Thursday morning March 5, 2009 from7.30-9.30 where you will have about one hour presentation plus 30 minutes of interaction and answering questions. We are also trying to fix a meeting with the lawyers on the evening of 4th March. I hope that you can come up with a one hour version that captures session 1,2,3&4 in a summarized way, because people don't know about these things. You have the option of using power point presentation. We have LCD projectors here which you can use.

Otherwise we are continuing to pray.

God bless.

Stephen Langa

Date: Wed, 25 Feb 2009 07:21:43 -0500
Subject: Re: UP DATE ON UGANDA PREPARATIONS
From: "Scott Lively" <sdllaw@gmail.com> View Contact Details Add Mobile Alert
Yahoo! DomainKeys has confirmed that this message was sent by gmail.com. Learn more
To: "Stephen Langa" <stephenlanga@yahoo.com>
[Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Fri, Apr 11, 2014 at 12:08 AM
To: Scott Lively <psalm37nasb@gmail.com>

---------- Forwarded message ----------
From: **Stephen Langa** <stephenlanga@yahoo.com>
Date: Thu, Feb 26, 2009 at 12:53 PM
Subject: Re: UP DATE ON UGANDA PREPARATIONS
[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 5

Sent in lieu of page newsletter

Gmail

Scott Lively <sdllaw@gmail.com>

Report From Kampala

2 messages

DefendTheFamily.com <abidingtruth@defendthefamily.com> Tue, Mar 10, 2009 at 5:53 PM
To: Scott Lively <scottlively@defendthefamily.com>

PLAINTIFF'S EXHIBIT 25 6-23-15

Defend the Family.com
a service of Abiding Truth Ministries
Defending the Natural Family, Marriage and Family Values

DefendTheFamily.com Alert

I'm writing from Kampala, Uganda where I am teaching about the "gay" agenda in churches, schools colleges, community groups and in Parliament. My visit here is being treated as an international crisis by the "gay" activists and their media toadies, who are spinning lies in their usual manner, but the Ugandan response has been resoundingly positive.

My week began with a meeting with about fifty members of the Ugandan Christian Lawyers Association on the evening of my arrival, then an address to members of the Parliament on the following morning. There were from fifty to one hundred persons in attendance, including numerous legislators and the Minister of Ethics and Integrity, with whom I enjoyed a personal chat for more than half and hour leading to the event. The centerpiece event was a three-day conference featuring myself, Don Schmierer, author of An Ounce of Prevention and several other books designed to help the families of homosexuals, and Caleb Lee Brundidge of International Healing Foundation, a formerly "gay" African-American man who now leads recovery workshops. It was a paid event, very well attended, mostly by professionals in various fields including education, counseling, government and medicine. Their feedback was extremely favorable.

My part of the conference was a series of three lectures on the final day, lasting most of the day. We gave two seminars at Kampala Pentecostal Church, to a combined total of about 2,000. I shared the platform with the other men the first night, then gave what I thing was one of my best motivational sermons ever as the main presenter on the following night. Caleb and I were joint presenters at one of the biggest universities in the city to a crowd of up to 5,000 college students (which began by learning some traditional Ugandan dance moves on stage -- to some uproarious laughter from the youths). We spoke to three large groups of secondary school students, a total of maybe 4,000, and did two radio shows, one Christian, one secular, and a one-hour television program on live national television. I did interviews with several newspapers during the week, and had private conversations with several influential leaders. I ended the week with a strategy and brainstorming sess! ion with a small group of key Christian activist leaders. All in all it was a highly successful and satisfying campaign.

The Ugandan people are strongly pro-family, and there is a large Christian population which is much more activist minded than that of most western countries. However, the international "gay" movement has devoted a lot of resources to transforming the moral culture from a marriage-based one to one that embraces sexual anarchy. Just as in the US many years ago they are leading with pornography to weaken the moral fiber of the people, and propagandizing the children behind the parents' backs. On the TV show we exposed a book distributed to schools by UNICEF that normalizes homosexuality to teenagers. (We expect a massive protest by parents, who are mostly not aware that such materials even exist in their country, let alone in their childrens' classrooms.)

And remember that homosexuality is literally illegal in this country. Imagine how bad things

would be if the criminal law were abandoned. By the way, the false accusation against me, now circulating in the US, is that I called on the Ugandan government to force homosexuals into therapy. What I actually said is that the law against homosexuality should be liberalized to give arrestees the choice of therapy instead of imprisonment, similar to the therapy option I chose after being arrested for drunk driving in 1985 (during which time I accepted the Lord and was healed and transformed into a Christian activist).

Uganda is an important target for the "gays" because of it's internationally-renowned victory over AIDS through abstinence campaigns. It went from having the highest to the lowest disease rates in Africa.

Sadly, there are numerous indications that the "gay" efforts are working. We heard testimonies in our meetings from teachers, pastors and counselors that incidents of homosexuality are on the raise among the youth, including male-on-male rapes in boys boarding schools, and increasing lesbianism in several public schools. It was reported that in at least one of the schools two girls had actually been hired by the underground "gay" movement to recruit other girls at school, resulting in a total of thirteen girls self-identifying as lesbians by the end of the year. There is also a very high incidence of "cross-generational relationships" (i.e. pederasty), so much so that during my stay there was a public-service radio campaign urging young people not to give in to "sugar-daddies." What happens, according to reports from the youths, is that wealthy white "gays" are coming to Uganda from Europe and America using cash and gifts to lure teenage boys into homosexual relationshi! ps. These "rent boys" then brag to their friends that they too can have money and material things if they offer the same services. Unfortunately, in a poor country like Uganda where many people live on less than $5 per day, it isn't very expensive to corrupt the young.

On the positive side, my host and ministry partner in Kampala, Stephen Langa, was overjoyed with the results of our efforts and predicted confidently that the coming weeks would see significant improvement in the moral climate of the nation, and a massive increase in pro-family activism in every social sphere. He said that a respected observer of society in Kampala had told him that our campaign was like a nuclear bomb against the "gay" agenda in Uganda. I pray that this, and the predictions, are true.

Now my attention is turned to equipping the activists in Uganda with helpful materials. I have given them permission to make unlimited use of Defeating "Gay" Arguments With Simple Logic, and Seven Steps to Recruit-Proof Your Child (a much-esteemed book among the Africans). I still want to send them my remaining stock of about 100 or so copies of Seven Steps, but I didn't raise any money toward this in my last appeal. If you would like to help, please make a donation at

www.defendthefamily.com/help/donate.php

Please also pray for my ministry (which has come under withering attack in recent weeks) and the Ugandan people.

Your Fellow Servant,

Dr. Scott Lively

DefendTheFamily.com <abidingtruth@defendthefamily.com> Tue, Mar 10, 2009 at 5:59 PM
To: Scott Lively <sdllaw@gmail.com>

This Exhibit 6 is a video recording

which is being filed separately on digital media.

LIVELY DECLARATION
EXHIBIT 6

LIVELY DECLARATION
EXHIBIT 7

The Lively Letter

PO Box 2373, Springfield, MA 01101, www.defendthefamily.com, sdllaw@gmail.com

April 1, 2009

UGANDA, NEW ATTACKS & COFFEE HOUSE UPDATE

It is good to be home again. I've been back from Uganda for a couple of weeks now, but the impact of that trip both there and here continues to unfold. It was a relatively short mission, but seemed much longer than it was, probably because of the wide variety and sheer number of events we handled through the week. I wrote a report of that trip which I put out to our e-mail list and published herein on the Response Page, listing all of my activities there. What is not in the report is the exchange I had with various "gay" media attackers and their new friend and ally, Dr. Warren Throckmorton of Grove City College (a supposed professing Christian at a Christian institution). The "gays" arranged for their own activists to attend several of my events in Kampala (Uganda's capital city) and they started spreading lies about me around the globe from day one. I didn't know this until I received an e-mail from a fellow pro-family leader who forwarded a story from Throckmorton's blog condemning me for saying that Uganda should force homosexuals into therapy (not accurate) and implying that I supported imprisoning them under its existing criminal laws (not true). …And demanding that Exodus International and NARTH (two of my favorite pro-family groups) distance themselves from me. Then I stated getting e-mails from the "gay" press asking for comment about removal of references to me from the websites of those organizations. I had almost forgotten how nasty and devious these guys can be.

I chided Throckmorton by e-mail for not checking first with me, but instead of apologizing, he posted additional comments against me on his blog. I guess he is part of what is being termed the "emerging church," a new version of evangelicalism that abandons Biblical truth regarding sexual issues. Of course, the leftist media loves the emerging church, which makes it all the easier for the homosexuals to marginalize people like me. (Who would have thought twenty years ago that we, not they, would be considered outside of the mainstream of our society??) This latest development, following the Southern Poverty Law Center's campaign to discredit ATM as a "hate" group, has done a lot of damage (in the natural) to me and this ministry, but, as the Scripture says, "greater is He that is in me, than he who is in the world."

There is no question that the times are growing darker, and the Gospel is being challenged in this country like never before. And it will almost certainly get worse. Barney Frank is predicting the passage of at least three major pro-homosexual laws during Obama's first term and globally, the "gay" juggernaut is advancing apace. In recent months some have been equating his election to the rise of the Hitler, but I disagree. Obama's election is actually equivalent in a historical sense to the Weimar government prior to Hitler, which was characterized by disastrous socialist economic policies and a concurrent extreme sexual libertinism. The resulting social chaos invited over-correction to the "right" which opened the door for Hitler. There as here the transformation of the moral culture over decades from conservative to corrupt was orchestrated by the "gay" movement: that is the central message and thesis of *The Pink*

Swastika.

Right on cue, we're seeing a populist anti-socialism uprising across the country in the form of Tea Parties and other gatherings. I'm all in favor of these, because at this stage the movement is largely Christian sponsored and manned. However, if the movement grows to the point that secularists outnumber Christian activists and begin to assume leadership roles, its tone and goals will likely shift hard to the right and away from Biblically-grounded moderating principles. We would be on track to trade secular liberalism for secular conservatism, which, in my opinion, is worse: harsh, repressive and punitive.

I pray that instead of repeating the German experience, we steer our nation into Christian revival. That is the strategic intention behind our Redemption Project: to focus the energy of Christian activists around the region into the re-Christianization of Springfield, Massachusetts -- to transform a depressed and defeated post-Christian city into a model of Biblical living. We hope to inspire a renewal of the missionary perspective in the pro-family movement and the larger Christian community nationally.

Encouragingly, this past Sunday we had a packed living room at Redemption House for our weekly activist discussion group. The focus was on the upcoming March for Jesus, which is set for the day before Easter, April 11th. Everyone was excited about the event as we brainstormed ideas for getting Christians to turn out on that date. And we began planning ahead for Family Day 2009, which will probably be August 15th. I'm trying to keep up a regular schedule of activist projects and events that focus on Biblical fundamentals.

Redemption House (our home) is being slowly transformed as the weeks and months progress. I have much less time for remodeling than I would like, but step by step we're turning this former trash-filled, abandoned crack-house into a beautiful home, as we personally model the philosophy of redemptive living that guides our entire mission here in Springfield. Thankfully, my years as a handyman and contractor before becoming a Christian activist allow me to do most of the work myself at minimal cost.

The Coffee House building will be my primary project for the coming several weeks. As you know, we liquidated the PFCT investment fund to buy this building last Fall as the stock market was collapsing under us. Now we own, free-and-clear, this great, ideally-located three-story historic facility. It was a good investment, worth probably more than twice the purchase price (which, if so, is greater than the PFCT balance at its peak), yet we don't have enough money left over to do the complete renovation that we had planned. With the funds we've raised we have upgraded the electrical service from the ground up: new meters, main circuit-breaker box and sub-panels for each of the two upper floors. We were also able to prepare and rent one of the two apartments, which we intend to use as missionary housing. Our tenant is a medical missionary awaiting assignment to a foreign mission field. We also paid for a professional architectural design for the remodel of the coffee shop. But there is a lot we can do even without funding and I'll press forward on that in April.

On my flights to and from Uganda I was able to get very close to completing *Redeeming the Rainbow: A Christian Response to the "Gay" Agenda.* It is now 90% formatted for publication and I should have it ready for the printer by May 1st. I don't seem to get much done when I'm not traveling, but thankfully I'll be speaking in So Cal this month so maybe I'll get the project completed on my way there and back. Next comes the task of raising the funds to print it. We were forced to use our book printing fund last months to cover Feb/March overhead after a drop-off in donations, but we're starting again now.

Thank you for you faithful support.

In Him,

Dr Scott Lively

PS. Special needs this month include funding for printing the new book (about $8000), renovation funds for the Coffee House building ($25,000), and about $500 for printing signs for the March for Jesus ("Jesus is Lord of New England"). Mostly, however, please pray that we will be able to continue to meet our regular overhead expenses in these difficult times.

LIVELY DECLARATION
EXHIBIT 8

Gmail by Google

Scott Lively <sdllaw@gmail.com>

Fwd: Re: Fwd: Re: Also

3 messages

Stephen Langa <stephenlanga@yahoo.com> Tue, Apr 14, 2009 at 2:27 AM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott,

Please find the response to your question as given by a brother who is a lawyer.

God bless.

Stephen Langa

Note: forwarded message attached.

---------- Forwarded message ----------
From: francis gimara <gimaraf@yahoo.com>
To: Stephen Langa <stephenlanga@yahoo.com>
Cc:
Date: Thu, 9 Apr 2009 09:20:30 -0700 (PDT)
Subject: Re: Fwd: Re: Also

Stephen

The relevant sections of the penal code is Section 145, which provides that:

Any person who-

(a) has carnal knoledge of any person against the order of the nature;
and
(c) permits a male person to have carnal knowledge of him or her gainst the order of nature.

Commits an offence and is liable for life imprisonment.

Regards

Francis

--- On Wed, 4/8/09, Stephen Langa <stephenlanga@yahoo.com> wrote:

> From: Stephen Langa <stephenlanga@yahoo.com>
> Subject: Fwd: Re: Also
> To: "Francis Gimara" <gimaraf@yahoo.com>, "Francis K" <kidsra@yahoo.co.uk>
> Date: Wednesday, April 8, 2009, 8:03 AM
> Dear Francis,
>

> Please send me a reply to the question in the forwarded
> email.
>
> Thanks.
>
> SL
>
> Note: forwarded message attached.

Scott Lively <sdllaw@gmail.com> Tue, Apr 14, 2009 at 7:01 AM
To: Stephen Langa <stephenlanga@yahoo.com>

Thanks. That is an overly harsh punishment. Is it enforced?
[Quoted text hidden]
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> From: francis gimara <gimaraf@yahoo.com>
> To: Stephen Langa <stephenlanga@yahoo.com>
> Date: Thu, 9 Apr 2009 09:20:30 -0700 (PDT)
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>> To: "Francis Gimara" <gimaraf@yahoo.com>, "Francis K" <kidsra@yahoo.co.uk>
>> Date: Wednesday, April 8, 2009, 8:03 AM
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>> Please send me a reply to the question in the forwarded
>> email.
>>
>> Thanks.
>>

>> SL
>>
>> Note: forwarded message attached.
>
>
>
>
>

Stephen Langa <stephenlanga@yahoo.com> Wed, Apr 15, 2009 at 2:34 AM
To: Scott Lively <sdllaw@gmail.com>

No it is not enforced. I believe that it needs amendment. We are going to look into this matter as well.

Scott Lively <sdllaw@gmail.com> wrote:

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>
>
>
> On Tue, Apr 14, 2009 at 2:27 AM, Stephen Langa wrote:
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> > and
> > (c) permits a male person to have carnal knowledge of him or her gainst the
> > order of nature.
> >
> > Commits an offence and is liable for life imprisonment.
> >
> > Regards
> >
> > Francis
> >
> >
> >
> >
> >
> >
> >
> >
> >

> --- On Wed, 4/8/09, Stephen Langa wrote:
>
>> From: Stephen Langa
>> Subject: Fwd: Re: Also
>> To: "Francis Gimara" , "Francis K"
>> Date: Wednesday, April 8, 2009, 8:03 AM
>> Dear Francis,
>>
>> Please send me a reply to the question in the forwarded
>> email.
>>
>>Thanks.
>>
>> SL
>>
>> Note: forwarded message attached.
>
>
>
>
>

LIVELY DECLARATION
EXHIBIT 9

I've been working with Stephen Langa to set up a conference for me on the homosexual issue in Uganda for 2009. I invite Pastor Ssempa to join us in this effort.

What I ask in exchange for the right to reprint the book is for you to set aside a portion of the sales into a fund to help cover my travel expenses when I come. I would like a share of the book sales from the conference as well.

0A

I also have about 100 copies of 7 Steps that I can send for you to sell in advance for this purpose or I can bring them with me to sell at the conference. I think its better to sell them in advance to generate interest for the conference.

I am also ready to publish a new book on the homosexual issue titled Redeeming the Rainbow: A Christian Response to the "Gay" Agenda. It will be out in the Spring of 2009. It is the last book I will write on this topic and so I have incorporated everything I have learned in 20 years of pro-family ministry. I will be looking for a Ugandan sales distributor for this book once it is in print. Stephen has first right to this option if he chooses to exercize it.

As for Seven Steps to Recruit-Proof Your Child, (except for the limited request above) I give=2
0all rights freely to my Ugandan brothers as my contribution to your worthy efforts.

In Jesus,

Dr. Scott Lively

[Quoted text hidden]

Martin Ssempa < ssempa@aol.com> Thu, Apr 23, 2009 at 6:56 PM
To: Scott Lively <sdllaw@gmail.com>

Dear Scott,

Greetings and kindly recieve my appreciation of all the good work. Your work here planted deep seeds and had fuelled adesire for change.

Urgently We need your help on a legislative angle.. We need help in developing a strong detterent law against homosexuality in Uganda.
We have had ex gay people share about serious recruitment in the schools and how human rights gps are using there

position to spread homosexuality. Victims of kids who have been raped and have also gotten the nation up in arms. yesterday we had a national demonstration with a petition to parliament. We got a great reception and were assigned to work with some three wonderful christian MPs to develope a bill to be presented in parliament on wednesday next week.

I am tasked with helping these guys develope this law. I am asking for some help in this legal process. What would you encourage us to put in this bill.

What are definitions.

What are key issues to capture.

How do we hinder and silence advocacy of this issue. REmember they have their hate crimes against us, how can we draft
a reverse hate crimes against gay propaganda.

How do we deal with national and international protocols.

How do we ensure equal protection of boys and girls...ie defilement of a girl below eighteen is a capital offense in Uganda.
But when boys are molested it is not as serious.

Is there a strong law against this in any part of the world, we can learn from? Any urgent help on this is appreciated.

I have a meeting with them tommorrow at 10am Uganda time..and some more work can be done on Sunday, and Monday.

Thank you for your urgent help on this.

Martin

In the News today Uganda Government News:
Civil society petitions Parliament over homosexuality vice
On Dec 4, 2008, at 9:06 PM, Scott Lively wrote:

=

Scott Lively < sdllaw@gmail.com> Thu, Apr 10, 2014 at 7:48 PM
To: Scott Lively <psalm37nasb@gmail.com>

---------- Forwarded message ---------
From: **Martin Ssempa** <ssempa@aol.com>
Date: Thu, Apr 23, 2009 at 6:56 PM
Subject: Re: Uganda Needs Your Help
[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 10

Gmail by Google

Scott Lively <sdllaw@gmail.com>

Here is what we have so far

Scott Lively <sdllaw@gmail.com> Tue, Apr 28, 2009 at 1:04 PM
To: Martin Ssempa <ssempam@gmail.com>

Here's my revision, attached

On Mon, Apr 27, 2009 at 4:49 PM, Martin Ssempa <ssempam@gmail.com> wrote:

> Dear Scott,
>
> Kindly find our progress as below. Please make additional changes where needed. Also if you need you can make track changes.
>
> If possible send me you cell or phone as I lost your card.
>
> Martin SSempa
>
> On Apr 26, 2009, at 1:57 AM, Scott Lively wrote:
>
> > I'll give this some attention tomorrow
> >
> > On Sat, Apr 25, 2009 at 6:12 PM, Martin Ssempa <ssempam@gmail.com> wrote:
> > > Dear Scott,
> > >
> > > Further to my message yesterday, we spent sometime working on the draft with some legislators. There is no precendence we found, but decided to proceed anyway. Kindly find a draft and we ask that you give your careful input. How can we make it stronger, and make our nation a model to lead the world on this issue. Kindly take a look as soon as possible and give your input. Maybe use track changes. Thanks very much. Do give me a response if you get this mail.
> > >
> > > Your teaching did so much for all of us. Blessings indeed. I have worked on the Family Policy Center.
> > >
> > > Pr. Martin Ssempa

Uganda Anti_Homosexual_update[1].doc
54K

I encourage moderation in sentencing. Even my suggested modifications may be too harsh, but I'll leave that to you.

More important to me is that you emphasize rehabilitation and prevention. I have added two sections that will accomplish that.

Otherwise, this looks like it will solve your problems.

Regards,

Dr. Scott Lively

APRIL20, 2009

THE ANTI - HOMOSEXUALITY BILL, 2009

MEMORANDUM

1. The Principle

The object of the Bill is to create a comprehensive legislation which prohibits homosexuality that includes male to male sex, female to female sex and related sexual offences in Uganda.

Given our historical, legal, cultural and religious value to heterosexual relationships as the basis of our society, the bill aims at strengthening the nation's capacity to deal with the emerging internal and external threats to traditional heterosexual family. Which includes: redefining human rights to elevate homosexuality as a legitimate human right, where as it is self evidently perverted, disordered and unnatural. This being advanced using new terms like "sexual orientation", "sexual minorities" and "gender identity" as new forms special sexual rights. The Republic of Uganda needs a comprehensive and enhanced legislation to protect our cultural, legal, religious, and traditional family values.

There is also need to protect our children and youth who are made vulnerable to

sexual abuse and deviation as a result cultural changes, uncensored information technologies, and parentless child developmental settings.

2. Defects in the existing law.

The penal code act does not explicitly address the issue of same sex unions and gender identity disorders which is damaging the social fabric of our nation at an alarming level hence the need for legislation to provide for charging, investigating, prosecuting, convicting and sentencing of offenders on the above law. There is need for equal treatment of man and women before the law in regard to homosexual offenses.

This legislation comes to complement and supplement the provisions of the constitution of Uganda and the penal code Act by not only criminalizing same sex marriages but same -sex sexual acts and other related acts.

3.1. The object of the Bill

The object of the Bill is -

(a) To prohibit Homosexuality and related to practices in Uganda.
(b) To prevent the threat to the survival and stability of the natural family institution which is the basic unit of the society.
(c) To safe guard the health of Ugandan citizens from the antecedent heath effects of homosexuality and related practices.
(d) To promote Co-operation with other Countries in combating homosexuality and related practices.
(e) To prohibit ratification of any international treaties, conventions, protocols and declarations which are contrary or inconsistent with the provisions of this Act.
(f) To ensure through public education and social services that Ugandan children and youths receive age-appropriate instruction and guidance at every age level which helps them to understand and embrace healthy marriage and family life as a personal goal.

3.2. Part 1 of the Bill incorporating clause 1 and 2 provides for Preliminary matters relating to commencement and Interpretation of the words and phrases used in the Bill

3.3. Part II of the Bill in clauses 3 to 6 prohibits homosexuality and related practices by introducing the offences of engaging in homosexuality, and the penalties of imprisonment upon conviction. This part also creates offences and penalties for acts that promote homosexuality, failure to report the offence and impose a duty on the Community to report Suspected Cases of the homosexuality.

3.4 .Part III of the Bill of clauses 7 to 9 provides for the jurisdiction of Ugandan Courts in Case of Homosexuality, including extra territorial Jurisdiction with consent of the Attorney General.

3.5. PART IV of the Bill in clauses 10 and 11 provides for miscellaneous provisions on international treaties, protocols, declarations and conventions and the minister to make regulations to give effect to the Act.
4. Schedule 1 of the Bill gives the value of the currency.

Hon. David Bahati
Ndorwa County West
Kabale District.

ARRANGEMENT OF CLAUSES

PART I ----PRELIMINARY

Clause.

PART II – PROHIBITION OF HOMOSEXUALITY

PART III – JURISDICTION

PART I - PRELIMINARY

1 – Commencement

This Act shall come into force upon publication in the Gazette.

2 - Interpretation

In this Act, unless the Context otherwise requires –
"Gender" means male or female;
"Homosexuality" means same gender or same sex sexual acts;
"Homosexual" a person who engages or attempts to engage in same gender sexual

activity.

"Minister" means the minister responsible for Ethics and Integrity.

"Sexual act" means –

(a) Stimulation or penetration of a vagina or mouth or anus, however slight of any person by a sexual organ;

(b) The use of any object or organ by a person on another person's sexual organ or anus or mouth;

"Sexual organ" means-a vagina or penis.

PART II: **PROHIBITION OF HOMOSEXUALITY AND RELATED PRACTICES**

3. **Prohibition of homosexuality**

(1) Homosexuality is prohibited.

(2) Any person who engages in homosexuality contrary to sub-section (1) commits an offense and on conviction is liable to a fine not exceeding 500 currency points or imprisonment not exceeding ~~10 years~~ or both. Not to exceed 6 months for a first offense

4. Aggravated homosexuality

(1) Any person who commits the offense mentioned in section 2(1) above with another person who is below the age of 18 years in any of the circumstances specified in sub-section (2) commits an offense called aggravated homosexuality and on conviction by a competent court liable to suffer ~~death~~ imprisonment not to exceed twenty years, except when the offender is infected with HIV/AIDS and knows that he or she is infected, in which case he shall be subject to imprisonment for life.

(2) The circumstances referred to in sub-section (1) are as follows: -

(a) Where the person against whom the offense is committed is below the age of ~~14~~ 16;

(b) Where the offender is infected with HIV/AIDS, and knows that he

or she is infected;

(c) Where the offender is a parent or guardian or a person in authority over, the person against whom the offense is committed;

(d) Where the victim of the offense is a person with disability; or

(e) Where the offender is a serial offender.

(3) Any person who attempts to commit the offense of homosexuality with another person below 18 years in any of the circumstances specifies in sub-section (2), commits an offense and is liable on conviction to imprisonment for life.

(4) Where a person is charged with the offense under this section, that person shall undergo a medical examination as to his or her HIV status.

(5) Any person who without the consent of an adult victim being under their authority or not commits the offense mentioned in this section

5. Promotion of homosexuality

(1) Any person who,

(a) Participates in production, trafficking, procuring, marketing, broadcasting, disseminating, publishing homosexual materials;

(b) Funds or sponsors homosexuality and related activities

(c) Offers premises and other fixed or movable assets

(d) Uses electronic devices which include internet, films, mobile phone and

(f) Who acts as an accomplice or attempts to legitimize or in any way abets homosexuality and related practices

Commits an offense and on conviction is liable to a fine of five thousand currency points or life imprisonment of a term not to exceed five years.

(2) Where the offender is a corporate body or a business or an Association or an NGO, upon conviction its certificate of registration shall be cancelled and the Director(s) or proprietors or promoter(s) shall be criminally liable.

6. Failure to report the offense

Any person who being aware of the commission of any offense under this Act omits to report the offense to the relevant authorities within 24 hours commits an offense and on conviction is liable to a fine not exceeding five hundred currency point or imprisonment not exceeding two years.

PART IV ---JURISDICTION

7. Jurisdiction.

Save for aggravated homosexuality which shall be tried by the High Court, other offenses under this Act shall be tried by the Magistrates Court.

8. Extra – Territorial Jurisdiction.

This Act shall apply to offences Committed outside Uganda Where-

(1) A person who, while being a citizen of, or permanently residing in Uganda, Commits an act Out side Uganda, which act would Constitute an offence had it been Committed in Uganda.

(2) The offence was committed partly outside and or partly in Uganda.

9. Extradition.

A person charged with offence under this Act shall be liable to extradition under the existing Extradition laws.

PART V---MISCELLANEOUS

10. Nullification of inconsistent International treaties, protocols, declarations and conventions.

(1). Any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in this Act, are null and void to the extent of their inconsistency.

(2). The foreign definitions of "sexual orientation", "sexual rights", "sexual minorities", "gender identity" shall not be used in anyway to legitimize homosexuality, gender identity disorders and related practices in Uganda.

11. **Regulations.**

The Minister may by statutory instrument make regulations to effect implementation of the provisions of this Act, and Promote this objects.

SCHEDULE 1

CURRENCY POINT

One currency point is equivalent to twenty thousand Shillings.

12. To prevent harmful outside influences from corrupting the youth, and to further ensure that homosexual and other harmful sexual lifestyles cannot take root in our society, the government of Uganda will take all reasonable measures to ensure that children within its jurisdiction are prepared for healthy marriage and family life through age appropriate instruction on 1) the importance and value of marriage to individuals and to society, 2) the optimal traits and virtues that help men and women to be good husbands and wives, 3) the physical, emotional and social harms which result from promiscuity and sexual deviance.

The Minister will work with specialists in the fields of education and family life and all government agencies which interact directly or indirectly with children to develop practical means of implementing this section.

13. Any person who is arrested for homosexuality in Uganda may request a reasonable delay in sentencing in order to obtain reparative therapy, at his or her own expense, with a government approved medical professional. In this event, sentencing may be delayed indefinitely while such therapy is ongoing, subject to regular reporting by the medical professional to the court. Upon a certification by the medical professional that the party no longer poses a significant threat of re-offending, the court shall close the case.

This section shall not be available for those charged with aggravated homosexuality.

At such time as the government approves medical professionals who are qualified to treat homosexual disorder, the government shall inform the public, including specifically all school counselors, that treatment for homosexuality is now available in Uganda, and that anyone who sufferers from unwanted homosexual

feelings is encouraged to seek therapy, and that the confidentiality of all such therapy will be scrupulously protected.

The Minister will work with specialists in the fields of medicine, higher education and the judiciary to develop practical means of implementing this section.

I encourage moderation in sentencing. Even my suggested modifications may be too harsh, but I'll leave that to you.

More important to me is that you emphasize rehabilitation and prevention. I have added two sections that will accomplish that.

Otherwise, this looks like it will solve your problems.

Regards,

Dr. Scott Lively

APRIL20, 2009

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4. Schedule 1 of the Bill gives the value of the currency.

Hon. David Bahati

Ndorwa County West

Kabale District.

ARRANGEMENT OF CLAUSES

PART I ----PRELIMINARY

Clause.

1. Commencement
2. Interpretation

PART II – PROHIBITION OF HOMOSEXUALITY

3. Offence of Homosexuality
4. Aggravated Homosexuality
5. Promoting Homosexuality
6. Failure to report offence

PART III – JURISDICTION

7. Jurisdiction
8. Extra – territorial Jurisdiction

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(a) Stimulation or penetration of a vagina or mouth or anus, however slight of any person by a sexual organ;
(b) The use of any object or organ by a person on another person's sexual organ or anus or mouth;

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.

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SCHEDULE 1

CURRENCY POINT
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13. Any person who is arrested for homosexuality in Uganda may request a reasonable delay in sentencing in order to obtain reparative therapy, at his or her own expense, with a government approved medical professional. In this event, sentencing may be delayed indefinitely while such therapy is ongoing, subject to regular reporting by the medical professional to the court. Upon a certification by the medical professional that the party no longer poses a significant threat of re-offending, the court shall close the case.

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The Minister will work with specialists in the fields of medicine, higher education and the judiciary to develop practical means of implementing this section.

LIVELY DECLARATION
EXHIBIT 11

Gmail by Google

Scott Lively < sdllaw@gmail.com>

Homosexuality Law

3 messages

Scott Lively < sdllaw@gmail.com> Wed, Oct 28, 2009 at 2:36 PM
To: Stephen Langa <stephenlanga@yahoo.com>, Martin Ssempa <ssempam@gmail.com>

Brothers,

Can you send me a copy of the bill? The news is hitting here in the US and from the reports it sounds excessively harsh and is likely to create a lot of problems for Uganda internationally. Is there a treatment/recovery component to the bill?

In Jesus,

Scott

Stephen Langa < stephenlanga@yahoo.com> Fri, Nov 6, 2009 at 11:25 AM
To: Martin Ssempa <ssempam@gmail.com>, Scott Lively <sdllaw@gmail.com>

Dear Scott,

There is no recovery component in the present bill. We had included it in the draft but it looks like somebody removed it. We are working to see that it is included.

God bless.

Stephen Langa

--- On **Wed, 10/28/09, Scott Lively <*sdllaw@gmail.com*>** wrote:

> From: Scott Lively <sdllaw@gmail.com>
> Subject: Homosexuality Law
> To: "Stephen Langa" <stephenlanga@yahoo.com>, "Martin Ssempa" <ssempam@gmail.com>
> Date: Wednesday, October 28, 2009, 11:36 AM
> [Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Fri, Nov 6, 2009 at 12:48 PM
To: Stephen Langa <stephenlanga@yahoo.com>

Thanks. Please keep me updated.
[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 12

Gmail by Google

Scott Lively < sdllaw@gmail.com>

The Wall Street Journal wants to chat

2 messages

Scott Lively < sdllaw@gmail.com> Wed, Nov 11, 2009 at 8:40 PM
To: Stephen Langa <stephenlanga@yahoo.com>, Martin Ssempa <ssempam@gmail.com>

Brothers,

I've just completed an interview with Mike Allen of the WSJ about Uganda and the new proposed law. He seems like a reasonably decent man, but you can never really tell about reporters. His note to me is below. His e-mail address is mike.allen@wsj.com

FYI I've taken the position that the proposed law should be further liberalized so it is not so harsh. In my view the death penalty or even life imprisonment is far too excessive for sexual crimes and will bring down the wrath of the international community upon Uganda. I have stressed the theraputic angle as well. I defended Uganda as a family-centered society beset by corrupting outside influences.

Allen wants to know more about the trafficking in boys by homosexuals from Europe and the US, and some of the other problems that led to renewed interest in updating the laws re homosexuality.

I think it would be helpful if you talked with him so that his story is not so heavily influenced by Throckmorton and the US "gays" who (I think) pitched the story idea to him.

I am also including a copy of a recent story he wrote about S. Africa below so you can get a sense of his worldview.

Blessings,

Scott

Hi, trying to reach Scott Lively for a story I\'m thinking of
doing on Uganda in the Wall Street Journal. Seems like Uganda is
turning into an idealogical battleground and I\'m trying to
understand all the forces at work, and what role the Obama
administration may be playing, if any. I can be reached at
212-416-3506. thanks, mike

FactivaDow Jones

Altared State: Who's the First Lady When the President's a Polygamist? --- South Africa's New Leader Has Two Spouses And a Fiancee, but Only One Can Reign
By Michael Allen
1102 words
30 April 2009
The Wall Street Journal
J
A1
English
(Copyright (c) 2009, Dow Jones & Company, Inc.)
NKANDLA, South Africa -- Now that 67-year-old Jacob Zuma is about to become president, the question is: Who will be First Lady? And Second Lady? And will there be a Third Lady?
Mr. Zuma, who led the African National Congress party to an overwhelming victory in last week's elections, is a onetime goatherd who enthusiastically embraces his Zulu roots. That means, for the first time, an avowed polygamist will be occupying the Cape Dutch-style presidential palace in Pretoria. Mr. Zuma has been married four times and currently has two wives and one fiancee waiting in the wings.
It's "Big Love," South African style.

Competing for the top role will be first wife Sizakele Khumalo, about 68, whom he married in 1975 after his release from the apartheid regime's notorious Robben Island prison. She could be found one recent morning picking dried maize in a scraggly field here in Mr. Zuma's childhood village, helped out by local women and a bodyguard.

Also in the running is Nompumelelo Ntuli, more than 30 years his junior, whom he wed at a raucous traditional festivity last year that featured him dancing in a loincloth and leopard-skin robe. And then there's Thobeka Mabhija, a Durban socialite reported to be in her thirties. Earlier this year, local press reported that Mr. Zuma paid lobolo -- an offering of cattle or the cash equivalent -- to her family, making her his bride-to-be. Not that this guarantees a wedding: Mr. Zuma reportedly paid lobolo in 2002 for a princess from the royal family of Swaziland, but she still hasn't sealed the deal.

The marital connections extend beyond the presidential palace. Ex-wife Nkosazana Dlamini Zuma, the mother of four of his children, is foreign affairs minister. Political watchers believe she'll retain a role in the Zuma administration, perhaps heading the Home Affairs Ministry. Her spokesman calls that speculation and wouldn't comment on the couple's divorce. The ANC has routinely declined to comment on Mr. Zuma's personal life, and spokesmen didn't respond to messages.

Mr. Zuma has defended polygamy, which is legal here. "There are plenty of politicians who have mistresses and children that they hide so as to pretend they're monogamous," he once said in a TV interview. "I prefer to be open. I love my wives and I'm proud of my children."

There's plenty of cultural precedent. Zulu monarch King Goodwill Zwelithini has six wives, and the prior ruler of Swaziland is said to have taken 70. Both tribes feature a reed-dance festival each year in which young maidens parade topless, many of them hoping to catch the royal wandering eye.

Mr. Zuma's embrace of Zulu traditions helped cement his popularity, particularly in the countryside. Badly treated under British and apartheid rule, and somewhat marginalized afterward, Zulus are South Africa's largest ethnic group. Most are jubilant to see one of their own assume the highest office.

But some social activists are aghast, saying Mr. Zuma is setting a terrible example in a country where women have yet to enjoy the full fruits of freedom. Colleen Lowe Morna, executive director of Gender Links, which promotes equality of the sexes, calls polygamy "unconstitutional" because men are allowed to have more than one wife but women aren't allowed more than one husband. And she worries that more men will embrace the practice. "It goes with the flaunting of wealth and power," she says.

That's not the way the first Mrs. Zuma sees it. Done with field chores for the morning, she graciously received a trio of visiting journalists in the living room of her lavishly appointed hut. While bearing some resemblance to traditional dwellings, with a thatched roof and a cattle pen out front, her home also is equipped with a flat-screen TV and a microwave oven. One chair, draped in a leopard skin, is off-limits to visitors. By tradition, only the man of the house, Mr. Zuma, sits there.

Speaking Zulu, Mrs. Zuma, who goes by the name Sizakele Khumalo, described how her husband-to-be -- as an impoverished boy who lived over the next hill -- had pursued her. "He was easy on the eyes," she said, but she put him off until he was 20. Before they could marry, though, he was swept up by security forces and thrown into prison with future president Nelson Mandela. Though he had only a few years of schooling, he used to write her letters -- first in Zulu, then in English, which he mastered in prison. "It was difficult to be apart, but we coped," she said.

After his release, they delayed some more, finally tying the knot in 1975. The price: 11 cows.

Other wives came later, including the future foreign minister, now divorced, and another wife who committed suicide, leaving behind a scathing note describing her time with Mr. Zuma as "24 years of hell." All told, says the first Mrs. Zuma, her husband has fathered 19 children that she's aware of, though none with her.

The first Mrs. Zuma stuck it out, and defends the institution of polygamous marriage. "It's a Zulu custom and if there's respect between the husband and the wives and among the wives themselves, and if he's able to treat us equally, then it's not hard," she said.

Equal treatment may not be possible now that the man of the house is South Africa's next president. Though there's an official residence in Pretoria, the administrative seat, as well as in Cape Town, where the legislature meets, only one First Lady is supposed to enjoy the official title and the protocol that goes with it.

Asked who will get top honors, Szakele Khumalo laughed mischievously and raised her finger, indicating she thinks she has the inside track. It's true that in the presidential compound here her hut is bigger than that of wife No. 2. But then she demurred and said the matter hasn't been decided yet. In any event, she acknowledged, there would be a downside to moving into the South African equivalent of the White House.

"I'd like it in the town, but this is where I've been all my life," she said. "And if I go I will miss it."

Document J000000020090430e54u0002p

Scott Lively < sdllaw@gmail.com> Thu, Apr 10, 2014 at 8:00 PM
To: Scott Lively <psalm37nasb@gmail.com>

[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 13

Gmail by Google

Scott Lively < sdllaw@gmail.com>

Brothers

2 messages

Scott Lively < sdllaw@gmail.com> Sat, Nov 21, 2009 at 8:55 AM
To: Martin Ssempa <ssempam@gmail.com>, Stephen Langa <stephenlanga@yahoo.com>

It is virtually impossible for me to support the anti-homosexuality law as written due to the political realities here in the US and the vulnerability that I have based on my history on the issue. As I've said, I believe the law should be dramatically liberalized to make it more palatable to the international community, and frankly more consistent with the view that homosexuality is a hard-to-overcome dysfunction not simply a moral weakness. But I don't want you to take this as opposition to your ministries. I consider you both to be good Christian friends and brothers.

I am thinking of writing an essay to counter what Throckmorton has been doing on this issue. It should help your case, especially if you can have the law modified.

In Jesus,

Scott

Scott Lively < sdllaw@gmail.com> Thu, Apr 10, 2014 at 8:04 PM
To: Scott Lively <psalm37nasb@gmail.com>

[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 14

Gmail by Google

Scott Lively < sdllaw@gmail.com>

My Editorial

2 messages

Scott Lively < sdllaw@gmail.com> Thu, Dec 3, 2009 at 11:44 PM
To: Stephen Langa <stephenlanga@yahoo.com>, Martin Ssempa <ssempam@gmail.com>

Brothers,

Can you pass this along to the members of Parliament?

I've taken some serious attacks the past few weeks in varous media around the world. I sincerely hope for my own sake, let alone that of Uganda's international relations, that the law is seriously modified before passage. I've concerned that my future travel in EU countries may be jeopardized by being identified as the inspiration for this law -- hate mail from Europe has voiced the wish that I lived there so I could be prosecuted under their laws against inciting hatred of homosexuals -- invalid based on my actual message but when has that ever stopped them?

I'm happy to stand for Christ despite persecution, but I'd rather it be for what I actually support, not something that I agree is too extreme.

Still firmly your friend in Jesus,

Scott

The Death Penalty in Uganda

By official count 22 young men were executed under Uganda's law on homosexuality. The law in question required that all men and boys in Uganda be willing to submit to the homosexual seduction of it's ruler, King Mwanga. When Ugandans began to convert to Christianity in the 1800s, a group of Catholics, led by Charles Lwanga, refused to allow themselves to be sodomized by the King. Enraged, King Mwanga had them torurously bound, marched 37 miles and then roasted alive in a fire pit. The date of their execution was June 3rd, 1886, and is today a national holiday commemorating Uganda's rejection of homosexuality and commitment to Christian values.

It should be no surprise, therefore, that modern Ugandans are very unhappy that homosexual political activists from Europe and the United States are working aggressively to re-homosexualize their nation. Ugandan citizens report a growing number of foreign homosexual men coming to their country to turn desperately poor young men from the slums into their personal houseboys, and that some girls in public schools have being paid to recruit others into lesbianism. Foreign interests have exerted intense pressure on Uganda's government to compromise its laws regarding sexual morality, often using their control over foreign aid funding for leverage.

Over the past decade a growing pro-family movement has begun to insist that Parliament do something about this problem. This year, Parliament answered the call. Unfortunately, the bill they are now debating represents a serious overcorrection, including, for example, the death penalty for certain forms of "aggravated homosexuality"

(such as knowingly spreading AIDS).

As a Christian attorney and international human rights advocate who has worked closely with Uganda's pro-family movement, I have a special interest in this issue. In my view, homosexuality (indeed all sex outside of marriage) should be actively discouraged by society -- but only as aggressively as necessary to prevent the mainstreaming of alternative sexual lifestyles, and with concern for the preservation of the liberties of those who desire to keep their personal lifestyles private. Marriage-based culture served humanity very favorably during the centuries when homosexuality was disapproved but tolerated as a sub-culture in America, England and elsewhere. It has obviously not fared well in the decades since the so-called sexual revolution kicked open Pandora's Box and unleashed both rampant heterosexual promiscuity and "Gay Pride" on the world.

In March of this year I had the privilege of addressing members of the Ugandan parliament in their national assembly hall when the anti-homosexuality law was just being considered. I urged them to pattern their bill on some American laws regarding alcoholism and drug abuse. I cited my own pre-Christian experience being arrested for drunk driving. I was given and chose the option of therapy which turned out to be one of the best decisions of my life. I also cited the policy in some U.S. jurisdictions regarding marijuana. Criminalization of the drug prevents its users from promoting it, and discourages non-users from starting, even while the law itself is very lightly enforced, if at all. Additionally, I urged them to actively promote the marriage model in their schools as a form of inoculation to the anti-family messages flooding their country through Western media.

All of my suggestions were ignored (despite which fact I am being blamed for the proposed law as written by certain major media outlets and the "gay" blogosphere.) Nevertheless, I commend the courage of the Ugandan people. During the past decade or so, Uganda has been one of the few countries of the world that has firmly resisted the enormous power and relentless pressure of the international "gay" lobby, while other developing nations such as South Africa and Brazil have been systematically homosexualized. This is one of the reasons that Uganda's AIDS rate went from the highest to the lowest in Africa during this same time period.

Let me be absolutely clear. I do not support the proposed anti-homosexuality law as written. It does not emphasize rehabilitation over punishment and the punishment that it calls for is unacceptably harsh. However, if the offending sections were sufficiently modified, the proposed law would represent an encouraging step in the right direction. As one of the first laws of this century to recognize that the destructiveness of the "gay" agenda warrants opposition by government, it would deserve support from Christian believers and other advocates of marriage-based culture around the world.

In the mean time, despite all of the hysteria in the liberal media, it is important to remember that there is no death penalty for homosexuals in Uganda, only a bill under debate that will hopefully be modified before passage. The only Ugandans who have been executed for their beliefs and actions about homosexuality have been Christians.

Scott Lively < sdllaw@gmail.com> Thu, Apr 10, 2014 at 12:53 PM
To: Scott Lively <psalm37nasb@gmail.com>

[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 15

Gmail by Google

Scott Lively < sdllaw@gmail.com>

Letter re Anti-Homosexuality Bill

2 messages

Scott Lively < sdllaw@gmail.com> Thu, Mar 11, 2010 at 7:37 PM
To: speaker@parliament.go.ug
Cc: bahatidav@yahoo.co.uk, Martin Ssempa <ssempam@gmail.com>, Stephen Langa <stephenlanga@yahoo.com>

Defend the Family International
PO Box 2373, Springfield, MA 01101, www.defendthefamily.com

March 8, 2010

The Speaker of Parliament
Hon Edward Ssekandi
The Parliament of Uganda
Kampala Uganda

Dear Mr. Ssekandi,

In March of 2009, it was my great honor to address members of the Ugandan Parliament in your legislative assembly hall regarding the anti-homosexuality bill that was being contemplated at that time. My advice was to discourage all forms of sexual promiscuity, including homosexuality, by such things as promoting a marriage-centered culture through your public school system. Regarding homosexuality specifically, I urged an emphasis on rehabilitation as an alternative to incarceration. Although my ideas were well received at the time, the bill that was eventually drafted followed a more traditional approach emphasizing deterrence through strong criminal sanctions.

As the duly elected representatives of a sovereign democratic nation, it is certainly within your prerogative to regulate criminal conduct in your society through the threat of harsh punishment. Indeed, until recent decades similar laws were used successfully in the United States and other Western countries to suppress the spread of sexual deviance. It is also Uganda's right and responsibility as a member of the community of nations to advocate the social policies it deems necessary for the preservation and advancement of civilization, and I applaud the Ugandan government for taking a firm stand against the legitimization of homosexuality in the face of intense opposition from nations with different views.

However, as a long-time pro-family attorney, pastor and human rights activist with service in more than thirty countries, I believe there are aspects of the current draft of the anti-homosexuality bill that, if passed into law, will actually work against the interests you seek to serve.

First and foremost, the inclusion of capital punishment for what you have classed as "aggravated homosexuality" is, in my view, a disproportionately harsh penalty. You may not be aware that capital punishment has been banned in numerous countries, even for the most extreme cases of aggravated murder. This is held as such an important policy that these nations will often refuse to extradite criminals to their home countries (including the United States) if there is any possibility that they will be subject to capital punishment there. Advocating the "death penalty" for "mere" sexual crimes evokes such a severe negative reaction in most Western nations that all other aspects of the law, and the rationale for drafting it is ignored, and

very "gay" movement we seek to oppose is strengthened by public sympathy they would not otherwise enjoy.

Conversely, if the "death penalty" provision were removed, it would take the wind out of the sails of their current campaign against the bill. With so much of the international opposition rooted in the idea that this is a "Kill the Gays" law, the removal of this provision would represent enough of a concession on your part that a great many of the people who are now siding with the homosexual movement out of sympathy would consider the matter resolved. The "gay" activists and their political allies will, of course, continue to attack the bill, but from a much weaker position.

Second, the provision in the bill subjecting individuals to criminal penalties for failure to report the homosexual activity of others is very problematic as written because it is too vague and because it targets people who may live as homosexuals in their private lives, but who do not seek to recruit others or legitimize their lifestyle in the larger society. It is my understanding that your primary goal is to prevent the spread of homosexuality through the recruitment of young people into the "gay" lifestyle. I believe you could better achieve this goal by revising this provision along the lines of child abuse reporting requirements in the U.S.. All 50 states require that professionals who work with children report reasonable suspicions of child abuse while some states require that anyone with suspicions report it. I am attaching a typical model policy for such a law which was adopted by a school district in Illinois which I found in a simple Internet search. Your legislative research department could find other examples on the Web for comparison.

I believe you could easily adapt this model to your purposes by imposing this same reporting requirement on anyone with knowledge of homosexuals who involve themselves with anyone under a certain age. If, for example, you encompassed all youths under the age of twenty-five within this shield of protection, you would stop virtually all "gay" recruitment in your country, since normal young men and women are usually firmly set in their heterosexual identity by their mid-twenties. On the other hand, you would preserve the right to privacy of adults who are not activists or pederasts but simply want to live their lives in relative peace. This would function much like the "Don't Ask, Don't Tell" policy in the United States military. Adult homosexuals would remain subject to the law, but not actively pursued if they are discrete about their lifestyle.

This approach is especially important in that Uganda currently has no provision for treatment or rehabilitation to help homosexuals overcome this powerfully enslaving disorder. Moreover, by sticking closely to the U.S. model on child abuse reporting, which is very effective and enjoys near universal public support here, you could much more easily deflect criticism of the revised provision in your bill.

This brings me to my final concern. I believe that as a Christian nation, Uganda could and should set an example for the world by providing the option for therapy and rehabilitation for homosexuals in your public policy. I have been informed that it is not possible to include this in the current bill because there is currently no funding in the budget to implement such a provision. Monetary concerns are further heightened in that some existing foreign aid funding may be withheld by some strongly pro-homosexual governments if the anti-homosexuality bill becomes law.

Allow me to propose a possible solution to both problems. I suggest that you offer to the foreign funding countries and agencies to incrementally liberalize the criminal law on homosexuality in exchange for funding to implement a rehabilitation program. You can prove by this proposal that your true goal is the protection of your society in the least punitive manner, and at the same time force the funding sources to reveal whether their true motive in threatening the withdrawal of aid is to protect homosexuals from the risk of

incarceration or to legitimize homosexuality in your society. Meanwhile, I urge you to add some non-binding verbiage in the current bill, perhaps in the preamble, stating that the government views rehabilitation as a long-term goal of its public policy even if it is not possible to implement at this time. Such language would be enormously valuable to those of us who will work internationally and in our own countries to defend the bill once it is passed into law. It would also introduce this idea into the international debate on homosexuality and perhaps inspire other nations with greater financial resources to implement such a policy in their own laws.

In closing, while I have been critical of a few points in this bill, and remain personally opposed to the incarceration of homosexuals because of my knowledge of the effectiveness of rehabilitation, I nevertheless commend the courage of the Ugandan Parliament for addressing this issue and am ready to vigorously support a revised version that addresses these issues.

Respectfully,

Dr. Scott Lively
President

Cc. The Honorable David Bahati,

MODEL POLICY REPORTING CHILD ABUSE AND NEGLECT FOR SCHOOL OFFICIALS IN DUPAGE COUNTY, SEPTEMBER 2005

The DuPage County State's Attorney's Office, the DuPage Regional Superintendent of Schools, the School District, the Department of Children and Family Services, and the Police Department have created this Policy to address the reporting of child abuse and neglect. The goal of this policy is to ensure that all parties partner together to ensure the

safety and well-being of children. This Policy also addresses the duties under the mandatory reporting laws and the timely and professional investigation of allegations of abuse and neglect.

This Policy provides a guideline in coordinating the obligations and roles of each of the parties. This guideline will be supplemented with continued training in order that all partners develop the best procedures to ensure the protection of our children.

I. Abused and Neglected Child Reporting Act
The responsibility of all school personnel to report child abuse and neglect is mandated by law. The Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq., is appended to this Policy. All of the definitions, terms, obligations and appellate court decisions interpreting this Act are incorporated into this Policy by reference.

The DuPage County State's Attorney, the Dupage Regional Superintendent of Schools, the School District, the Department of Children and Family Services, and the Police Department agree to cooperate with each other and jointly develop all necessary education, training, policy planning and case management and services in order to prevent, identify and treat child abuse and neglect. (325 ILCS 5/7.1)

II. Identification of Mandatory Reporters
A. Definitions:
The law defines mandatory reporters as those professionals who may work with children in the course of their professional duties. Every teacher and teacher's aide clearly falls within this definition. In the school environment, the following individuals are also included as mandatory reporters:
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· Medical personnel, social workers, nurse practitioners, Registered nurses, LPN's, and assistants to school nurses;
· Paid, full-time, part-time, volunteer or substitute school personnel, principals, school counselors, assistant principals, deans, truant officers, school psychologists, staff of before and after school programs, custodians, lunch room monitors, school bus drivers, school librarians and assistants to the librarians, school resource officers and law enforcement officers assigned to the school, school athletic coaches or intramural coaches or assistant to the coaches and trainers.
B. Acknowledgement of Mandated Reporter Status:
All mandatory reporters in the School District shall complete the Illinois Department of Children and Family Services Acknowledgement of Mandate Reporter Status form (Cants 22 Rev. 8/00) The School District is required to retain this form and otherwise comply with the law's requirements relating to this form.
III. Reporting Obligations
ALL SCHOOL PERSONNEL MUST IMMEDIATELY CONTACT THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES WHEN THEY HAVE REASONABLE CAUSE TO SUSPECT THAT A CHILD WHO IS UNDER THE AGE OF EIGHTEEN AND KNOWN TO THEM IN THEIR PROFESSIONAL CAPACITY HAS BEEN ABUSED OR NEGLECTED OR IS IN DANGER OF BEING ABUSED OR NEGLECTED – PHYSICALLY, SEXUALLY OR THROUGH NEGLECT – AND THAT A CAREGIVER, OR PERSON IN A POSITION OF TRUST AND AUTHORITY OVER THEM,

COMMITTED THE HARM OR SHOULD HAVE TAKEN STEPS TO PROTECT THE CHILD FROM HARM.

CHILD ABUSE AND NEGLECT REPORTS ARE MADE BY CALLING THE DCFS HOTLINE AT 1-800-25ABUSE. IN MAKING THE HOTLINE REPORT, ALL SCHOOL PERSONNEL SHALL PROVIDE ANY AND ALL INFORMATION REQUESTED BY DCFS.

· All mandated reporters have the obligation to make the Hotline call. The mandated reporter with the most direct knowledge of the suspected abuse should be the one to make the hotline call.

· The mandated reported must follow any applicable District guidelines regarding the making and documenting of any report. However, under no circumstances shall any person in charge of a school facility or school district or his/her designated agent to whom such notification has been made, exercise any control, restraint, modification or other change in the report or the forwarding of such report to DCFS.

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· The School District should also make a report of suspected child abuse or neglect to the DuPage County Children's Advocacy Center of the DuPage County State's Attorney and the local Police Department.

· The mandated reporter or the School District should not notify the alleged perpetrator of the child abuse or neglect that a report of has been made, or that there is a pending investigation unless compelling reasons exist to do so.

· The law does not require a mandated reporter or the School District to notify the child's parent or guardian of a report of abuse or neglect. In considering whether notice to a parent should be made, the School district shall consider the child's safety and any directives by DCFS and law enforcement investigating the report.

IV. When a Report Must be Made

When there is reasonable cause to suspect that a child is abused - physically or sexually – or is neglected:

Abused child is a child whose parent or immediate family member, or any individual residing in the same home as the child, or a paramour of the child's parent, or any person responsible for the child's welfare, who:

(a) inflicts, causes to be inflicted, or allows to be inflicted upon such child physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(b) creates a substantial risk of physical injury to a child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

(c) commits, or allows to be committed, any sex offense against such child, including acts of vaginal, oral, or anal sex; fondling a child or having the child touch the person sexually;

(d) commits, or allows to be committed, an act or acts of torture upon a child;

(e) inflicts excessive corporal punishment;

(f) commits or allows to be committed the offense of female genital mutilation against the child; or

(g) causes an illegal controlled substance to be sold, transferred, distributed, or given to a child.

Neglected child is a child who is deprived of adequate food, shelter, clothing, or necessary medical care by a parent or caregiver. Neglect can also occur when an adult fails to provide adequate supervision of a child as when a child is left either unsupervised or in the care of someone unable to supervise the child. A child will not be considered neglected or abused solely because the child is not attending school. Nor shall a child be considered neglected or abused for the sole reason that the child's parent or caregiver depends upon spiritual means through prayer alone for the treatment or cure of disease.

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Reasonable Cause
A credible report of suspected child abuse or neglect must be reported to DCFS. In the context of the Act, "reasonable cause" is synonymous with a credible suspicion. Once the School District suspects or should suspect that a child may be abused or neglected, it shall call the DCFS Hotline and no further investigation should be conducted by the School District. DCFS is assigned the authority and discretion to substantiate the accuracy of all reports
of suspected child abuse or neglect.
The Reporter may consider the following in determining whether reasonable cause of child abuse or neglect exists:
(NOTE These are suggested factors to consider and this list is not intended to be exclusive.)
Use an objective/reasonable person test. A reporter should not consider personal opinions of either the alleged abuser or the alleged child victim in determining whether reasonable cause or credible suspicion of child abuse or neglect exists.
Has the child been harmed or been at risk of harm?
Have you observed evidence of damage to the child? e.g. bruises, cuts, hunger, poor hygiene.
Always report statements made by a child regarding sexual misconduct.
Report credible evidence even if the child denies any abuse or neglect.
Are the communications given by the child consistent with what you observe; is the statement plausible?
Consider past suspicious incidents or the frequency of signs of abuse or neglect.
Sexual abuse to be reported under the Act includes intentional touching and fondling of any part of a child under 18.
Err on the side of caution. The concept of the Act is to encourage people to report bad acts committed on children.
Make a report even if the child is now over 18 and the statute of limitations may have run, especially if the alleged abuser continues to have contact with children in a professional setting or other children remain at risk.
The State's Attorney will provide any necessary training and assistance to the School District in its development and implementation of standards for reporting child abuse and neglect.
V. Investigations
The investigation of any report of child abuse or neglect shall be undertaken by those who possess specialized experience, training, authority and discretion to determine whether suspected abuse or neglect of a child actually occurred.
The School District may initially undertake to determine the credibility of any "rumor" of abuse or neglect. The School District shall not conduct or cause to be
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conducted on their behalf an independent investigation to determine whether reasonable cause exists or whether such abuse or neglect actually occurred before
reporting the matter to the Illinois Department of Children and Family Services and the Children's Advocacy Center.
The investigation into the accuracy of any report of child abuse or neglect shall be
conducted by DCFS and, where necessary, the DuPage County State's Attorney and the local police. The School District may conduct a disciplinary investigation
of its personnel based on a report of child abuse or neglect. The School District
shall notify the State's Attorneys Office prior to beginning such an investigation.
The School district shall cooperate with DCFS and law enforcement in their investigation of all reports of abuse or neglect. The District shall not impede any
investigation being conducted by the Department and law enforcement. DCFS and local law enforcement shall conduct their investigations in a manner that

minimizes disruption of the school day.
The School District shall provide the Illinois Department of Children and Family Service investigators reasonable access to the suspected victim of child abuse or neglect for the purpose of conducting an interview.
The School District and the Police Department shall enter into all necessary reciprocal reporting agreements.
The State's Attorney's Office shall provide any reasonable and necessary information to the School District regarding its' criminal investigation of child abuse involving an employee of the School District. A press release or public discussion of any charges of child abuse by an employee of a School District will be made by the State's Attorney only after notice to the affected School District's Superintendent or designee.
All partners to this Policy are committed to ensuring the integrity of the investigative process and to maintaining an open communication with each other during the investigation of any report of child abuse or neglect.
VI. RIGHTS OF MANDATED REPORTERS
All rights of the mandated reporters of the School District as allowed in any collective bargaining agreements, including their right to legal or union representation, shall apply, except to the extent inconsistent with the Abused and Neglected Child Reporting Act and this Policy.
The individual policy of the School District may require notices to the administrator or principal of any report made by their Employee under the Act. However, no policy may be implemented which is inconsistent with the Act or with this Policy.
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Mandated reporters are entitled to immunity for any report of child abuse or neglect under the Act as long as the report is made in good faith However, any failure of a mandated reporter to make a report may be subject to criminal prosecution, license suspension or revocation and civil liability.
VII. Training
The DuPage County State's Attorney, the School District, the Regional Superintendent of Schools, the Department of Children and Family Services and the Police Department agree to cooperate with each other in the implementation of this Policy and continued review of this Policy as may be needed.
The partners also agree that system wide education of all school personnel regarding their duties and responsibilities under the Abused and Neglected Child Reporting Act is an essential component of our commitment to protect our children. All partners agree to provide and participate in multi-disciplinary training with the other partners on a regular and consistent basis beginning with the 2005-2006 school year, and agree to notify and where appropriate, include the local exclusive bargaining representative in the training.

Letter to Uganda Parliament.rtf
41K

Scott Lively < sdllaw@gmail.com> Thu, Apr 10, 2014 at 1:25 PM
To: Scott Lively <psalm37nasb@gmail.com>

[Quoted text hidden]

Letter to Uganda Parliament.rtf
41K

LIVELY DECLARATION
EXHIBIT 16

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- Science and Medicine
- Sexual Orientations
- Sports
- Street Activism
- Uganda
- Youth

Abiding Truth Ministries
PO Box 2373
Springfield MA 01101

My Letter to the Ugandan Parliament and Reply

perspective: pro-family
from the 'Uganda' topic
27-Jan-2011

Source: In House
Author:
Abstract:
The liberal media continues to lie about the Ugandan anti-homosexuality bill and my role in it so I have decided to release my letter to the Ugandan Parliament from March 8, 2010, and the reply from a legal advisor to the Parliament.
[send this article to a friend]

Defend the Family International
PO Box 2373, Springfield, MA 01101, www.defendthefamily.com

March 8, 2010

The Speaker of Parliament
Hon Edward Ssekandi
The Parliament of Uganda
Kampala Uganda

Dear Mr. Ssekandi,

In March of 2009, it was my great honor to address members of the Ugandan Parliament in your legislative assembly hall regarding the anti-homosexuality bill that was being contemplated at that time. My advice was to discourage all forms of sexual promiscuity, including homosexuality, by such things as promoting a marriage-centered culture through your public school system. Regarding homosexuality specifically, I urged an emphasis on rehabilitation as an alternative to incarceration. Although my ideas were well received at the time, the bill that was eventually drafted followed a more traditional approach emphasizing deterrence through strong criminal sanctions.

As the duly elected representatives of a sovereign democratic nation, it is certainly within your prerogative to regulate criminal conduct in your society through the threat of harsh punishment. Indeed, until recent decades similar laws were used successfully in the United States and other Western countries to suppress the spread of sexual deviance. It is also Uganda's right and responsibility as a member of the community of nations to advocate the social policies it deems necessary for the preservation and advancement of civilization, and I applaud the Ugandan government for taking a firm stand against the legitimization of homosexuality in the face of intense opposition from nations with different views.

However, as a long-time pro-family attorney, pastor and human rights activist with service in more than thirty countries, I believe there are aspects of the current draft of the anti-homosexuality bill that, if passed into law, will actually work against the interests you seek to serve.

First and foremost, the inclusion of capital punishment for what you have classed as "aggravated homosexuality" is, in my view, a disproportionately harsh penalty. You may not be aware that capital punishment has been banned in numerous countries, even for the most extreme cases of aggravated murder. This is held as such an important policy that these nations will often refuse to extradite criminals to their home countries (including the United States) if there is any possibility that they will be subject to capital punishment there. Advocating the "death penalty" for "mere" sexual crimes evokes such a severe negative reaction in most Western nations that all other aspects of the law, and the rationale for drafting it is ignored, and very "gay" movement we seek to oppose is strengthened by public sympathy they would not otherwise enjoy.

Conversely, if the "death penalty" provision were removed, it would take the wind out of the sails of their current campaign against the bill. With so much of the international opposition rooted in the idea that this is a "Kill the Gays" law, the removal of this provision would represent enough of a concession on your part that a great many of the people who are now siding with the homosexual movement out of sympathy would consider the matter resolved. The "gay" activists and their political allies will, of course, continue to attack the bill, but from a much weaker position.

Useful Links:

- Accuracy in Media
- America Asleep Know More
- American Family Association
- Americans for Divorce Reform
- Americans For Truth
- Beam Research Center
- Campaign for Working Families
- Catholic League
- Catholic Medical Association
- Center for Reclaiming America
- Choice 4 Truth
- Christian Coalition
- Citizens for Community Values
- Citizens for Parents' Rights
- Concerned Women For America
- Coral Ridge Ministries
- Corporate Resource Council
- Democrats for Life of America
- Dr. Judith Reisman
- Eagle Forum
- Family Dynamics Institute
- Family Policy Network
- Family Research Council
- Family Research Institute
- Focus on the Family
- Howard Center for Family, Religion & Society
- Institute for American Values
- Jews For Morality
- Laigle□s Forum
- Libertarians for Life
- Love Won Out
- Massachusetts Citizens For Life
- Mission: America
- National Association for the Research and Therapy of Homosexuality
- National Network of Youth Ministries
- National Right to Life
- Parent's Rights USA
- Parents and Friends of Ex-Gays and Gays
- Parents Rights Coalition
- Portland Fellowship
- Preserve Liberty
- Revolution Ministry
- RSVP America
- Society for Law, Life, and Religion
- Susan B. Anthony List
- TeenPact
- The Bible As History & Literature
- The Heritage Foundation
- The Heritage Foundation
- The Justice Foundation
- The Leadership Institute
- Traditional Values Coaltion
- True Knights
- Urban Conservative
- ValuesUSA

Second, the provision in the bill subjecting individuals to criminal penalties for failure to report the homosexual activity of others is very problematic as written because it is too vague and because it targets people who may live as homosexuals in their private lives, but who do not seek to recruit others or legitimize their lifestyle in the larger society. It is my understanding that your primary goal is to prevent the spread of homosexuality through the recruitment of young people into the "gay" lifestyle. I believe you could better achieve this goal by revising this provision along the lines of child abuse reporting requirements in the U.S.. All 50 states require that professionals who work with children report reasonable suspicions of child abuse while some states require that anyone with suspicions report it. I am attaching a typical model policy for such a law which was adopted by a school district in Illinois which I found in a simple Internet search. Your legislative research department could find other examples on the Web for comparison.

I believe you could easily adapt this model to your purposes by imposing this same reporting requirement on anyone with knowledge of homosexuals who involve themselves with anyone under a certain age. If, for example, you encompassed all youths under the age of twenty-five within this shield of protection, you would stop virtually all "gay" recruitment in your country, since normal young men and women are usually firmly set in their heterosexual identity by their mid-twenties. On the other hand, you would preserve the right to privacy of adults who are not activists or pederasts but simply want to live their lives in relative peace. This would function much like the "Don't Ask, Don't Tell" policy in the United States military. Adult homosexuals would remain subject to the law, but not actively pursued if they are discrete about their lifestyle.

This approach is especially important in that Uganda currently has no provision for treatment or rehabilitation to help homosexuals overcome this powerfully enslaving disorder. Moreover, by sticking closely to the U.S. model on child abuse reporting, which is very effective and enjoys near universal public support here, you could much more easily deflect criticism of the revised provision in your bill.

This brings me to my final concern. I believe that as a Christian nation, Uganda could and should set an example for the world by providing the option for therapy and rehabilitation for homosexuals in your public policy. I have been informed that it is not possible to include this in the current bill because there is currently no funding in the budget to implement such a provision. Monetary concerns are further heightened in that some existing foreign aid funding may be withheld by some strongly pro-homosexual governments if the anti-homosexuality bill becomes law.

Allow me to propose a possible solution to both problems. I suggest that you offer to the foreign funding countries and agencies to incrementally liberalize the criminal law on homosexuality in exchange for funding to implement a rehabilitation program. You can prove by this proposal that your true goal is the protection of your society in the least punitive manner, and at the same time force the funding sources to reveal whether their true motive in threatening the withdrawal of aid is to protect homosexuals from the risk of incarceration or to legitimize homosexuality in your society.

Meanwhile, I urge you to add some non-binding verbiage in the current bill, perhaps in the preamble, stating that the government views rehabilitation as a long-term goal of its public policy even if it is not possible to implement at this time. Such language would be enormously valuable to those of us who will work internationally and in our own countries to defend the bill once it is passed into law. It would also introduce this idea into the international debate on homosexuality and perhaps inspire other nations with greater financial resources to implement such a policy in their own laws.

In closing, while I have been critical of a few points in this bill, and remain personally opposed to the incarceration of homosexuals because of my knowledge of the effectiveness of rehabilitation, I nevertheless commend the courage of the Ugandan Parliament for addressing this issue and am ready to vigorously support a revised version that addresses these issues.

Respectfully,

Dr. Scott Lively
President

Cc. The Honorable David Bahati,

My letter was forwarded to Members of Parliament by Dr. Martin Ssempa. This was the reply.

March 10, 2010

Dr. Ssempa,

Thanks for sending Dr. Lively's Letter. His proposals can be considered as we make our revisions, but, while I appreciate the need to have people like Lively campaign for the Bill and the law when passed, there are obvious dangers in trying to equalise the policy and law on homosexuality between USA and Uganda. The two countries are dealing with totally different situations. The time when USA should have enacted a preventive law like we are contemplating passed a long time ago and they are faced with a huge and financially and politically powerful gay population recruited into homosexuality because no one foresaw the need for a preventive law in time (probably in the 1940s). If such comprehensive law (not merely about sodomy) had been in place, people

like Alfred Kinsey would not have done so much damage by opening the door wide for homosexuality.

The situation in Uganda today is different because homosexuality is still a budding problem. We either nip it in the bud now with a strong, preventive law or give it a foothold to grow from.

The danger I see in Dr. Lively's suggestions is in proposing to normalise homosexual practice for adults (whatever age they may be). That is the Western approach generally which has failed miserably, because what is held as normal practice by adults will be adopted by children and youth automatically. It's just a matter of time before the whole culture is swamped in homosexual practice. That's how pornography broke barriers in Western society and became insidious. It's like the proverbial "Camel and herdsman story". Today it is a foot in the hut, tomorrow it is a leg in the hut, next day its the head in the hut; before long, the herdsman is tossed out of the hut.

I agree with Dr. Lively that the Death Penalty can be removed, but it must be replaced by equally strong and detterent penalties. The purpose of penalties is to detter people from behaviour with far-reaching consequences. What the Bill needs, to me, is solid research into the consequences of homosexuality. Its huge health-risks and social, cultural and economic disruption need to be documented and not merely talk about defending our "religious and cultural practices". In countries or territories with legalised homosexuality, parents and religious bodies have lost the right to teach against homosexuality; a property owner will not refuse to rent a house or hotel room to a homosexual couple based on belief, conscience or fear of influence on neighbouhood children; teachers must teach that homosexuality is normal lyfestyle or lose their licences; children in Kindergarten are introduced to homosexual books and other indoctrination e.t.c. All these are reasons we must do everything to stop and prevent homosexual practice.

Ultimately, I see no way out in taking a stand and paying the price. We cannot adopt an innefective policy against homosexuality just to prevent loss of donor funds. Our friends in the West must stand with Uganda as we take a serious stand against homosexual infiltration. What we need is more nations to stand up and do the same. There will be no place for lukewarmness, the way I see this situation. It's time for nations to stand up for what is right and pay the price. The more nations do this, the more the tide will turn against the homosexual movement. Christians in the West must know that it is time to pay the price for truth. Unwillingness to do this is responsible for infiltration and takeover of virtually every western insitution by homosexuals, including the church.

I admire the courage of my friend Dr. Lively, because he has stood up to homosexual intimidation for so long as a lone voice. We need more people like him in the days, weeks, months and years ahead. The homosexual machine is well organised and its agenda is not conciliation with anyone but total take-over of society. Africa is probably is the last place they are trying to take-over that has the best hope to turn the tide, if we do not mess-up the opportunity.

Charles Tuhaise

(P/S: You can forward my comments to Dr. Scott Lively)

LIVELY DECLARATION
EXHIBIT 17

Gmail by Google

Scott Lively < sdllaw@gmail.com>

AHB Suggested Language

5 messages

Scott Lively < sdllaw@gmail.com> Wed, Dec 5, 2012 at 4:00 PM
To: Stephen Langa <stephenlanga@gmail.com>, Martin Ssempa <ssempam@gmail.com>, charles tuhaise <ctuhaise@yahoo.com>, David Bahati <bahatidav@yahoo.co.uk>

To My Ugandan Friends,

I am very pleased to hear that the pending Anti-Homosexuality Bill has been modified to remove the death penalty and to add language related to therapy for people with homosexual disorder. Allow me to reiterate my suggestion that the bill emphasize therapy and prevention rather than punishment. To that end I am resubmitting suggested language that I drafted on April 28, 2009.

Please forward this to the appropriate parties, with my best wishes for a final version that will stop the homosexual agenda in Uganda while reflecting mercy toward those who suffer from this weakness.

Praying for you all in Christ Jesus,

Dr. Scott Lively

1. Therapy as a sentencing alternative

Any person who is arrested for homosexuality in Uganda may request a reasonable delay in sentencing in order to obtain reparative therapy, at his or her own expense, with a government approved medical professional. In this event, sentencing may be delayed indefinitely while such therapy is ongoing, subject to regular reporting by the medical professional to the court. Upon a certification by the medical professional that the party no longer poses a significant threat of re-offending, the court shall close the case.

This section shall not be available for those charged with aggravated homosexuality.

At such time as the government approves medical professionals who are qualified to treat homosexual disorder, the government shall inform the public, including specifically all school counselors, that treatment for homosexuality is now available in Uganda, and that anyone who sufferers from unwanted homosexual feelings is encouraged to seek therapy, and that the confidentiality of all such therapy will be scrupulously protected.
The Minister will work with specialists in the fields of medicine, higher education and the judiciary to develop practical means of implementing this section.

2. Proactive measures to inculcate heterosexual norms and prevent homosexuality in the young.

To prevent harmful outside influences from corrupting the youth, and to further ensure that homosexual and other harmful sexual lifestyles cannot take root in our society, the government of Uganda will take all reasonable measures to ensure that children within its jurisdiction are prepared for healthy marriage and family life through

age appropriate instruction on 1) the importance and value of marriage to individuals and to society, 2) the optimal traits and virtues that help men and women to be good husbands and wives, 3) the physical, emotional and social harms which result from promiscuity and sexual deviance.

The Minister will work with specialists in the fields of education and family life and all government agencies which interact directly or indirectly with children to develop practical means of implementing this sectio

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Martin Ssempa < ssempam@gmail.com> Thu, Dec 6, 2012 at 5:48 AM
To: David Bahati <jesusalive2@gmail.com>
Cc: Scott Lively <sdllaw@gmail.com>

Dear Hon Bahati,

Kindly find enclosed a suggested language update from Mr. Scott Lively.

Pr. Ssempa

Begin forwarded message:

From: Scott Lively <sdllaw@gmail.com>
Date: December 6, 2012 12:00:05 AM GMT+03:00
To: Stephen Langa <stephenlanga@gmail.com>, Martin Ssempa <ssempam@gmail.com>, charles tuhaise <ctuhaise@yahoo.com>, David Bahati <bahatidav@yahoo.co.uk>
Subject: AHB Suggested Language

[Quoted text hidden]

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charles tuhaise < ctuhaise@yahoo.com> Thu, Dec 6, 2012 at 8:28 AM
To: Scott Lively <sdllaw@gmail.com>
Cc: Stephen Langa <stephenlanga@gmail.com>, Martin Ssempa <ssempam@gmail.com>, David Bahati <jesusalive2@gmail.com>

Dear Dr. Lively,

Thank you for taking time to write and send these proposals.

However, there are technical reasons why counseling cannot be part of the Anti-homosexuality Bill and hopefully the resultant law, when passed by Parliament:

1- The Constitution does not allow a Private Members' Bill to impose a charge on public funds:

Article 93(a)(ii) requires that before Parliament proceeds with any Bill, except Bills introduced on behalf of the Government, such Bill must not impose a charge on Public Funds. For this reason, a Private Members' Bill must be accompanied by a Certificate of Financial Implications (CFI) issued by the Ministry of Finance, certifying that the Bill complies with Article 93(a)(ii) .

We originally tried to provide for counselling in the Bill, but such inclusion would introduce a financial cost in the Bill, contrary to Article 93(a)(ii). Although you suggest that the cost for counselling could be

met by the person charged with an offence, this does not answer the question of those who cannot afford the cost of counselling, which would violate the principle of **"equity before the law".** Inclusion of counselling in the law, would therefore require that the counselling be financed by the government and made available to all persons, irrespective of their financial background. If this was to be done, this Bill would have to be introduced by the government in Parliament, not a Private Member, which is by all estimates, impossible. The reason we resorted to a private Members' Bill, is because the government would not sponsor a Bill where international relations are at stake.

2- Law usually restricts itself to prohibited behavior and associated penalties:

Traditionally, law-making in Uganda begins with a laborious process of formulating the **Policy** which the law will help to implement. The Policy is usually a multi-plonged undertaking, with certain aspects involving non-legal interventions like public education, service provision, etc. These non-legal interventions may be implemented by appropriate government agencies or Departments. This is where provision of counselling services may be done. The Parliamentary Committee on Social Services can be lobbied to push for creation of a much needed social service, like counselling, in say, the Ministries of Health, or Gender and Social Development.

However, aspects of a policy that need legislation, will be those where everybody is required to comply / obey or be penalised for failure to comply. The law is effective to the extent that its penalties carry deterrent power.

The proposal that, before serving a sentence, a person could at that stage ask for counselling, would likely be abused and would weaken the deterrence the law was meant to create. There is also **the question of:** would such provision be made for all other penal offences in the law? Why would the law single out only homosexual offences? What about persons who commit other offences like incest or theft or robbery etc?

The nature of penal law is that it stipulates what prohibited behavior is and what the penalty will be if you violate the law. Those who know they have a behavior weakness regarding the penal law in place, (provided such a law was established through democratic discourse), **are free to seek counseling** to enable them comply with the law. It would be an absurdity for the law to impose on itself, the duty of persons to comply with the law.

In fact, there is a real danger, that once counselling is established in law, those who would use that service would blame their **intentional refusal to obey the law** on false allegations that the counselling service is poor and inneffective. Given how so-called **"reperative therapy"** is reviled by gay-activists, counselling provisions would immediately be a target for abuse.

I would rather the Anti-homosexuality Bill remains simply a penal law, without any provision for counselling. Anyone who needs counselling is free to seek it and avoid breaking the law. The law must be obeyed as it is.

Once again, thank you for this discussion. These are my thoughts. Please feel free to respond with any insights.

Charles Tuhaise

P/S: Please note Hon. Bahati's correct e-mail - do not give it out though as it is given restrictively.

--- On **Wed, 12/5/12, Scott Lively <*sdllaw@gmail.com*>** wrote:

> From: Scott Lively <sdllaw@gmail.com>
> Subject: AHB Suggested Language
> To: "Stephen Langa" <stephenlanga@gmail.com>, "Martin Ssempa" <ssempam@gmail.com>, "charles tuhaise" <ctuhaise@yahoo.com>, "David Bahati" <bahatidav@yahoo.co.uk>
> Date: Wednesday, December 5, 2012, 1:00 PM
> [Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Thu, Dec 6, 2012 at 11:11 AM
To: charles tuhaise <ctuhaise@yahoo.com>

Thank you Charles.
[Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Thu, Apr 10, 2014 at 2:20 PM
To: Scott Lively <psalm37nasb@gmail.com>

---------- Forwarded message ----------
From: **Scott Lively** <sdllaw@gmail.com>
[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 18

Gmail by Google

Scott Lively < sdllaw@gmail.com>

Policy suggestion

3 messages

Scott Lively < sdllaw@gmail.com> Fri, Aug 9, 2013 at 3:29 PM
To: Stephen Langa <stephenlanga@gmail.com>, Martin Ssempa <ssempam@gmail.com>, charles tuhaise <ctuhaise@yahoo.com>

Brothers,

I am sending you the text of a letter I will send to President Putin next week. It is for your eyes only until then.

You may have already thought of doing this but I think Uganda should drop the Anti-Homosexuality Bill and adopt the anti-propaganda law that was just passed in Russia. It will accomplish the objective of stopping foreign interference in Uganda, and the destructive propaganda efforts of groups like SMUG, while preserving basic civil rights of homosexuals to live their lives privately and discretely in the society. It would change the entire international debate about Uganda, and give you a strong ally in Russia and the several East European countries that are also following Russia's lead.

Please pass this suggestion along to those who could bring it up for debate.

Blessings,

Scott

Letter to Russian President Vladimir Putin

23, Ilyinka Street,
Moscow, 103132, Russia.

Dear President Putin,

On behalf of millions of Americans who are concerned about the seemingly unstoppable spread of homosexuality in our country and internationally, I want to express my heartfelt gratitude that your nation has take a strong and unequivocal stand against this scourge by banning homosexual propaganda in your country. You have set an example of moral leadership that has shamed the governments of Western Europe and North America and inspired the rest of the world. Already Lithuania, Moldova, Hungary and Ukraine have begun to follow your example, and you have engendered real hope in the international pro-family movement that this destructive "gay" agenda might finally begin to be rolled back across the globe.

As a long-time leader in the pro-family movement who toured your country in 2006 and 2007 advocating the very policy you have enacted, I want to caution you not to assume that you have fully solved the problem by the enactment of this law. The battle to protect your society from homosexualization has only just begun, and you may be surprised to discover in the coming months and years just how aggressively other world leaders will work to try to force you to capitulate to homosexual demands.

Few social forces in the history of mankind have exhibited the tenacity and resolve of the homosexual movement. Its activists are driven by an implacable militancy and a zeal to advance their own selfish interests that rivals even the most fanatical religious sects. A glimpse at the spirit behind the movement can be seen in the Bible in Genesis 19:4-11.

In just fifty years this tiny group representing only 2% of the population has, through sheer will-power, gained more influence in the legislatures and courtrooms of the western world than the Christian church. The sexual conduct that defines their identity as individuals and as a movement was almost universally illegal during the years our two nations were allied against the threat of Nazism, but just a little more than half a century later homosexual leaders and surrogates sit in a majority of the seats of power across the west, and increasing in the east and in developing nations as well.

In readying your society to recognize and counter the efforts of the "gay" movement it is important to understand that their propaganda and policies adhere invariably to the narrative that "All disapproval of homosexuality leads inevitably to hatred, violence and murder of homosexuals." All of the pro-homosexual policies in the United States and Europe rest on this unstated and unchallenged but false premise. Thus, the homosexual movement is not seeking "tolerance," or "acceptance," but control. They want the power to stamp out all disapproval of homosexuality in your society and to force every citizen (especially the youth) to embrace the view that homosexuality is good and normal.

They ask for "a place at the table," but once they have one all the social ideals they exploited to get there, such as "tolerance," freedom of speech," and respect for "diversity, are abandoned. In place of those ideals is a new upside-down morality that condemns disapproval of homosexuality as intolerable bigotry. I have termed this phenomenon "Homo-Fascism" and defined it as "a form of extreme left-wing radicalism which attempts to establish rigid totalitarian controls over public discussions and policies addressing sexual morality, and to punish or suppress all disapproval of homosexuality and related sexual behaviors."

In the coming months and years Russia and its people will be increasingly portrayed as murderous haters, intent on exterminating homosexuals. Indeed, the propaganda campaign on that theme has already begun, with video footage purporting to show Russian neo-Nazis beating homosexuals now being circulated on the Internet, along with the false implication that this is the intent of your policy. The same propaganda machinery has been grinding away against the country of Uganda since 2009 when it introduced (but never passed) an Anti-Homosexuality Bill that I agree was far too harsh but which never reflected an intention of the Ugandan government to exterminate homosexuals as "gay" activists and their media allies continue to claim.

Indeed, this "gay" narrative that equates opposition to homosexuality with Nazi-like "genocide" is in part an attempt to obscure the ugly roots of the modern homosexual movement in pre-Nazi Germany. German fascism was formed and facilitated by masculine-oriented male homosexuals in response to an effeminate model of homosexuality which held that all homosexual men were actually female souls trapped in men's bodies. Beginning in the 1860s the "Femmes," following the "Grandfather of Gay Rights," Karl Heinrich Ulrichs, built a powerful social movement in Germany which focused on repealing the sodomy laws.

Offended by the constant characterization of male homosexuality as effeminate, the masculine-oriented "Butches" created their own movement grounded in the male warrior-cult philosophy epitomized by ancient Sparta. These were the first German fascists and from their ranks came first the "Storm Troopers" of World War I and then the Nazi Party. This thesis is heavily documented in my book *The Pink Swastika: Homosexuality in the Nazi Party*, which I co-authored with researcher Kevin E. Abrams.

I am sending you along with this letter a copy of *The Pink Swastika* in English that is autographed by both of us. We will soon be completing a long-delayed process of publishing the book in Russian, and hereby pledge that we will dedicate the Russian version of *The Pink Swastika* to the Russian Government and it's People. It will be our honor to send the very first copy of the Russian version to you.

Once again, thank you, President Putin, for standing strong in defense of the natural family, which is the essential foundation of civilization. Perhaps through the inspiration of your leadership an alliance of the good people of my country with those of your own, can again in some spiritual fashion, rescue the future from a destructive monster, just as we did in World War II.

Respectfully,

Pastor Scott Lively, J.D., Th.D.

Stephen Langa < stephenlanga@gmail.com> Fri, Aug 9, 2013 at 11:45 PM
To: Scott Lively <sdllaw@gmail.com>
Cc: Martin Ssempa <ssempam@gmail.com>, charles tuhaise <ctuhaise@yahoo.com>

Dear Scott,

This is a good gesture of support and goodwill to the Russian President.

Bless you.

SL

[Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Fri, Apr 11, 2014 at 3:05 PM
To: Scott Lively <psalm37nasb@gmail.com>

[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 19

Gmail by Google

Scott Lively < sdllaw@gmail.com>

International Coalition Building

6 messages

Scott Lively < sdllaw@gmail.com> Fri, Oct 18, 2013 at 1:35 PM
To: Martin Ssempa <ssempam@gmail.com>, charles tuhaise <ctuhaise@yahoo.com>, Stephen Langa <stephenlanga@gmail.com>, David Bahati <bahatidav@yahoo.co.uk>, Benson Obua-Ogwal <obua-ogwal@rocketmail.com>, Mary Karooro Okurut <mkarooro@parliament.go.ug>, Charles Tuhaise <ctuhaise@parliament.go.ug>, Rusoke Mwigare <amwigare@parliament.go.ug>, "Hon. Nsaba Buturo" <njbuturo@parliament.go.ug>

Greetings from Moscow,

I am here for the planning meeting for the World Congress of Families VIII, which will be held here in Moscow, at the Kremlin, in September 2014. This will be an extremely important conference for nations and NGOs who want to protect family-based society from the homosexual agenda. It is anticipated that President Putin himself may address the conference.

The planning committee is in agreement with me that a high-level representative of the Ugandan government should attend this conference. We do not want the global "progressive" media to succeed in casting Uganda as a pariah because of the AHB and the nation's strong commitment to Biblical values.

I would like to explore the possibility of attendance by President Museveni.

I would also like to encourage a dialogue among Ugandan leaders about adopting Russia's new law banning homosexual propaganda to children. This is a policy I advocated for in my 2006-2007 tour of Russia, and I am greatly encouraged that it passed the Russian Duma unanimously, and was signed into law by President Putin. Already several other counties have adopted the law or are in process of doing so.

It is my hope that Uganda will adopt this law as a practical alternative to the AHB to curbing the "gay" agenda in your country.

In my opinion it is very important for morally conservative nations to begin cooperating in practical ways to stop the homosexual political juggernaut.

Aligning with the newly re-Christianized Russian Federation on a common front to protect the children from "gay" propaganda would seem to be the best possible scenario. Russia is a world power that is not intimidated by the western media and is increasing taking the leading role not only to protect Christian values, but to speak out against the increasing persecution of Christians in various parts of the world.

I also think the western powers would be far less aggressive in attempting to steer African social policy with foreign aid money if these same African countries were newly allied with wealthy Russia in a global pro-family coalition.

I fully expect the Russian law to be adopted in numerous African nations in due time. I think it would be fitting for Uganda to be the first.

In Jesus,

Dr. Scott Lively

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charles tuhaise < ctuhaise@yahoo.com> Mon, Oct 21, 2013 at 4:54 AM
Reply-To: charles tuhaise <ctuhaise@yahoo.com>
To: Scott Lively <sdllaw@gmail.com>, Martin Ssempa <ssempam@gmail.com>, Stephen Langa <stephenlanga@gmail.com>, David Bahati <bahatidav@yahoo.co.uk>, Benson Obua-Ogwal <obua-ogwal@rocketmail.com>, Mary Karooro Okurut <mkarooro@parliament.go.ug>, Charles Tuhaise <ctuhaise@parliament.go.ug>, Rusoke Mwigare <amwigare@parliament.go.ug>, "Hon. Nsaba Buturo" <njbuturo@parliament.go.ug>

Dear Dr. Lively,

Many thanks for this missive about the upcoming conference in Moscow. I salute you for your relentless fight for family values, including your recent bid for Governor of Massachusetts, to ensure that these values have a voice in influential political offices.

About your proposal for Uganda to adopt the approach of the Russian law that bans homosexual propaganda to children, first, I saluthe Russians for coming up with the law against hostile western Media. Although I have not read the Russian law in detail, its focus on children sounds like it has a serious loophole, since similar propaganda directed to adults appears permissible under the law. Gay activists may pretend to be enraged at a law curbing their free-access to impressionable children and youth, but they will be privately jubilate if such a law allows them to continue their activities unabated - because if they manage to corrupt the adult population, it will trickle down to the children anyway. Either way they win.

It is comparable to what I call a sham policy in the western world, of regarding pornography as "adult material". By the law regarding pornography as material suitable only to adults (contrary to research showing it is harmful to all age-groups), the adults continue to buy the material and bring it home, where children can also access it. The end result is that the fight against pornography in the western world, including child-pornography, has been lost and this destructive evil has become insidious and endemic.

Similarly, I find this suggestion in the Russian law problematic: **"that homosexual propaganda, when directed to children, is harmful, but when directed to adults it is okay".** The Ugandan AHB sought to avoid this trap, by not creating a false dichotomy, that homosexuality is OK for any section of our society. AHB regards homosexual practice as inherently harmful and therefore deserves prohibition. If any behavior or practice, such as homosexuality, pornography, drug-abuse, prostitution, abortion etc. has been proven to be harmful to individuals, families, communities etc. then it should be outrightly banned, provided the decision to ban is arrived at democratically.

The problem in the western world, is that few people, if any, have been willing to stand up and show the harm to the nations, of many of the practices that have now become a normal part of the culture, despite abundance of evidence that they are harmful to individuals, certain groups, families and communities.

I strongly urge that Africa should not make the same mistakes as the western world; but should articulate correct public policy and law.

Charles Tuhaise

[Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Mon, Oct 21, 2013 at 3:34 PM
To: charles tuhaise <ctuhaise@yahoo.com>

Hi Charles. I understand your points, but the AHB has never passed and faces major difficulties, but the Russian law could be easily passed (I assume) and then built upon in stages, or you could use the Russian law as a framework and add additional language right up front. And in any case the implementation of the law could encompass activities that are ostensibly for adults. The main benefit is the creation of an international pro-family front with powerhouse Russia as the cornerstone.

[Quoted text hidden]

Stephen Langa < stephenlanga@gmail.com> Tue, Oct 22, 2013 at 5:45 AM
To: Scott Lively <sdllaw@gmail.com>

Cc: Martin Ssempa <ssempam@gmail.com>, charles tuhaise <ctuhaise@yahoo.com>, David Bahati <bahatidav@yahoo.co.uk>, Benson Obua-Ogwal <obua-ogwal@rocketmail.com>, Mary Karooro Okurut <mkarooro@parliament.go.ug>, Charles Tuhaise <ctuhaise@parliament.go.ug>, Rusoke Mwigare <amwigare@parliament.go.ug>, "Hon. Nsaba Buturo" <njbuturo@parliament.go.ug>

Dear Brother Scott,

Thank you very much for this wonderful effort regarding the 2014 World Congress of families. I totally agree that we must start to align with nations that are pro-family and build a coalition of nations that appreciate the value of the family in society. So this effort deserves all the support that can be secured.

I also support your decision to stand as Governor. That is commendable and I say that for the sake of the many who wish to live in a society where values based on TRUTH are respected and observed, your candidature is long overdue, so please "GO FOR IT"

Please note that the email for Hon. Nsaba Buturo is: nsabiyunva@yahoo.co.uk

God bless,

Stephen Langa
[Quoted text hidden]

Nsaba Buturo < nsabiyunva@yahoo.co.uk> Tue, Oct 22, 2013 at 7:35 AM
Reply-To: Nsaba Buturo <nsabiyunva@yahoo.co.uk>
To: "Stephen Langa Thanks Steve." <stephenlanga@gmail.com>, Scott Lively <sdllaw@gmail.com>
Cc: Martin Ssempa <ssempam@gmail.com>, charles tuhaise <ctuhaise@yahoo.com>, David Bahati <bahatidav@yahoo.co.uk>, Benson Obua-Ogwal <obua-ogwal@rocketmail.com>, Mary Karooro Okurut <mkarooro@parliament.go.ug>, Charles Tuhaise <ctuhaise@parliament.go.ug>, Rusoke Mwigare <amwigare@parliament.go.ug>, "Hon. Nsaba Buturo" <njbuturo@parliament.go.ug>

Stephen, thanks. We must support this coalition building. It is the only way! The 2014 World Congress is a great development. We shall do all we can to attend!About Uganda government's representation, Hon Mary Okorut can handle together with the Minister for Ethics & Integrity. Hon Bahati, please get us a copy of the Russian recent law and see if it has something for us. Clearly though, we must not give up on the AHB. The Lord would judge us harshly if we were to do so!

Our Brother Scott is to be congratulated. Keep up the fight and remember you are not alone.

Nsaba

From: Stephen Langa <stephenlanga@gmail.com>
To: Scott Lively <sdllaw@gmail.com>
Cc: Martin Ssempa <ssempam@gmail.com>; charles tuhaise <ctuhaise@yahoo.com>; David Bahati <bahatidav@yahoo.co.uk>; Benson Obua-Ogwal <obua-ogwal@rocketmail.com>; Mary Karooro Okurut <mkarooro@parliament.go.ug>; Charles Tuhaise <ctuhaise@parliament.go.ug>; Rusoke Mwigare <amwigare@parliament.go.ug>; Hon. Nsaba Buturo <njbutturo@parliament.go.ug>
Sent: Tuesday, 22 October 2013, 2:45
Subject: Re: International Coalition Building
[Quoted text hidden]

Scott Lively < sdllaw@gmail.com> Thu, Apr 10, 2014 at 2:27 PM
Draft To: Scott Lively <psalm37nasb@gmail.com>

---------- Forwarded message ----------
From: **Nsaba Buturo** <nsabiyunva@yahoo.co.uk>

Date: Tue, Oct 22, 2013 at 7:35 AM
Subject: Re: International Coalition Building
[Quoted text hidden]

LIVELY DECLARATION
EXHIBIT 20

Scott Lively Ministries
For such a time as this...

My Comments on the Passage of the Uganda Anti-Homosexuality Law

Posted on February 25, 2014 by Pastor Scott

While I respect the right of sovereign nations to legislate sexual morality according to their own cultural standards, I believe the Ugandan anti-homosexuality law takes the wrong approach in dealing with simple homosexuality (as opposed to pederasty and the other sub-categories of "aggravated homosexuality" in the bill). As I said in my comments to the Ugandan Members of Parliament I addressed in March, 2009 before the AHB had been drafted, the focus of a government seeking to protect its people from the homosexual agenda should be on rehabilitation and prevention, not punishment.

I believe the Russian approach of banning homosexual propaganda to children as a preventive measure is a better model for other nations of the world looking avoid the moral degeneracy that has occurred in the U.S. and E.U. due to so-called "gay rights."

That having been said, I commend Uganda for removing the death penalty in the final version of the law and for taking a strong stand against the homosexual abuse of children and the intentional spreading of AIDS through sodomy. I urge the Ugandans to exercise mercy and compassion for homosexual strugglers in their enforcement of the new law and, on behalf of the pro-family movement in the U.S., stand ready to assist in any future effort to shift the emphasis of the law from punishment to rehabilitation and prevention.

As a final point I think it is important for people to recognize that the Ugandan law is typical of African criminal law across the continent. Poor countries with limited criminal justice systems tend to rely on the harshness of the letter of the law to be a deterrent to offenders. In practice, the sentencing is usually pretty lenient and I expect that will be the case under this new law as well.

This entry was posted in Uncategorized. Bookmark the permalink.

Scott Lively Ministries
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DECLARATION OF STEPHEN LANGA

Stephen Langa declares as follows:

1. I am over the age of 18 years, and have personal knowledge of the facts contained in this Declaration.

The Family Life Network

2. I founded the Family Life Network (FLN) in 2002 with a vision of restoring Biblical family values and morals in Ugandan society. I am currently the Executive Director of FLN.

3. Upon its founding, FLN began conducting family values seminars, and also going into schools to teach sex education.

FLN's March 2002 Conference on Pornography

4. Shortly after FLN's founding in 2002, I organized Uganda's first national pro-family conference, on "The Threat of Pornography and Obscenity in Uganda." Weeks prior to the conference the main speaker dropped out. I was introduced to Scott Lively and invited Lively to speak at the conference. I met Lively for the first time when he arrived for the conference in March 2002.

5. Lively's presentation at the March 2002 conference was about the role of pornography and obscenity in softening a society to the sexual revolution. Homosexuality was not the focus of the conference.

6. I invited Lively to return to Uganda in June 2002, to continue speaking publicly against the spread of pornography, and in support of preserving a Judeo-Christian marriage- and family-based culture.

7. During the six days of Lively's June 2002 visit to Uganda, in accordance with arrangements I had made, Lively spoke to an assembly of university students regarding pornography, to another university student assembly regarding Christian leadership, to a church assembly of teenagers regarding abstinence, to another church teenager assembly regarding abstinence and pornography, to a seminar for married-couples regarding God's design for marriage and family, to a pastors' conference regarding holiness and Christian living, to members of the Kampala City Council regarding pornography and sex-related businesses, and in a private meeting with the Kampala mayor regarding God's design for the family.

8. In between Lively's several presentations, and also in accordance with arrangements I had made for him, he made a total of four radio appearances, during which he discussed various topics relating to God's design for marriage- and family-based society, and at times took calls from listeners.

9. Lively also made two television appearances during his June 2002 Uganda trip, consisting of one interview by a secular television reporter, and one appearance on a Christian television network show hosted by Martin Ssempa. The subject of the discussion on the show was pornography's role in the advance of the sexual revolution. Homosexuality was not the focus of the television show.

10. In the course of Lively's June 2002 speaking and media appearances in Uganda, homosexuality was but one topic he touched upon among many within the broader context of preserving a Judeo-Christian marriage- and family-based culture. Speaking about

homosexuality was not the focus of his discussions, nor the main purpose of my invitation to him to come to Uganda.

11. During Lively's 2002 visits to Uganda, he did not discuss the concepts of "promotion of homosexuality" or "recruitment" of youth into homosexuality. He did not discuss changes in Uganda's laws with respect to homosexual conduct. He did not discuss or advocate strategies on the criminalization of promotion of homosexuality.

FLN's March 2009 Conference on Homosexuality

12. Between Lively's June 2002 Uganda visit and his return to Uganda in March 2009, I saw Lively only one time. I visited the United States around 2005 or 2006, and paid a brief social visit to Lively and his wife. They took me to a museum, and we did not engage in any ministry or advocacy. I mentioned to Lively in passing that I might invite him to speak in Uganda again at some point in the future.

13. My only other contact with Lively prior to his March 2009 return to Uganda was sporadic e-mail communication with him beginning in March 2007. I initiated the communications to share my ideas for a Ugandan conference on homosexuality. I informed Lively of my purpose for such a conference:

> The purpose would be to provide correct information on homosexuality and expose the homosexual lies, agenda and propaganda. Homosexuality is spreading in our schools being fueled with funding from homosexuals in the Western world, and nobody knows how to deal with it. The school authorities, the government, counselors and parents are helpless. So we want to use the conference to set the record straight and also to provide some expertise to help victims of this vice.

(A true and correct copy of my March 7, 2007 e-mail to Lively containing the above purpose statement and our subsequent exchange is attached hereto as Exhibit 1.)

14. Our communications after March 2007 proceeded intermittently, and did not involve discussions of substantive issues or strategies for opposing the homosexual rights agenda.

15. Eventually in our communications we settled on March 5-7, 2009 as the date for the conference we had been contemplating. Because my purpose for organizing the conference was not to change Ugandan laws on homosexuality, none of our communications leading up to the March 2009 conference included any substantive discussions of Ugandan governmental strategies, policies, or laws regarding homosexuality. The only reference to Uganda's laws regarding homosexuality in all of my communications with Lively leading up to the conference was a passing reference in an e-mail I sent to Lively and the other conference speakers the week before the conference, letting them know that homosexuality was illegal in Uganda. This was in the context of my informing the speakers that persons who had generated controversy through their support of homosexual rights were expected to attend the conference.

16. By the time Lively arrived in Uganda for the March 2009 conference, however, I had been advised that some members of the Ugandan Parliament were contemplating a new law on homosexuality. I wasn't sure about the timing or seriousness of the new proposal, because Ugandan government officials had made public statements in the past regarding new laws on homosexuality, including in 2007, but without accompanying action. Nonetheless, prior to his address to some members of the Parliament at an informal meeting the day after he arrived, I shared with Lively that I had learned of a new law being considered, even though I did not know the details of the proposal. At the meeting, Lively

stated his view that any new laws should focus on counseling and education instead of punishment for persons convicted of homosexual conduct. At this meeting, Lively did not advocate for tougher laws, and did not advocate for either the death penalty or life imprisonment for any sexual offenses. Lively said that those who struggle with homosexuality deserve to be helped, not jailed.

The 2009 AHB and 2014 AHA

17. During and after the March 2009 conference it was falsely reported by media that Lively used the FLN conference to advocate for "tougher" laws against homosexuality and the imposition of "forced" therapy on homosexuals. However, at no time during Lively's March 2009 visit to Uganda did I hear him advocate for "tougher" laws against homosexuality or "forced" therapy. To the contrary, whenever Lively spoke of the existing criminalization of homosexual conduct, he always stressed that the focus of any law should be voluntary counseling and education instead of punishment.

18. Shortly after the March 2009 conference, Lively wrote to me by e-mail that he considered the punishment of life imprisonment for a conviction of homosexual conduct under Uganda's existing law against homosexuality to be "overly harsh."

19. On or about April 23, 2009, I led a group of pro-family activists to deliver a petition to the Ugandan Parliament, requesting Parliament to investigate the impact of homosexuality in Uganda. The petition also requested that Uganda's constitution be amended to prohibit homosexual conduct. I did not discuss this petition with Lively, and Lively did not participate, in any way whatsoever, in the preparation or delivery of the petition to Parliament.

20. Shortly after the delivery of the FLN petition to Parliament, a draft of a new Anti-Homosexuality Bill ("AHB") emerged from Member of Parliament David Bahati.

21. I did not discuss the AHB with Hon. Bahati prior to or during the March 2009 conference, and I was not involved in the drafting of the initial AHB. By the time I saw the initial draft in late-April 2009, it already included the opening principles, the discussion of the need to protect children and youth from sexual abuse, the death penalty for aggravated offenses, the prohibition on the promotion of homosexuality, and the reporting requirements for persons in authority, all of which provisions originated within Parliament itself, and not with me. To my knowledge Lively had no involvement in the drafting of those provisions.

22. I am aware that in late-April 2009, Pastor Martin Ssempa forwarded the initial draft of the AHB to Lively requesting comments. The version that Ssempa forwarded was the same version I had seen, which already included the opening principles, the discussion of the need to protect children and youth from sexual abuse, the death penalty for aggravated offenses, the prohibition on the promotion of homosexuality, and the reporting requirements for persons in authority. I am also aware that Lively responded by objecting to the draft AHB's focus on punishment instead of counseling, objecting in particular to the death penalty and life imprisonment provisions. Lively consistently made the same objections during the four years the AHB was being considered by Parliament, and until a subsequent version was enacted in 2014 (the "Anti-Homosexuality Act" or "AHA"). Even after enactment of the AHA, Lively continued to call for drastic changes to the law to make it more lenient, and to move away from incarceration in favor of counselling and rehabilitation.

23. I, and many other Ugandans, disagreed with Lively's requests for leniency, counseling and education by the State. We are of the view that the State should not take on the responsibility of counseling and education but rather should create policies that can enable private and religious organizations and institutions to offer such services, as is the case right now. Further to this, we are of the view that it is the responsibility of every individual who feels that they are struggling with issues relating to prohibited sexual conduct or any other prohibited conduct, to seek help from these organizations and institutions. It is their responsibility to seek help before they find themselves on the wrong side of the law, since they know that the behavior they have inclination towards is prohibited by law. In light of this, it is our view that Uganda as a Sovereign State has the right to put in place deterrent punishment, which Uganda believes is appropriate to discourage citizens from engaging in prohibited conduct.

24. Therefore, although we considered and discussed Lively's suggestions, and I passed them along to others, ultimately he was not able to persuade us to adopt his proposed approach. The AHA that was passed in the end did not include any of Lively's proposals or suggestions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 2nd day of July, 2016.

Stephen Langa

Gmail by Google

LANGA EXHIBIT 1

Scott Lively <sdllaw@gmail.com>

RE: INVITATION TO UGANDA IN JUNE 2007

4 messages

Stephen Langa <stephenlanga@yahoo.com> Tue, Mar 6, 2007 at 12:51 PM
To: sdllaw@gmail.com

Dear Scott,

Let me hope that this email finds you and your family in good health.

If you remember last year I indicated to you that we would like to hold a "Homosexuality Conference" or awareness week or something of that sort.

The purpose would be to provide correct information on homosexuality and expose the homosexual lies, agenda and propaganda. Homosexuality is spreading in our schools being fuelled with funding from homosexuals in the Western world, and nobody knows how to deal with it. The school authorities, the government, counselors and parents are helpless. So we want to use this conference to set the record straight and also to provide some expertise to help victims of this vice.

I was in South Africa in December with my Pastor and we were invited by a political party there that was very angry that S.Africa legalized gay marriages last year. They want to work with the churches there to try and reverse this situation. I could arrange to invite some of them to come to this conference as well to get equipped. We would also need adequate literature on the subject.

We are thinking of four full days during which time meetings would be held with counselors, parents, church leaders, the public (lecture), students and teachers. We would wish to have you come with two former homosexuals who have changed and can help counselors and others understand how homosexuality can actually be corrected or is correctable. If you could have both a man and woman, that would be great.

We are tentatively thinking of the dates of June 13-16, 2007 or there about. That would mean that you could arrive on the 11th and be free to leave on 18th. You would need to allow for about 6-7 days total although the main items would only take 4. This would give your team enough time to rest after arrival here before starting the meetings.

We would request that you kindly fund the airfare for your team.

Sorry for writing a lot, but please let me know you thoughts on this matter.

God bless.

Stephen Langa

Scott Lively <sdllaw@gmail.com> Tue, Mar 6, 2007 at 1:44 PM
To: Stephen Langa <stephenlanga@yahoo.com>
Cc: Igor at NG Riga <newgen@mailbox.riga.lv>, Vadim Privedenyuk <vadng@hotmail.com>

Dear Stephen,

Thank you for the invitation. I will be in Latvia in June working with the New Generation Church. They may be interested in sending me with a delegation to assist you in this effort. I will forward your request to their office. Have you discussed

this matter with Brother Robert Karanja? He has worked closely with New Generation in the past, and may be interested in joining forces to create a larger event.

Be Blessed,

Scott Lively

On 3/6/07, **Stephen Langa** <stephenlanga@yahoo.com> wrote:

Dear Scott,

Let me hope that this email finds you and your family in good health.

If you remember last year I indicated to you that we would like to hold a "Homosexuality Conference" or awareness week or something of that sort.

The purpose would be to provide correct information on homosexuality and expose the homosexual lies, agenda and propaganda. Homosexuality is spreading in our schools being fuelled with funding from homosexuals in the Western world, and nobody knows how to deal with it. The school authorities, the government, counselors and parents are helpless. So we want to use this conference to set the record straight and also to provide some expertise to help victims of this vice.

I was in South Africa in December with my Pastor and we were invited by a political party there that was very angry that S.Africa legalized gay marriages last year. They want to work with the churches there to try and reverse this situation. I could arrange to invite some of them to come to this conference as well to get equipped. We would also need adequate literature on the subject.

We are thinking of four full days during which time meetings would be held with counselors, parents, church leaders, the public (lecture), students and teachers. We would wish to have you come with two former homosexuals who have changed and can help counselors and others understand how homosexuality can actually be corrected or is correctable. If you could have both a man and woman, that would be great.

We are tentatively thinking of the dates of June 13-16, 2007 or there about. That would mean that you could arrive on the 11th and be free to leave on 18 th. You would need to allow for about 6-7 days total although the main items would only take 4. This would give your team enough time to rest after arrival here before starting the meetings.

We would request that you kindly fund the airfare for your team.

Sorry for writing a lot, but please let me know you thoughts on this matter.

God bless.

Stephen Langa

Stephen Langa <stephenlanga@yahoo.com> Wed, Mar 7, 2007 at 7:24 AM
To: Scott Lively <sdllaw@gmail.com>
Cc: Igor at NG Riga <newgen@mailbox.riga.lv>, Vadim Privedenyuk <vadng@hotmail.com>

Dear Scott,

This is to be a combined effort by many Christian groups and churches that have a burden in this area. We are yet to eatablish Brother Robert Kayanja's involvement.

When you say that you will be in Latvia in June, are you suggesting that the dates suggested are not good for you or are you still figuring it out. Please advise.

In the meantime we will be praying.

God bless.

Stephen Langa
[Quoted text hidden]

Scott Lively <sdllaw@gmail.com> Wed, Mar 7, 2007 at 7:39 AM
To: Stephen Langa <stephenlanga@yahoo.com>

we're still figuring it out. I'll get back to you next week.
[Quoted text hidden]

DECLARATION OF CHARLES TUHAISE

Charles Tuhaise declares as follows:

1) I am over the age of 18, and have personal knowledge of the facts contained in this Declaration.

2) I am the Principal Research Officer for the Parliament of Uganda. I have held this position since 2005. In my position, I work closely with members of Parliament as they draft and consider various laws. I advise members of Parliament on various issues and research questions that come up during legislative debates.

3) I met Scott Lively when he visited Uganda in March 2009.

4) I was present for Mr. Lively's informal talk to a few members of Parliament. I recall that less than 10 members of Parliament (out of 385 members) were present, although there were several additional people in the room. Mr. Lively said that Uganda should liberalize its laws that criminalize homosexual conduct. I understood Mr. Lively to be criticizing as too harsh Uganda's long standing laws against sodomy. He appeared to be in favor of reducing our criminal punishment for homosexual acts, and focusing instead on family and marriage education for our young people and counseling for those involved in homosexual conduct. He urged tolerance, restraint and respect for persons struggling with homosexuality in any new legislation dealing with homosexual conduct.

5) I disagreed with Mr. Lively's opinions, because I believed that Uganda's laws against homosexuality, and the punishments prescribed for homosexual acts, should be strengthened, not relaxed.

6) My views, opinions and beliefs about homosexuality are not based on Mr. Lively's views, opinions, speeches and writings. Instead, they are based on my experience in

and observation of Ugandan society, as well as the harm I saw happening to our youth and children who were being abused homosexually or taught to embrace homosexuality.

7) I know from discussion with many members of Parliament that they share my views.

8) In October 2009, a bill called the Anti-Homosexuality Bill of 2009 ("AHB") was introduced into the Ugandan Parliament. I am personally familiar with the inception, drafting, debate, passage, enactment and subsequent annulment of the law.

9) The AHB was the subject of many vigorous democratic debates in the Ugandan Parliament between October 2009 and December 2013, with many lawmakers speaking both in favor and against the bill. It was ultimately passed by Parliament on 20 December 2013, and signed into law by President Yoweri Musevini on 24 February 2014, at which point it became known as the Anti-Homosexuality Act of 2014 ("AHA"). The AHA was invalidated by the Constitutional Court of Uganda on 1 August 2014, on the ground that it was not passed by a sufficient quorum of legislators. The attorney general of Uganda decided not to appeal that decision to the Supreme Court of Uganda.

10) No person was convicted or punished under the AHA while it was in effect.

11) Scott Lively was not involved in or present at any of the Parliamentary debates of the AHB or AHA. The idea that Mr. Lively somehow manipulated or even influenced the Parliament of Uganda into doing his bidding is not only demonstrably false, but is insulting to the intelligence and sovereignty of Uganda's Parliament. Because I work closely with the members of Parliament, I know that they are smart, strong-willed, and independent. They are fully capable of considering legislative proposals, thinking and speaking for themselves and their

constituents, and debating proposals in a democratic process. As with any other law, the enactment of the AHA was the exclusive work of Uganda's sovereign Parliament.

12) Indeed, the members of Parliament exercised their independent judgment when they made substantial amendments to the proposed AHB while it was being debated and considered. For example, the initial proposal included the death penalty to deter a specific subset of acts defined as "aggravated homosexuality," such as sexual abuse of minors or the disabled. The death penalty is used as a symbolic deterrent for several violations of law in Uganda, but I do not recall that any person in Uganda has been executed for any crime within the last three decades. Nevertheless, Parliament ultimately opted for life imprisonment. Whereas the initial proposal included a legal requirement that persons in authority report illegal homosexual acts to authorities, Parliament rejected that proposal in its entirety. Parliament also rejected the initial proposal for extra-territorial jurisdiction, and the initial proposal for nullification of any inconsistent international legal instruments. Thus, as with any other law, the AHA law that was ultimately passed by Parliament in December 2013 was no longer the product of any individual member of Parliament, but the joint product of a democratically elected legislature, accountable to the sovereign people of Uganda.

13) The members of Parliament and I did not consult Scott Lively, or any of his speeches or writings, in concluding that there was a need for the AHB, or in developing or drafting any of the provisions of the AHB.

14) The notion that Scott Lively introduced the concepts of homosexual recruitment of children, or promotion of homosexuality to children, or homosexual abuse of children into a Ugandan society previously unaware of such things is false and ridiculous.

15) The need for the AHB was clearly evident to me and others in Parliament by 2008, almost one year before Mr. Lively's visit to Uganda in March 2009. In the few years prior to 2008, we had been hearing from Ugandan citizens an increasing number of alarming reports that sex tourism was on the rise in Uganda; that wealthy homosexual adult males from outside Uganda were enticing and recruiting Ugandan youths and boys into homosexual acts using money and gifts; that young boys were being raped or otherwise forced into sexual contact with adult males; that western advocacy groups were promoting homosexual practices to Ugandan youths, including school children, through literature, money and gifts; and that Ugandan persons who practiced homosexuality and were infected with HIV were knowingly spreading the virus through unprotected homosexual contacts. These reports were coming to us directly from Ugandan citizens, and also through many media reports. There were also several youth who had been led into homosexual activity, who came out to report the abuse they had undergone in churches, schools and other places. Members of Parliament were discussing these problems and asking me to help them research these issues long before March 2009.

16) Based upon these reports, in 2008 some members of Parliament concluded that there was a need for the AHB and began the process to develop it.

17) To my knowledge, neither Stephen Langa nor Martin Ssempa were involved in the initial draft of the AHB. They only became involved in late April 2009. By that time, the AHB draft was already in progress, and it already included the opening principles, the discussion of the need to protect children and youth from sexual abuse, the death penalty for aggravated offenses, the prohibition on the promotion of homosexuality, and the reporting requirements for persons in authority. Those provisions did not originate with either Mr. Langa or Mr. Ssempa.

18) The death penalty was already part of the Ugandan penal code in 2007 for aggravated offenses involving heterosexual abuse of minors, and other grave sexual offenses. By proposing the death penalty for such aggravated offenses in the context of homosexuality in the 2009 AHB draft, the drafters were attempting to be consistent with existing Ugandan law.

19) I am aware that Mr. Lively provided some comments to the draft AHB. His comments were not accepted and not incorporated in the final draft of the AHB.

20) After the AHB was introduced in Parliament, I received several communications from Mr. Lively urging that the death penalty be removed, that the criminal punishments be drastically reduced, and that the law be modified to emphasize counseling and education rather than punishment. Mr. Lively shared his concerns through an open letter to the Ugandan Parliament on March 8, 2010, as well as through subsequent emails to me and others on December 5, 2012, August 9, 2013, and October 18, 2013. The revisions urged by Mr. Lively were consistent with the leniency and counseling focus that he favored during his presentation to some of the members of Parliament in March 2009, and in his comments on the draft AHB.

21) Even though I appreciated Mr. Lively's interest and considered him a friend of the Ugandan people, I continued to disagree with his approach, and so did other members of Parliament with whom I discussed Mr. Lively's suggestions. We were not in favor of his proposals for many reasons, including insufficient funding for education and counseling programs, and, more importantly, our belief that tough punishments were necessary to address and deter the serious problems we were hearing about from Ugandan citizens. It seemed to us that Mr. Lively's perspective was based upon his experience in the United States, which was quite different from our perspective and experience as Africans and Ugandans. We believed that Ugandans were in a better position to know what is needed and best for Uganda, than Mr. Lively

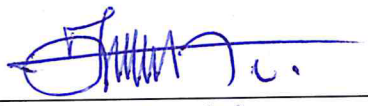
and other people from outside Uganda. I responded to Mr. Lively on a couple of occasions, including on March 10, 2010 and October 21, 2013, to indicate my disagreement with his suggestions.

22) The AHB introduced in Parliament in October 2009 contained no input from Mr. Lively. It contained none of Mr. Lively's suggestions or modifications.

23) The AHA passed by Parliament in December 2013 contained no input from Mr. Lively. It contained none of Mr. Lively's suggestions or modifications.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 3, 2016



Charles Tuhaise

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

SEXUAL MINORITIES UGANDA,

Plaintiff,

v.

SCOTT LIVELY, individually and as President of Abiding Truth Ministries,

Defendant.

Civil Action No.

3:12-CV-30051

PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES TO DEFENDANT SCOTT LIVELY'S FIRST SET OF INTERROGATORIES CONTAINING CONFIDENTIAL INFORMATION SUBJECT TO THE TERMS OF PROTECTIVE ORDER

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Sexual Minorities Uganda ("SMUG") supplements its objections and responses to Defendant Scott Lively's First Set of Interrogatories as follows:

In the interest of clarity and for ease of reference, SMUG includes herein only the Responses to Interrogatories that are being supplemented on this date, above and beyond the responses that were made in Plaintiff's Original and Supplemental Responses to Defendant Scott Lively's First Set of Interrogatories on July 11, 2014, and October 20, 2014, respectively.

Subject to and without waiving the general objections set out in Plaintiff's original and supplemental responses SMUG further objects and responds as follows:

RESPONSES TO INTERROGATORIES

Interrogatory No. 2:

Separately for each Person identified in Interrogatory 1, and for any other Person whom you contend in this Lawsuit to have been Persecuted, describe in detail each Act of Persecution that each such Person has suffered, and, for each such Act of Persecution:

a) identify the Date(s) on which and Location where such Act of Persecution took place;
b) identify each Person who committed such Act of Persecution, stating:
    i. what each Person who committed such Act of Persecution did or failed to do to carry out the Persecution;
    ii. the specific section and/or subsection of the specific law, treaty, international accord, or any other legal authority which you contend each Person who committed such Act of Persecution violated; and
c) identify each specific fundamental right which such Act of Persecution infringed, with reference to the specific legal source (section and/or subsection number) conferring that right.

Response to Interrogatory No. 2:

SMUG objects to this interrogatory because it seeks information from nonparties. SMUG further objects to the interrogatory because the term "describe in detail" is vague, overly broad, and unduly burdensome in seeking a detailed narrative account. SMUG further objects to subparts (b)(ii) and (c) of this interrogatory because they call for legal conclusions. Subject to and without waiving its specific or general objections, SMUG responds as follows: SMUG refers Defendant to paragraphs 165-226 of the Amended Complaint (Dkt. No. 27), which list the individual acts of persecution SMUG alleges in this lawsuit, including the victim(s) of such persecution, the relevant dates and locations, and those who carried out such persecution. SMUG further refers Defendant to paragraphs 43-164 of the Amended Complaint (Dkt. No. 27), which provide the identities of others who contributed to the persecution and the form of their contribution.

Supplemental Response No. 2.

SMUG incorporates its original Response to Interrogatory No. 2 herein and further

responds as follows: This Interrogatory assumes that SMUG will identify individuals in response to Interrogatory No. 1, which SMUG has not done for reasons explained in its Response to Interrogatory No. 1. Subject to and without waiving its specific or general objections, SMUG supplements its Response to Interrogatory No. 2 in order to identify acts of persecution that occurred subsequent to the filing of the Amended Complaint in this action:

Raid of 2012 Pride Parade

SMUG states that on Aug. 4, 2012, Ugandan activists held their first Pride gathering, an event that celebrates LGBTI culture and pride, at the Botanical Gardens in Entebbe. The police raided the gathering and arrested several of the participants.

Passage and Enactment of the Anti-Homosexuality Bill

SMUG states that the Anti-Homosexuality Bill was passed by Parliament on December 20, 2013, and signed into law on February 24, 2014. The bill then became the Anti-Homosexuality Act (AHA), officially broadening the criminalization of same-sex acts between consenting adults, including "touching with the intention of committing the act of homosexuality," which carried sentences of up to life imprisonment. The law also imposed criminal penalties for, inter alia, speech, advocacy, and association and the provision of counseling and health services, by criminalizing the "promotion of homosexuality" and "aid[ing], abet[ting], counsel[ing] or procur[ing] another to engage in acts of homosexuality." While a Ugandan court invalidated the AHA on August 1, 2014 on the basis of a parliamentary irregularity, efforts are now underway to appeal that ruling and/or reinstate the AHA.

Investigation of Refugee Law Project ("RLP") and Suspension of Services

SMUG states that the Refugee Law Project is a non-governmental organization based at Makerere University and established in 1999 to provide legal aid to asylum seekers and refugees

in Uganda. Following the passage of the AHA, the government initiated an investigation into RLP to determine if it was violating the new law. On March 14, 2014, the Minister of Relief, Disaster Preparedness and Refugees wrote to all Refugee Settlement Commandants and Refugee Desk Officers advising them to suspend the activities and services of RLP pending investigation into allegations that the organization was "promoting homosexuality" in the settlements. On May 20, 2014, RLP received another letter from the Permanent Secretary, signed off on by the Commissioner for Refugees in the Office Prime Minister, extending the suspension to RLP's Kampala office.

Raid and Shut-down of Walter Reed Clinic

SMUG states that the Makerere University Walter Reed Project is a U.S.-funded medical research facility in Kampala that conducted HIV research and provided services to LGBTI people. On April 3, 2014, Ugandan police raided the clinic and arrested one of the facility's employees, allegedly for conducting "unethical research" and "recruiting homosexuals." The operations of the clinic were temporarily suspended to ensure the safety of staff and beneficiaries of the programs. When the clinic reopened, it discontinued its serves to men who have sex with men.

Threats Against LGBTI Organizations

SMUG states that following the enactment of AHA, SMUG and a number of SMUG member organizations have been surveilled, exposed by the media, threatened with closure and calls for attack and/or evicted. As a result, many have had to suspend their operations serving Uganda's LGBTI community.

Additional Media Outings and Threats

On February 24, 2013, Ugandan newspaper Red Pepper published the headline:

BUSTED- HOW GAYS OPERATE IN UGANDA. It featured a picture of SMUG staff. It alleged that SMUG member organization Spectrum Initiative Uganda ("Spectrum") was a recruiting agency for homosexuals in Uganda and identified some of Spectrum's staff. Spectrum had to move offices as a result.

On February 25, 2014, the day after the AHA was signed into law, the Red Pepper continued its media outings with the headline *EXPOSED! Uganda's 200 Top Homos Named*. Four photos appeared on the front page, with additional photos on the inside pages, along with names, addresses and other identifying information on 200 people that the paper reported to be gay.

Two of the four front-page photos were of well-known LGBT rights activists Sam Ganafa and Victor Mukasa. Ganafa served as the executive director of Spectrum. Mukasa is a SMUG co-founder who secured the 2008 High Court ruling referenced in paragraph 34 of the Amended Complaint. The issue also had three interior pages with more names and photos of Ugandans described as LGBTI. Some of the names and photos were of well-known activists, such as SMUG staff members Frank Mugisha and Pepe Onziema, and former Executive Director of SMUG member organization Freedom and Roam Uganda, Kasha Jacqueline Nabagasera. However, the overwhelming number of those named were private citizens and not well-known activists or celebrities. Many of the names were of ordinary salespeople, shopkeepers, and employees of other larger businesses. The evidence for their alleged sexual orientation was not given.

The following day, the February 26, 2014 edition of Red Pepper included more front-page headlines promising "new pictures of gays inside" along with an alleged threat that "homos vow to shed blood over M7 [Museveni] law."

The February 27, 2014 issue of Red Pepper included a cover story with the headline *Homos go to court over anti-gay law*. The next several issues continued to spread anti-gay propaganda including outings by anti-gay pastor Solomon Male, mischaracterizations of statements of LGBT advocates, and photos, names and addresses of LGBT Ugandans who were allegedly part of a "homo cabinet." One issue had another feature entitled, *How to prevent your child from becoming a homo*.

The February 28, 2014 issue of the Red Pepper publicly identified SMUG staff member, Richard Lusimbo. Lusimbo received threatening calls and mail in the aftermath and was forced to take additional security precautions.

Second Supplemental Response No. 2:

SMUG incorporates its original and supplemental responses and objections to Interrogatory No. 2 herein and further supplements its Response to Interrogatory No. 2 in order to identify acts of persecution that occurred subsequent to the filing of the Amended Complaint in this action:

Arrests and Torture or Other Forms of Cruel, Inhuman and Degrading Treatment

Kim Mukisa and Jackson Mukasa. In late January 2014, within weeks of the passage of the Anti-Homosexuality Bill, Jackson Rihanna Mukasa and Kim Mukisa were arrested by the police on allegations of being homosexual. The arrests occurred after Kim Mukisa was thrown out of his house on January 27, 2014, based on allegations that he was a "homosexual" and then beaten by local council authorities and local residents. The police arrested Jackson Mukasa, a transwoman who was also present at Kim Mukisa's residence at the time of the attack, on or about the same day and used her to call Kim Mukasa to the police station where he was also arrested. The two were held for seven days in police custody without being brought before a

judge, in violation of Ugandan law. They were produced in court only after their lawyers submitted complaints to the Inspector General of Police and the Ugandan Human Rights Commission about their illegal detention. Kim Mukisa was charged with having carnal knowledge of a person against the order of nature under Section 145(a) of the Ugandan Penal Code Act Cap. 120. Jackson Mukasa was charged with permitting a male person to have carnal knowledge of her against the order of nature under the same provision. While in detention, both were paraded before the media as "homosexuals" and both were subjected to HIV tests without their consent. Jackson Mukasa was further subjected to a highly invasive, humiliating and degrading anal examination used by Ugandan authorities ostensibly to obtain evidence of same-sex sexual activity.

They remained in pre-trial detention for approximately four months until May 2014, when they were released on bail. The case against them was dismissed by the court on or about October 22, 2014, for want of prosecution after it had been adjourned four times due to the prosecution's failure to produce any witnesses.

CONFIDENTIAL: [redacted]. On or about [redacted], [redacted] and his partner, [redacted], were arrested after private intimate pictures of [redacted] with another man were taken from a stolen laptop and published in the *Red Pepper* tabloid. While in detention, [redacted] was beaten, and both he and [redacted] were subjected to invasive, humiliating and degrading anal examinations by Ugandan authorities. On or about [redacted], charges against [redacted] were dropped and he was deported. Charges of gross indecency are still pending against [redacted]. Though he has been released from detention, he has been subjected to humiliating and inflammatory tabloid coverage and has received numerous threats, resulting in serious harm to his business and reputation.

Unknown police involved in arrests and investigation

CONFIDENTIAL: [redacted]

[redacted]

Unknown police officers involved in investigation and arrests

Unknown staff at *Red Pepper* tabloid

Dated: January 2, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd of January 2015, I served Plaintiff's Fourth Supplemental Rule 26(a)(1) Disclosures by email to the following:

Mathew D. Staver
Stephen M. Crampton
Horatio G. Mihet
LIBERTY COUNSEL
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Orlando, FL 32854-0774
hmihet@liberty.edu

Attorneys for Defendant Scott Lively

/s/ Gina Spiegelman
Gina Spiegelman

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

SEXUAL MINORITIES UGANDA,	:	
Plaintiff,	:	**Civil Action No. 3:12-CV-30051**
v.	:	
SCOTT LIVELY, individually and as President of Abiding Truth Ministries,	:	
Defendant.	:	

PLAINTIFF'S FIFTH SUPPLEMENTAL RESPONSES TO DEFENDANT SCOTT LIVELY'S FIRST SET OF INTER ROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Sexual Minorities Uganda ("SMUG") supplements Plaintiff's Responses to Defendant Scott Lively's First Set of Interrogatories as follows.

In the interest of clarity and for ease of reference, SMUG includes herein only the Responses and Objections to Interrogatories that are being supplemented on this date.

Subject to and without waiving the general and specific objections set out in Plaintiff's original, Supplemental, Second and Third Supplemental Responses to Defendant Scott Lively's First Set of Interrogatories, SMUG further objects and responds as follows:

RESPONSES TO INTERROGATORIES

Interrogatory No. 4:

Separately for each Act of Persecution identified in Interrogatory 2, identify the nature and amount of damages it caused to each Person you identified as having suffered that Act of Persecution, and provide the method or means or formulas that you employed to calculate those damages. To the extent you seek any other damages in this Lawsuit, then also identify the nature and amount of those other damages, and provide the method or means or formulas that you employed to calculate those damages.

Response to Interrogatory No. 4:

SMUG incorporates by reference its objections to Interrogatory No. 2. Subject to and without waiving its specific or general objections, SMUG responds as follows: SMUG only seeks damages for harm it suffered as an organization. As set forth in SMUG's Amended Complaint (Dkt. No. 27 at 59-60), SMUG seeks compensatory damages, punitive and exemplary damages, and reasonable attorneys' fees and costs, in amounts to be determined at trial, in addition to equitable relief. The categories of past and ongoing harm to SMUG for which it seeks damages fall into one or more of the following categories, which SMUG reserves the right to supplement due to the ongoing nature of the persecution:

- Compensation for diversion of SMUG's resources to protect SMUG from the persecution conspiracy and/or joint criminal enterprise as alleged in the Amended Complaint, including diversion of resources to seek redress and accountability for persecution of Plaintiff's staff members and raids of Plaintiff's meetings and to adopt additional security measures and relocate its operations, including but not limited to:
    - Costs incurred and staff time spent following the arbitrary arrest and detention of staff member(s) and following the harassment and threats faced by staff member(s) them to temporarily relocate;
    - Costs incurred and staff time spent in responses to breach(es) to security of SMUG's operations; and
    - Costs incurred and staff time spent to implement additional security measures due to heightened security risks.
- Compensation for diversion of SMUG's resources to counteract the persecution resulting from the conspiracy and/or joint criminal enterprise as alleged in the Amended Complaint, including resources used to conduct public education,

political and legal advocacy, and media campaigns and to support SMUG's member organizations, some of which assist LGBTI persons who are denied access to critical services, forcibly evicted, forced to go into hiding or seek asylum, and/or arbitrarily arrested or detained, including but not limited to:

- Costs incurred and staff time spent for public education, advocacy, and media campaigns to counteract the persecution;

- Costs incurred and staff time devoted to supporting SMUG's member organizations; and

- Costs incurred and staff time spent bringing a constitutional challenge to the Anti- Homosexuality Act.

• Compensation for frustration of SMUG's purpose as a result of harm SMUG suffered to its standing and reputation in the community, attributes which are necessary to conduct its advocacy and education and outreach campaigns, due to the persecution conspiracy and/or joint criminal enterprise that Defendant has propelled and pursued as alleged in the Amended Complaint.

Supplemental Response to Interrogatory No. 4:

SMUG incorporates its original Response to Interrogatory No. 4 herein and further incorporates its Supplemental Response to Interrogatory No. 2 for the acts of persecution that SMUG has had to divert resources in order to counteract. Subject to and without waiving its specific or general objections, SMUG further states that it is undertaking to quantify the damages it has suffered to date and will disclose to Defendant such information once it is complete.

Second Supplemental Response to Interrogatory No. 4:

SMUG incorporates its original and first supplemental response to Interrogatory No. 4 herein and further supplements its response to Interrogatory No. 4 as follows: SMUG seeks damages for the diversion of its resources that were required to protect SMUG from persecution and to counteract the effects of persecution, and for compensation for frustration of SMUG's purpose as a result of the harm SMUG has suffered to its standing and reputation in the community. While the specific amount of damages will by calculated by an expert witness and reflected in an expert report, the method for measuring the damages consists of identifying from SMUG's records those expenditures that relate to the above-mentioned categories. These expenditures are reflected on the documents bearing the Bates numbers listed below and include

expenditures for advocacy campaigns, public education, media work, legal costs, support to SMUG's member organizations, including in the form of capacity-building, operating costs, salaries, security costs, and costs relating to threats to staff.

SMUG002344	SMUG015500
SMUG002547	SMUG015510
SMUG003549	SMUG015536
SMUG004215	SMUG015549
SMUG004723	SMUG015569
SMUG004763	SMUG015596
SMUG004769	SMUG015615
SMUG004789	SMUG015616
SMUG004790	SMUG015644
SMUG004791	SMUG015658
SMUG004792	SMUG015665
SMUG004793	SMUG015708
SMUG005457	SMUG015719
SMUG005787	SMUG015724
SMUG006263	SMUG015810
SMUG006819	SMUG015811
SMUG007243	SMUG016686
SMUG007280	SMUG016954
SMUG007281	SMUG016961
SMUG007282	SMUG016967
SMUG007297	SMUG016977
SMUG007301	SMUG016987
SMUG007325	SMUG016996
SMUG007345	SMUG017179
SMUG007346	SMUG017283
SMUG007347	SMUG017640
SMUG007348	SMUG017656
SMUG007352	SMUG017661
SMUG007356	SMUG017692
SMUG007360	SMUG017701
SMUG007362	SMUG017725
SMUG007364	SMUG017888
SMUG007366	SMUG018022
SMUG007367	SMUG018084
SMUG007368	SMUG018142
SMUG008976	SMUG018150
SMUG009027	SMUG018158
SMUG009366	SMUG018167
SMUG009372	SMUG018174
SMUG010550	SMUG018181
SMUG010783	SMUG018197

SMUG012616	SMUG018199
SMUG012632	SMUG018208
SMUG012724	SMUG018210
SMUG012729	SMUG018215
SMUG012739	SMUG018509
SMUG012748	SMUG018511
SMUG012760	SMUG018550
SMUG012767	SMUG018552
SMUG012774	SMUG018592
SMUG012781	SMUG018602
SMUG012788	SMUG018829
SMUG012795	SMUG018883
SMUG012802	SMUG018915
SMUG012809	SMUG018946
SMUG012816	SMUG019190
SMUG012825	SMUG019191
SMUG012834	SMUG019200
SMUG012843	SMUG019201
SMUG012852	SMUG019206
SMUG012853	SMUG019247
SMUG012883	SMUG019248
SMUG012889	SMUG019395
SMUG012896	SMUG020087
SMUG012907	SMUG020088
SMUG012912	SMUG020091
SMUG012926	SMUG022886
SMUG013968	SMUG022936
SMUG014264	SMUG022946
SMUG014266	SMUG022977
SMUG015144	SMUG023156
SMUG015147	SMUG023167
SMUG015160	SMUG024260
SMUG015166	SMUG024433
SMUG015206	SMUG024531
SMUG015236	SMUG024581
SMUG015243	SMUG024582
SMUG015265	SMUG024584
SMUG015274	SMUG024606
SMUG015275	SMUG024616
SMUG015276	SMUG024617
SMUG015277	SMUG024648
SMUG015284	SMUG024651
SMUG015288	SMUG024750
SMUG015344	SMUG024779
SMUG015357	SMUG024921
SMUG015374	

Third Supplemental Response to Interrogatory No. 4:

SMUG incorporates its original and first supplemental response to Interrogatory No. 4 herein and amends its second supplemental response to Interrogatory No. 4 as follows: Based on the documents listed here[1] and as explained in the spreadsheet attached as Exhibit A, the categories and amounts of past and ongoing harm to SMUG for which it seeks compensatory damages, and which SMUG reserves the right to supplement due to the ongoing nature of the persecution, are as follows:

- Compensation for diversion of SMUG's resources to protect SMUG from the persecution conspiracy and/or joint criminal enterprise as alleged in the Amended Complaint, including diversion of resources to seek redress and accountability for persecution of Plaintiff's staff members and raids of Plaintiff's meetings and to adopt additional security measures and relocate its operations, including but not limited to:

  - Costs incurred and staff time spent following the arbitrary arrest and detention of staff member(s) and following the harassment and threats faced by staff member(s) forcing them to temporarily relocate:

    $49,708

  - Costs incurred and staff time spent in responses to breach(es) to security of SMUG's operations:

    $0

  - Costs incurred and staff time spent to implement additional security measures due to heightened security risks:

    $4,695

- Compensation for diversion of SMUG's resources to counteract the persecution resulting from the conspiracy and/or joint criminal enterprise as alleged in the Amended Complaint, including resources used to conduct public education, political and legal advocacy, and media campaigns and to support SMUG's member organizations, some of which assist LGBTI persons who are denied access to critical services, forcibly evicted, forced to go into hiding or seek asylum, and/or arbitrarily arrested or detained, including but not limited to:

  - Costs incurred and staff time spent for public education, advocacy, and media campaigns to counteract the persecution:

[1] These documents were previously included in the list of documents disclosed in SMUG's second supplemental response to Interrogatory No. 4.

$251,897

- Costs incurred and staff time devoted to supporting SMUG's member organizations:

  $21,082

- Costs incurred and staff time spent bringing a constitutional challenge to the Anti- Homosexuality Act:

  $12

• Compensation for frustration of SMUG's purpose as a result of harm SMUG suffered to its standing and reputation in the community, attributes which are necessary to conduct its advocacy and education and outreach campaigns, due to the persecution conspiracy and/or joint criminal enterprise that Defendant has propelled and pursued as alleged in the Amended Complaint:

  An amount to be determined at trial.

Documents supporting the above damages calculations:

2007	
Document	**Page(s)**
SMUG014612	14621
SMUG015357	15361-9
2008	
Document	**Page(s)**
SMUG012883	12885-87
SMUG014264	14264
SMUG015236	15236-38
SMUG014266	14268-69
SMUG015265	15265-68
SMUG015344	15344-46
SMUG016977	16984-85
SMUG014271	14272-73
2009	
Document	**Page(s)**
SMUG012729	12729-38
SMUG012834	12834-39
SMUG015206	15206-22
SMUG015236	15240-42
SMUG015277	15277-84
SMUG015510	15518-19, 22-28
SMUG015374	15378

2010	
Document	**Page(s)**
SMUG015736	15736-37
SMUG024531	24531-36
SMUG009366	9366-70
SMUG015809	15809
SMUG015725	15725-27
SMUG015764	15764-67
2011	
Document	**Page(s)**
SMUG015809	15809-10
SMUG015724	15724
SMUG016996	16696
SMUG015072	15072
SMUG018915	18915
SMUG022732	22732
SMUG015775	15775
SMUG015725	15725-27
2012	
Document	**Page(s)**
SMUG020868	20868-73
SMUG018181	18181-89
SMUG029547[2]	29547-53
SMUG006819	6819
2013	
Document	**Page(s)**
SMUG019190	19190
SMUG018158	18158-63
SMUG027061[3]	27061-62, 74-75, 79-80
SMUG018210	18210
SMUG017640	17640-47
SMUG004790	4790
SMUG007280	7280
SMUG007281	7281
SMUG007362	7362
2014	
Document	**Page(s)**
SMUG004792	4792-93
SMUG020092	20092
SMUG024581	24581
SMUG009027	9027
SMUG018946	18946-47

[2] *Reproduced version of SMUG017692.*
[3] *Reproduced version of SMUG007325.*

Dated: November 6, 2015

Luke Ryan (Bar No. 664999) 100 Main Street, Third Floor Northampton, MA 01060 413-586-4800 Phone 413-582-6419 Fax lryan@strhlaw.com Attorneys for Plaintiff	/s/ Pamela Spees Pamela C. Spees, admitted pro hac vice Baher Azmy, admitted pro hac vice Jeena Shah, admitted pro hac vice Center for Constitutional Rights 666 Broadway, 7th Floor New York, NY 10012 212-614-6431- Phone 212-614- 6499- Fax pspees@ccrjustice.org
	Mark S. Sullivan admitted pro hac vice Joshua Colangelo-Bryan admitted pro hac vice Gina S. Spiegelman admitted pro hac vice Daniel W. Beebe, admitted pro hac vice Kaleb McNeely, admitted pro hac vice Vikram Kumar, admitted pro hac vice Dorsey & Whitney LLP 51 West 52nd Street New York, NY 10019 212-415-9200- Phone 212-953-7201 - Fax sullivan.mark@dorsey.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th of November 2015, I served Plaintiff's Fifth Supplemental Responses to Defendant Scott Lively's First Set of Interrogatories by email to the following:

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Roger K. Gannam
LIBERTY COUNSEL
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Orlando, FL 32854-0774
hmihet@ lc.org

Attorneys for Defendant Scott Lively

/s/ Kaleb McNeely
Kaleb McNeely

Exhibit A

DOCUMENT FILED UNDER SEAL

PURSUANT TO

ORDER REGARDING CONFIDENTIALITY OF CERTAIN DISCOVERY MATERIAL

(Dkt. 106)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

SEXUAL MINORITIES UGANDA,	)	
	)	
Plaintiff,	)	**Civil Action No.**
	)	
v.	)	**3:12-CV-30051**
	)	
SCOTT LIVELY, individually and as President of Abiding Truth Ministries,	)	
	)	
Defendant.	)	

PLAINTIFF'S RULE 26(a)(1) INITIAL DISCLOSURES

Plaintiff, through its undersigned counsel, hereby provides the following initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1). These initial disclosures reflect the current knowledge of Plaintiff and its counsel and are subject to, and made without waiving, Plaintiff's right to assert any and all objections to relevancy, attorney-client privilege, attorney work product privilege, associational privilege, use or admissibility of evidence of any of these initial disclosures, or the subject matter of these initial disclosures, in this matter. Plaintiff reserves the right to supplement, amend, or otherwise modify these initial disclosures as additional investigation and discovery are conducted.

The names and contact information for certain witnesses may have been withheld from these disclosures due to concerns regarding their personal security and freedom of association. Plaintiff reserves the right to supplement these disclosures following the entry of a protective order in this litigation.

Plaintiff's attempts to register as a non-governmental organization under Ugandan law;

2. Electronic and hard copy documents and communications reflecting Plaintiff's advocacy on behalf of its members and the LGBTI community in Uganda;

3. Electronic and hard copy documents and communications reflecting instances of persecution against Plaintiff, its members, and the LGBTI community in Uganda; and

4. Electronic and hard copy documents and communications reflecting resources used for security for Plaintiff and services to Plaintiff's members and the LGBTI community in Uganda in response to the persecution.

C. Computation of Damages Pursuant to Rule 26(a)(1)(A)(iii)

Plaintiff has not yet finalized its computation of damages, but will provide this information to Defendant as soon as expert reports are delivered and damages are computed.

D. Disclosure of Insurance Agreement Pursuant to Rule 26(a)(1)(A)(iv)

Plaintiff has no insurance agreement to produce pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(iv).

Dated: December 10, 2013

Respectfully submitted,

/s/ Pamela Spees

Pamela C. Spees, *admitted pro hac vice*
Baher Azmy, *admitted pro hac vice*
Jeena Shah, *admitted pro hac vice*
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th of December 2013, I served Plaintiff's Rule 26(a)(1) Initial Disclosures by email to the following:

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Horatio G. Mihet
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Attorneys for Defendant Scott Lively

/s/Pamela Spees
Pamela Spees

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

SEXUAL MINORITIES UGANDA,	)	
	)	
Plaintiff,	)	**Civil Action No.**
	)	
v.	)	**3:12-CV-30051**
	)	
SCOTT LIVELY, individually and as President of Abiding Truth Ministries,	)	
	)	
Defendant.	)	

PLAINTIFF'S SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES

Plaintiff, through its undersigned counsel, hereby provides the following supplemental disclosures pursuant to Fed. R. Civ. P. 26(a)(1). These supplemental disclosures, along with Plaintiff's initial disclosures served on Defendant's counsel on December 10, 2013, reflect the current knowledge of Plaintiff and its counsel and are subject to, and made without waiving, Plaintiff's right to assert any and all objections to relevancy, attorney-client privilege, attorney work product privilege, associational privilege, use or admissibility of evidence of any of these initial disclosures, or the subject matter of these initial disclosures, in this matter. Plaintiff reserves the right to supplement, amend, or otherwise modify these disclosures as additional investigation and discovery are conducted.

Computation of Damages Pursuant to Rule 26(a)(1)(A)(iii)

As set forth in Plaintiff's First Amended Complaint ("FAC") (dkt. 27 at 59-60), Plaintiff seeks compensatory damages, punitive and exemplary damages, and reasonable attorneys' fees and costs of suit, in addition to equitable relief. While, at this stage in the litigation, it is

premature for Plaintiff to provide an estimate as to the damages sought, Plaintiff provides the following categories of injuries for which it seeks compensatory damages:

- Compensation for diversion of resources to protect Plaintiff from the persecution conspiracy and/or joint criminal enterprise that Defendant has propelled and pursued as alleged in the FAC, including diversion of resources to seek redress and accountability for persecution of Plaintiff's staff members and raids of Plaintiff's meetings and to adopt additional security measures and relocate its operations;
- Compensation for diversion of resources to identify and counteract incidents of persecution resulting from the conspiracy and/or joint criminal enterprise that Defendant has propelled and pursued as alleged in the FAC, including resources used to assist lesbian, gay, bisexual, transsexual, and intersex persons denied access to critical services, forcibly evicted, forced to go into hiding or seek asylum, and/or arbitrarily arrested or detained;
- Compensation for frustration of Plaintiff's purpose as a result of harm Plaintiff suffered to its standing and reputation in the community necessary to conduct its advocacy and education and outreach campaigns, due to the persecution conspiracy and/or joint criminal enterprise that Defendant has propelled and pursued as alleged in the FAC; and
- Compensation for the violation of Plaintiff's rights to expression, assembly, and association as a result of the persecution conspiracy and/or joint criminal enterprise that Defendant has propelled and pursued as alleged in the FAC.

Plaintiff will provide its computation of damages as soon as expert reports are delivered and damages are computed.

Dated: December 20, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th of December 2013, I served Plaintiff's Supplemental Rule 26(a)(1) Disclosures by email to the following:

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