

**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	:	MAGISTRATE JUDGE
president of Abiding Truth Ministries,	:	KATHERINE A. ROBERTSON
	:	
Defendant.	:	

**DEFENDANT SCOTT LIVELY’S EMERGENCY MOTION
FOR TELEPHONIC HEARING ON PLAINTIFFS’ FORTHCOMING
MOTION FOR LEAVE TO FILE POST-HEARING BRIEF**

Defendant, SCOTT LIVELY (“Lively”), moves the Court, on an emergency basis, for a telephonic hearing to address the forthcoming motion of Plaintiff, SEXUAL MINORITIES UGANDA (“SMUG”), for leave to file another, post-hearing brief in opposition to Lively’s Motion for Summary Judgment (dkt. 248).

Counsel for SMUG notified the undersigned counsel for Lively, yesterday, that SMUG intends to seek leave of Court to file a post-hearing brief on **issues already addressed** in previous briefing and at last Wednesday’s hearing:

The proposed brief will (1) address the Court’s question regarding the contours of a permissible injunction; and (2) identify the record evidence of U.S.-based conduct SMUG contends is relevant in evaluating ATS jurisdiction post-Kiobel.^[1]

¹ The two issues SMUG proposes for its additional brief are direct corollaries to the two questions the Court requested the parties to address at the hearing. (Dkt. 321.) The Court’s question at the hearing regarding what speech or conduct of Lively could be enjoined sought the same answer as the Court’s question in its pre-hearing Order, “what specific speech or conduct by Defendant . . . fell outside the protection of the First Amendment?” (*Id.* at 1-2.)

(E-mail exchange between K. McNeely and R. Gannam, Nov. 14, 2016, attached hereto as Exhibit A.)

SMUG has already filed over 3,000 pages in opposition to Lively, which included a sur-reply allowed over Lively's objection, and presented nearly an hour of argument at the hearing. Allowing still more argument, to which Lively would have to respond, would be both excessive and unfair.

The undersigned quickly notified SMUG's counsel that Lively will oppose the motion for leave. (Ex. A.) Lively expects, however, that SMUG will proceed with drafting its proposed additional brief and attach it to the motion for leave. Accordingly, Lively respectfully requests an immediate telephonic hearing to address Lively's opposition to the additional brief, before SMUG files it, to avoid imposing on Lively the iniquitous burden of opposing the filing after-the-fact, when the bell cannot be un-rung.

Respectfully submitted,

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/s/ Roger K. Gannam
Mathew D. Staver[†]
Horatio G. Mihet[†]
Roger K. Gannam[†]
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Attorneys for Defendant
[†]Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court on November 15, 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

From: [Roger Gannam](#)
To: mcneely.kaleb@dorsey.com; [Horatio Mihet](#)
Cc: PSpees@ccrjustice.org; beebe.daniel@dorsey.com
Subject: RE: SMUG v. Lively - SMUG Motion for Leave to File Post-Hearing Brief
Date: Monday, November 14, 2016 5:31:53 PM
Attachments: [image001.png](#)
[image004.png](#)

Kaleb,

Respectfully, those horses are dead. Lively will oppose the motion.

Regards, Roger

(Sent from my mobile)

Roger K. Gannam, Esq.*
Assistant Vice President of Legal Affairs
Liberty Counsel
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----- Original message -----

From: mcneely.kaleb@dorsey.com
Date: 11/14/16 5:16 PM (GMT-05:00)
To: Roger Gannam <rgannam@lc.org>, Horatio Mihet <hmihet@lc.org>
Cc: PSpees@ccrjustice.org, beebe.daniel@dorsey.com
Subject: RE: SMUG v. Lively - SMUG Motion for Leave to File Post-Hearing Brief

Roger,

The proposed brief will (1) address the Court's question regarding the contours of a permissible injunction; and (2) identify the record evidence of U.S.-based conduct SMUG contends is relevant in evaluating ATS jurisdiction post-Kiobel.

Regards,
Kaleb

Kaleb McNeely

Associate



DORSEY & WHITNEY LLP
51 West 52nd Street | New York, NY 10019-6119

EXHIBIT A

P: 212.415.9215 F: 212.953.7201 C: 9178162491

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From: Roger Gannam [mailto:rgannam@lc.org]
Sent: Monday, November 14, 2016 2:21 PM
To: McNeely, Kaleb; Horatio Mihet
Cc: PSpees@ccrjustice.org; Beebe, Daniel
Subject: RE: SMUG v. Lively - SMUG Motion for Leave to File Post-Hearing Brief

Kaleb, what would be the proposed content of the brief?

Roger K. Gannam, Esq.
Assistant Vice President of Legal Affairs
Liberty Counsel

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From: mcneely.kaleb@dorsey.com [mailto:mcneely.kaleb@dorsey.com]
Sent: Monday, November 14, 2016 2:18 PM
To: Roger Gannam <rgannam@lc.org>; Horatio Mihet <hmihet@lc.org>
Cc: PSpees@ccrjustice.org; beebe.daniel@dorsey.com
Subject: SMUG v. Lively - SMUG Motion for Leave to File Post-Hearing Brief

Roger/Harry,

SMUG intends to file a Motion for Leave to File a Post-Hearing Brief. Could you let us know if you consent or oppose that intended motion? Thank you.

Regards,
Kaleb

Kaleb McNeely

Associate



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