



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Rhonda Lynch
Paralegal

**TO: Mayor Jordan
City Council**

CC: Don Marr, Chief of Staff

FROM: Kit Williams, City Attorney

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

DATE: May 11, 2017

RE: Amended Answer filed, Motion for Enlargement of Time to respond to the State's Summary Judgment Motion

On April 7, 2017, the City filed its Amended Answer in the Uniform Civil Rights Protection Ordinance Case (copy attached). At the same time, we filed a Motion for Enlargement of Time to respond to the State's motion for summary judgment (copy attached). We requested such extension of time to "permit discovery to proceed." (paragraph 2).

The major disputed fact issue is whether the State of Arkansas by its legislative branch exhibited sufficient animus against our gay, lesbian and transgender citizens when passing Act 137 of 2015 to deny our citizens the protection of the Equal Protection of the Laws Clause of the 14th Amendment of the United States Constitution. The City had presented exhibits within its Response to the State's Motion for Summary Judgment including news interviews and a tweet from Senator Hester (the Senate sponsor of Act 137) and a letter and news article statements of Representative Ballinger (the House sponsor of Act 137.)

The State objected to the Court's consideration of these items at the hearing on the Motions for Summary Judgment. However, since the Circuit Court did not then decide the issue of the constitutionality of Act 137, his tentative ruling that he would consider our exhibits was not a necessary part of the Court's final decision. The Attorney General tried to get the Arkansas

Supreme Court to decide the constitutional issue during the appeal that our ordinance did comply with Act 137 even though the Court's consistent holdings would not allow them to rule on an issue not decided by the trial court. The Attorney General repeatedly criticized the evidence of animus as too meager to support an Equal Protection of the Laws claim.

Accordingly, when the Arkansas Supreme Court agreed with my arguments that it should follow its established rules and return the issue of the constitutionality of Act 137 of 2015 to the Circuit Court, we decided we should request enough time to conduct discovery and possibly depose Senator Hester and Representative Ballinger about their statements and tweets about our Civil Rights Ordinance and Act 137. Their statements under oath would then certainly be admissible in Court and cure some of the objections of the Attorney General and Plaintiffs. It would also give these Legislators an opportunity to clarify and expand on their statements.

Judge Martin granted our Motion for Enlargement of Time and granted us 120 days from May 9, 2017 to complete discovery and respond to Plaintiffs' and the State's Motions for Summary Judgment (copy of Order attached). I calculate this time to be until September 6, 2017.

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

PROTECT FAYETTEVILLE, f/k/a REPEAL 119;
PAUL SAGAN; PETER TONNESSEN;
and PAUL PHANEUF

PLAINTIFFS

vs.

Case No.: CV 15-1510-1

THE CITY OF FAYETTEVILLE, ARKANSAS, WASHINGTON COUNTY, ARKANSAS; LIONELD JORDAN, in his official capacity as MAYOR OF THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS; ADELLA GRAY, SARAH MARSH, MARK KINION, MATTHEW PETTY, ALAN LONG, and JUSTIN TENNANT, Individually and, in their official capacities as ALDERMEN OF THE FAYETTEVILLE CITY COUNCIL; MARTIN W. SCHOPPMAYER, JR., and JOHN LA TOUR, In their official capacities as ALDERMEN OF THE FAYETTEVILLE CITY COUNCIL; THE HON. RENEE OELSCHLAEGER, THE HON. MAX DEITCHLER, and THE HON. BILL ACKERMAN, in their official capacities as the COMMISSIONERS of the WASHINGTON COUNTY ELECTION COMMISSION

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CIRCUIT CLERK
K. SYLVESTER

DEFENDANTS

MOTION FOR ENLARGEMENT OF TIME

Comes now the City of Fayetteville, Mayor and all Fayetteville City Aldermen as named in Plaintiffs' Complaint (collectively the "City"), by and through Fayetteville City Attorney Kit Williams, and for City's motion to enlarge the time to respond to the State's motion for summary judgment states as follows:

1. In its March 28, 2017 filing, the State noted that it "has no objection if the Court wishes to receive supplemental summary-judgment briefing and/or oral argument on the constitutional question."

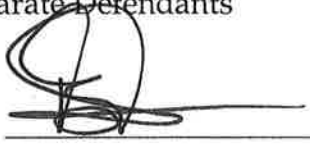
2. Therefore, the City requests additional time pursuant to the provisions of Ark. R. Civ. P. 56(c)(1) to respond to the State's motion for summary judgment that will permit discovery to proceed.

WHEREFORE, Defendants City of Fayetteville and its officials pray that the Court enlarge the time in which the City may respond to the State's motion for summary judgment.

Respectfully submitted,

**City of Fayetteville, Arkansas
Mayor Lioneld Jordan and
Aldermen of the Fayetteville City Council**

Separate Defendants

By:  _____

KIT WILLIAMS, ABA # 76007

Fayetteville City Attorney

and

BLAKE PENNINGTON, ABA # 2008223

Assistant City Attorney

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IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

PROTECT FAYETTEVILLE, f/k/a REPEAL 119;
PAUL SAGAN; PETER TONNESSEN;
and PAUL PHANEUF

vs.

Case No.: CV 15-1510-1

THE CITY OF FAYETTEVILLE, ARKANSAS, WASHINGTON COUNTY, ARKANSAS; LIONELD JORDAN, in his official capacity as MAYOR OF THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS; ADELLA GRAY, SARAH MARSH, MARK KINION, MATTHEW PETTY, ALAN LONG, and JUSTIN TENNANT, Individually and, in their official capacities as ALDERMEN OF THE FAYETTEVILLE CITY COUNCIL; MARTIN W. SCHOPPMAYER, JR., and JOHN LA TOUR, In their official capacities as ALDERMEN OF THE FAYETTEVILLE CITY COUNCIL; THE HON. RENEE OELSCHLAEGER, THE HON. MAX DEITCHLER, and THE HON. BILL ACKERMAN, in their official capacities as the COMMISSIONERS of the WASHINGTON COUNTY ELECTION COMMISSION

PLAINTIFFS
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DEFENDANTS

BRIEF IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME

Comes now the City of Fayetteville, Mayor and all Fayetteville City Aldermen as named in Plaintiffs' Complaint (collectively the "City"), by and through Fayetteville City Attorney Kit Williams and Assistant City Attorney Blake Pennington, and for City's brief in support of motion to enlarge the time to respond to the State's motion for summary judgment states as follows:

1. Ark. R. Civ. P. 56(c)(1) provides that "[f]or good cause shown, the court may by order reduce or enlarge the...time periods" to respond to a motion for summary judgment.
2. Given the amount of time that has passed since oral arguments in this matter, as well as new rulings in the federal courts on issues that potentially affect this

case, the City states that additional discovery is necessary in order to prepare a thorough response to the State's motion for summary judgment.

3. Furthermore, the City contends that additional discovery is likely to produce more genuine issues of material fact such that granting summary judgment would not be appropriate.

4. Given the State's position that it has no objection to supplementary briefing or oral argument on the question of the constitutionality of Act 137, there will be no prejudice to any of the parties if the City is granted its request for enlargement of time.

WHEREFORE, Defendants City of Fayetteville and its officials pray that the Court enlarge the time in which the City may respond to the State's motion for summary judgment.

Respectfully submitted,

City of Fayetteville, Arkansas
Mayor Lioneld Jordan and
Aldermen of the Fayetteville City Council

Separate Defendants

By: 

KIT WILLIAMS, ABA # 76007

Fayetteville City Attorney

and

BLAKE PENNINGTON, ABA # 2008223

Assistant City Attorney

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IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
FIRST DIVISION

PROTECT FAYETTEVILLE, f/k/a
REPEAL 119; PAUL SAGAIN;
PETER TONNESSON; and
PAUL PHANEUF

PLAINTIFFS

and

THE STATE OF ARKANSAS

VS.

NO. CV 2015-1510-1

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WASHINGTON CO. AR
CIRCUIT CLERK
K. SYLVESTER

THE CITY OF FAYETTEVILLE, ARKANSAS,
Washington County, Arkansas;
LIONELD JORDAN, in his official
capacity as Mayor of Fayetteville;
ADELLA GRAY, SARAH MARSH,
MARK KINION, MATTHEW PETTY,
JUSTIN TENANT, MARTIN W.
SCHOPPMAYER, JR., JOHN LATOUR
and ALAN LONG, in their official capacities
as Aldermen of the Fayetteville City Council;
The HON. RENEE OELSCHLAEGER,
The HON. MAX DEITCHLER, and
The HON. BILL ACKERMAN, in their official
capacities as the COMMISSIONERS of the
WASHINGTON COUNTY ELECTION COMMISSION

DEFENDANTS

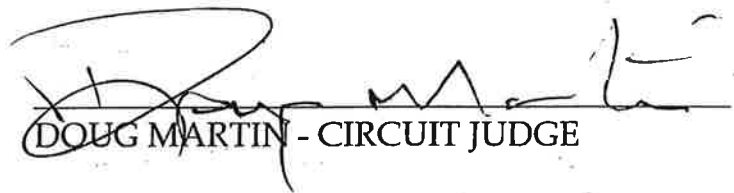
**ORDER GRANTING MOTION FOR
ENLARGEMENT OF TIME**

Now on this 9 day of May, 2017, comes on for decision the Motion for
Enlargement of Time filed by "the City of Fayetteville, Mayor and all Fayetteville
City Aldermen named in Plaintiff's Complaint," and having reviewed and
considered the motion and brief in support thereof, the State's Response to the City

of Fayetteville's Motion for Enlargement of Time, and the Brief in Support of Reply to the State's Response to the City of Fayetteville's Motion for Enlargement of Time, the court finds that the motion should be granted.

The City of Fayetteville, Mayor and all Fayetteville City Aldermen named in Plaintiffs' Complaint are hereby granted an enlargement of time of 120 days from the date of entry of this order in which to respond to the State's motion for summary judgment.

IT IS SO ORDERED.


DOUG MARTIN - CIRCUIT JUDGE

File-Marked Copies to:

Mr. Travis Story, Via email: travis@storylawfirm.com
Mr. Kit Williams, Via email: kwilliams@ci.fayetteville.ar.us
Mr. Colin Jorgensen, Via email: colin.jorgensen@arkansasag.gov
Ms. Holly Dickson, via email: holly@acluarkansas.org
Mr. Lee Rudofsky, via email: lee.rudofsky@arkansasag.gov
Mr. Clarke Tucker, via email: ctucker@qgtb.com