

**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.	:	

**DEFENDANT SCOTT LIVELY’S OPPOSITION TO PLAINTIFF’S MOTION FOR
EXTENSION OF TIME TO FILE SUMMARY JUDGMENT OPPOSITION**

The Court should deny the extension of time to file a summary judgment opposition requested by Plaintiff, Sexual Minorities Uganda (“SMUG”), in the same way and for the same reasons the Court denied the similar request of Defendant Scott Lively (“Lively”) to file his dispositive motion: the Court has already granted multiple previous extension requests, and granting the request herein would require the rescheduling of the summary judgment hearing, which the Court has already indicated is not willing to reschedule. (Dkt. 243). In addition, Lively briefly shows the Court the following:

1) It is true that Lively’s Brief in Support of his Motion for Summary Judgment is long, and covers complex issues. It is also true that the reason for this is the nature and sheer number of issues that SMUG has chosen to bring before this Court in this lawsuit.

2) Moreover, as previously noted by Lively (dkt. 247, ¶ 6), the length of the legal argument in his summary judgment brief is in line with (just slightly longer than) his earlier 100+ page brief in support of his motion to dismiss. Both the Court and SMUG must have anticipated that Lively’s summary judgment brief would be at least as long as his motion to

dismiss brief, and yet the one-month timeframe for SMUG to oppose Lively's summary judgment motion (already more generous than the 21 days allotted by L.R. 56.1) has been part of the Court's scheduling orders throughout this entire action. Nothing has changed.

3) What makes Lively's combined summary judgment brief appear substantially longer than his motion to dismiss brief is the inclusion of the 42-page Statement of Material Facts, separately required by L.R. 56.1. Lively could have filed this Statement separately, but chose to include it in his summary judgment brief for the sake of convenience and continuity. Critically, the Statement of Material Facts is based upon the record in this case, which has been available to both Lively and SMUG for many months, even years. SMUG has been aware of the record facts for a long time, including of its own witnesses' repeated assertion of lack of knowledge for just about every element of SMUG's claims. The recitation of record facts by Lively, lengthy as it is, does not provide good cause for the Court to abandon the summary judgment hearing timeline to which it has firmly held the parties up to this point.

4) When the Court denied Lively's motion to secure more time to file Lively's summary judgment motion (dkt. 242), the Court concluded, "Granting this motion would in any event require rescheduling the dispositive motion hearing because the court will require adequate time to prepare." (Dkt. 243). The requested briefing schedule in SMUG's new motion would conclude at approximately the same time requested by Lively in his unsuccessful motion, implicating the same timing issue for the Court.

5) Finally, Lively's counsel would have the Court note that, for the reasons detailed in their unsuccessful motion for more time (dkt. 242), when the Court denied that motion on June 24, 2016 (dkt. 243) Lively's counsel still had not yet put "pen to paper" on Lively's dispositive motion, but had only been studying and organizing the massive record, which SMUG could do

as well. Immediately upon receiving the Court's stern rejection and admonition that no further delays would be tolerated in the resolution of this case, Lively's counsel embarked on a 10-day writing marathon, working literally around the clock, sleeping on average less than 4 hours per night, and missing intervening birthdays, family events and holidays.¹ Lively's counsel does not provide this information to complain about the short timeframe, but merely to illustrate that SMUG's task to respond to the motion within thirty days is both feasible and reasonable.

6) If Lively's three attorneys were able to complete Lively's summary judgment brief in 10 days from scratch, then surely SMUG's eleven² attorneys can complete SMUG's opposition in 30 days.

7) In sum, SMUG has presented no good reason for the Court to now depart from the rigorous briefing timeframe it has previously set, and from the Court's previous refusal to further postpone the summary judgment hearing and the ultimate resolution of this case. SMUG's motion for an extension of time should therefore be denied.

¹ Lively and his counsel greatly appreciated the holiday weekend (one-business day) extension the Court did grant (dks. 244, 245), and would not oppose a similar extension here, if the Reply timeframe (21-days) stays the same and the summary judgment hearing does not change. However, since SMUG already has one month to file its opposition, a one-day or one-weekend extension may not materially benefit SMUG, while it would further shorten the Court's already limited time for adequate preparation prior to the summary judgment hearing.

² There are eleven counsel of record for SMUG currently listed as active in this case on the court's docket. In addition, SMUG has been represented by several additional counsel, not of record, at depositions (bringing the total to around fourteen), and SMUG is receiving research assistance from the legal clinics of at least one law school.

Respectfully submitted,

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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 11, 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