

NO. CV-14-427

BEFORE THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

v.

M. KENDALL WRIGHT, et al.

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APPELLANT
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On Appeal from the Circuit Court of Pulaski County

Honorable Chris Piazza, Presiding Judge

**BRIEF OF AMICI CURIAE EPISCOPAL BISHOP
LARRY R. BENFIELD OF THE DIOCESE
OF ARKANSAS, ET AL.**

Jeffrey S. Trachtman
Norman C. Simon
Jason M. Moff
Kurt M. Denk
Anna Schoenfelder
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
212-715-9100
jtrachtman@kramerlevin.com

John R. Tisdale (75127)
Gary D. Marts, Jr. (2004116)
Johnathan D. Horton (2002055)
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
FAX: (501) 376-9442
gmarts@wlj.com

Admission Pro Hac Vice Pending

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FAX: (501) 376-9442
gmarts@wlj.com

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ABSTRACT

Amici curiae adopt the Abstract of the Plaintiffs/Appellees (“Appellees”).

STATEMENT OF THE CASE

Appellees are same-sex couples who seek to marry in Arkansas and same-sex couples who seek Arkansas's recognition of marriages solemnized in other states. The Pulaski County Circuit Court (Piazza, J.) granted Appellees' motion for summary judgment on May 9, 2014. ADD 786.

Appellants urge reversal, in part, on the premise that Arkansas's exclusion of same-sex couples from marriage is a rationally permissible means of "preserv[ing] . . . the public purposes and social norms linked to the historical and deeply-rooted meaning of marriage." Br. of Appellants Nathaniel Smith, *et al.*, at Arg 26 (Sept. 15, 2014) (No. CV-14-427) (citing *Maynard v. Hill*, 125 U.S. 190, 211 (1888)). *Amicus Curiae* Bishop of the Roman Catholic Diocese of Little Rock likewise supports reversal, citing "a strong interest in protecting the traditional institution of husband-wife marriage because of the religious beliefs of [the Diocese's] members." Br. of *Amicus Curiae* Anthony B. Taylor, Bishop of the Roman Catholic Diocese of Little Rock, at SOC 2 (Sept. 15, 2014) (No. CV-14-427).

Amici curiae here ("*Amici*") represent diverse religious stakeholders who have approached issues affecting lesbian and gay people and their families in different ways over the years, but are united in supporting equal treatment for same-sex couples with respect to civil marriage. (The individual interests of *Amici* are listed in the Appendix.)

INTRODUCTION AND SUMMARY OF ARGUMENT

Over a century and a half ago, Alexis de Tocqueville reflected on religion's central role in the birth of the English colonies in America and its "peculiar power" in the cultural life of the United States, simultaneously observing the necessary corollary that lies at the heart of religious freedom: "In America religion has, if one may put it so, defined its own limits. There the structure of religious life has remained entirely distinct from the political organization. It has therefore been easy to change ancient laws without shaking the foundations of ancient beliefs."¹

Tocqueville's reflection bears directly on this case. By historical and legal tradition, American pluralism extends to religion and its expression. *Amici* here submit that the judgment below should be affirmed as consistent with fundamental principles of both equal protection and religious freedom. For the American religious panorama embraces a multitude of theological perspectives on lesbian and gay people and same-sex relationships. A vast range of religious perspectives affirms the inherent dignity of lesbian and gay people, their relationships, and their families. This affirmation reflects the deeply rooted belief, common to many faiths, in the essential worth of all individuals and, more particularly, the growing

¹ Alexis de Tocqueville, *Democracy in America*, Vol. II, Part 1, Ch. 1, at 432 (J.P. Mayer ed. (1969), George Lawrence trans. (1966), First Harper Perennial Modern Classics (2006)) (paragraph break omitted).

respect accorded within theological traditions to same-sex couples. Thus, some faiths celebrate same-sex couples' marriages identically to those of different-sex couples. Others solemnize same-sex relationships in ways other than marriage.

Faiths embracing same-sex couples – theologically, and with respect to the distinct issue of equality under civil law – participate in mainstream American religious observance. They include Mainline Protestant denominations such as the United Church of Christ and the Episcopal Church; the Unitarian Universalist Church; portions of the Religious Society of Friends (Quakers); and Judaism's Reform, Reconstructionist, and Conservative movements. Millions of religious individuals embrace and celebrate same-sex couples, including members of many other Mainline and Evangelical Protestant denominations, Roman Catholics, Mormons, Orthodox Jews, and Muslims. This grand mosaic includes Arkansans, many of whom – of diverse faiths – celebrate and embrace equal rights for same-sex couples and their families. *Amici* Arkansas faith leaders are a testament to this growing embrace of equality within mainstream religions in the state.

Eliminating discrimination in civil marriage will not impinge upon religious doctrine or practice. All religions would remain free – as they are today with nineteen states and the District of Columbia permitting same-sex couples to marry – to define *religious* marriage any way they choose. Nor would affirmance interfere with religious institutions' or individuals' constitutionally protected

speech or activities. Any “religious liberty” concerns implied by this case appear to relate to conflicts that already can and sometimes do arise under public accommodation laws whenever religiously affiliated organizations operate in commercial or governmental spheres. Courts know how to respond if civil rights law enforcement infringes First Amendment rights.

As Appellants are well aware, *see* Appellants’ Br. at Ab 92 (citing R 001787-88), Plaintiffs’ counsel argued below that courts that have “address[ed] the history and tradition argument” in cases challenging same-sex couples’ exclusion from marriage “have pointed out that marriage has its roots in religion” *and* “that the analysis can’t depend on religious doctrine. . . . [W]hen the government’s in the marriage business, same-sex couples have to be treated the same, *but no religious organization will have to change its policies to accommodate [] same-gender couples, no religious clergy will be required to solemnize a marriage in contravention of his or her religious beliefs.*” (emphasis added).

Amici accordingly urge that civil recognition of same-sex relationships, including through lawful marriage, is fundamentally consistent with the religious pluralism woven into the fabric of American law, culture, and society. Affirmance here would not “take sides” with one religious view against another or constitute an attack on religion. Nor would it signal a judicial imprimatur on changing social mores. Rather, affirmance would recognize the creative tension inherent in

religions' interface with our pluralistic, changing society while confirming that all, regardless of faith, are entitled to equal protection under the law.

ARGUMENT

The American religious landscape is vast and diverse. According to one national survey, more than 90% of Americans believe in God or a universal spirit and more than 80% have some formal religious affiliation.² In Arkansas, 53% of the population has identified as Evangelical Protestant, 16% as Mainline Protestant, 10% as Historically Black Protestant, and 5% as Catholic, with another 13% Unaffiliated.³ At the same time, religious adherents differ on contentious issues. Religious bodies have themselves evolved and disagreed over time -- on marriage, and on other civil rights and social issues, such as usury or slavery.⁴ For example, the American Baptist Church once endorsed racial segregation in

² U.S. Religious Landscape Survey, Pew Forum on Religion & Public Life, *Religious Beliefs and Practices: Diverse and Politically Relevant* (June 2008), at 5, 8, available at <http://religions.pewforum.org/pdf/report2-religious-landscape-study-full.pdf>. This, and all Web references, *infra*, were last visited Oct. 1, 2014.

³ U.S. Religious Landscape Survey, Pew Forum on Religion & Public Life, *Religious Affiliation: Diverse and Dynamic* (February 2008), at 99, available at <http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf>.

⁴ Michael Perry, *Religion in Politics*, 29 U.C. Davis L. Rev. 729, 772 n.94 (1996).

churches and other institutions, but later revised that view.⁵ Given the wide range of modern religious thought on same-sex unions, it would be a mistake to elevate any one view on marriage above all others as the “Christian” or “religious” view. It also would be constitutionally inappropriate, because civil marriage is a secular institution, *see Maynard v. Hill*, 125 U.S. 190, 210 (1888), and the Constitution bars the government from favoring certain religious views over others, *see Larson v. Valente*, 456 U.S. 228, 244 (1982). Religious freedom means that all voices may contribute to our national conversation, but particular religious perspectives on marriage cannot be permitted to control the civil definition of marriage for all.

I. A Wide Cross-Section Of American Religious Traditions Recognizes The Dignity Of Lesbian And Gay People And Their Relationships

With time, and across traditions, religious Americans have affirmed that the dignity of lesbian and gay people logically and theologically follows from the premise that all persons have inherent dignity. In some traditions, this affirmation has affected religious practice – *e.g.*, in clergy ordination. In others, it has led to various forms of religious affirmation of same-sex unions. All of this confirms that no one “religious” view of even the rite of marriage predominates in America,

⁵ Pamela Smoot, *Race Relations: How Do Baptists Treat Their Brothers and Sisters?*, in *History Speaks To Hard Questions Baptists Ask* (2009), available at <http://www.baptisthistory.org/smootracerelations.pdf>.

putting aside the separate question of whether there is a common religious viewpoint on access to civil marriage.

A. The Inherent Dignity Of Lesbian And Gay Individuals Informs The Theology Of Numerous Religious Believers And Bodies

Nearly three decades ago, the United Church of Christ, with 1.1 million members today, adopted a membership nondiscrimination policy regarding sexual orientation, citing Romans 12:4 (“Christians . . . are many members, but . . . one body in Christ”) and encouraging congregations to adopt “a Covenant of Openness and Affirmation” with lesbian and gay members of the faith.⁶ In 1989, the 45th General Assembly for the Union of Reform Judaism, which represents 1.3 million Reform Jews, resolved to “urge [its] member congregations to welcome gay and lesbian Jews to membership, as singles, couples, and families” and to “embark upon a movement-wide program of heightened awareness and education to achieve the fuller acceptance of gay and lesbian Jews in our midst.”⁷ Many other faiths in

⁶ Resolution, General Synod of the United Church of Christ, *Opening and Affirming Resolution* (July 2, 1985), available at <http://www.ucccoalition.org/about/history/ucc-actions/>.

⁷ Resolution, Union of Reform Judaism, 60th General Assembly, *Gay And Lesbian Jews* (Nov. 1989), available at http://urj.org/about/union/governance/reso/?syspage=article&item_id=2065.

Arkansas, and nationwide, similarly embrace the foundational theological belief in the dignity of lesbian and gay Americans *as persons*, including the Episcopal Church, the United Methodist Church, the Evangelical Lutheran Church in America, the Presbyterian Church (U.S.A.), the Unitarian Universalist Church, and Reconstructionist Judaism.⁸

⁸ See, respectively: Resolution 2006-A167, the 75th General Convention of The Episcopal Church (2006), *available at* http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2006-A167; United Methodist Church, *Social Principles & Creed*, *available at* <http://www.umc.org/what-we-believe/the-social-community>; Evangelical Lutheran Church in America, *Human Sexuality*, *available at* <http://www.elca.org/Faith/Faith-and-Society/Social-Statements/Human-Sexuality>; Final Report as approved by the 217th General Assembly, Theological Task Force on Peace, Unity and Purity of the Church, *A Season of Discernment*, at 20 (2006), *available at* <http://apps.pcusa.org/peaceunitypurity/finalreport/final-report-revised-english.pdf>; Business Resolution, General Assembly of the Unitarian Universalist Association, *Confronting Sexual Orientation and Gender Identity Discrimination* (2010), *available at* <http://www.uua.org/statements/statements/169267.shtml>; Rabbi Shawn I. Zevit, *JRF Homosexuality Report and Inclusion of GLBTQ Persons*, *available at* <http://archive.is/3a6x> (citing Reconstructionist Commission on

Religious individuals, too, have demonstrated an increasingly positive view of lesbian and gay Americans. According to a Public Religion Research Institute study, *the majority of Americans from most major religious groups* have positive moral and theological views of gay and lesbian people, including 62% of Roman Catholics, 63% of white Mainline Protestants, and 69% of religiously affiliated non-Christians.⁹ Many U.S. religious communities (including Roman Catholics and numerous major Protestant denominations) have a *majority* of individual adherents who view the denial of marriage rights to same-sex couples as unfair.¹⁰

Meanwhile, 57% of white Mainline Protestants and 50% of American Roman Catholics support the ordination of gay and lesbian clergy.¹¹ Unsurprisingly, therefore, some denominations – both Christian and Jewish – long

Homosexuality, *Homosexuality and Judaism: The Reconstructionist Position* (1993)).

⁹ Public Religion Research Institute, *Generations at Odds: The Millennial Generation and the Future of Gay and Lesbian Rights*, at 18-20 (Aug. 29, 2011), available at <http://publicreligion.org/site/wp-content/uploads/2011/09/PRRI-Report-on-Millennials-Religion-Gay-and-Lesbian-Issues-Survey.pdf>.

¹⁰ See discussion *infra*, notes 40-43 and accompanying text.

¹¹ Public Religion Research Institute, *supra* note 9, at 20.

have permitted openly lesbian and gay clergy. The Episcopal Church ordained its first openly gay priest in 1977, and the Unitarian Universalist Church called its first openly gay minister to serve as leader for a congregation in 1979.¹² The seminary for Reconstructionist Jews began accepting gay and lesbian applicants in 1984, and the Central Conference of American Rabbis endorsed the view in 1990 that “all rabbis, regardless of sexual orientation, be accorded the opportunity to fulfill the sacred vocation that they have chosen.”¹³ Others more recently have amended their practices to admit openly lesbian and gay people to various forms of

¹² See, respectively, Mireya Navarro, *Openly Gay Priest Ordained in Jersey*, N.Y. Times, Dec. 17, 1989, and Unitarian Universalist LGBT History Timeline, Unitarian Universalist Association of Congregations, *available at* <http://www.uua.org/lgbtq/history/20962.shtml>.

¹³ See, respectively, Zevit, *supra* note 8, and Central Conference of American Rabbis, *Report of the Ad Hoc Committee on Homosexuality and the Rabbinate of the Central Conference of American Rabbis Annual Convention*, at 261 (1990), *available at* http://borngay.procon.org/sourcefiles/CCAR_Homosexuality.pdf (“all Jews are religiously equal regardless of their sexual orientation”).

ministry.¹⁴ Whether it be the ordination of lesbian and gay clergy, the express welcome to lesbian and gay congregants and their families, or the affirmation that lesbian and gay individuals possess the same inherent dignity as any other person, the American religious landscape includes same-sex couples and their families, and affirms their role in both faith communities and civil society at large.

B. A Vast Spectrum Of American Faith Groups And Religious Observers Affirms Same-Sex Couples' Relationships In A Multitude Of Ways, Including By Celebrating And Solemnizing Their Marriages

Many faiths also more specifically accord doctrinal and theological affirmation to the loving, committed *relationships* that same-sex couples have elected to enter – unsurprisingly, in ways as diverse as America's religious.

¹⁴ See, e.g., Presbyterian Church (U.S.A.), *Presbyterian Church (U.S.A.) Approves Change In Ordination Standard* (May 10, 2011), available at <http://www.pcusa.org/news/2011/5/10/presbyterian-church-us-approves-change-ordination/>; Amy Stone, *Out and Ordained, New York's Jewish Theological Seminary Graduates its First Openly Lesbian Rabbi*, *Lilith* (2011), available at <http://lilith.org/articles/out-and-ordained/>; Sarah Pulliam Bailey, *ELCA Lutherans Elect First Openly Gay Bishop* (June 3, 2013), available at <http://www.religionnews.com/2013/06/03/elca-lutherans-elect-first-openly-gay-bishop/>.

families. For example, fifteen years ago the South Central Yearly Meeting (consisting of Arkansas, Louisiana, Missouri, Oklahoma, and Texas Quaker groups) affirmed their commitment to marriage equality in a meeting minute stating that “South Central Yearly Meeting endorses the marriages of individuals under the care of Monthly Meetings without regard to gender.”¹⁵ More recently, the General Assembly of the Presbyterian Church (U.S.A.) – the largest U.S. Presbyterian denomination – approved a recommendation permitting pastors to officiate at same-sex weddings and recommended that the Church’s 171 presbyteries ratify a change to the Book of Order indicating that “marriage involves a unique commitment between two people.”¹⁶ The Evangelical Lutheran Church in America has described the manner in which same-sex unions are, and are expected to be, like different-sex unions in several constitutive dimensions:

¹⁵ See South Central Yearly Meeting of Friends, *Minute* (1999), available at Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns, *Collected Marriage Minutes*, <http://flgbtqc.quaker.org/minutes.html>.

¹⁶ Press Release – Presbyterian Church (U.S.A.) *General Assembly Approves Recommendation Giving Pastors Discretion to Perform Same-Gender Marriage Ceremonies*, Presbyterian Church (U.S.A.), June 20, 2014, available at <http://www.pcusa.org/news/2014/6/20/press-release-presbyterian-church-us-general-assem/>.

“[T]he neighbor and community are best served when same-gender relationships are lived out with lifelong and monogamous commitments that are held to the same rigorous standards, sexual ethics, and status as heterosexual marriage. [We] surround such couples and their lifelong commitments with prayer to live in ways that glorify God”¹⁷

Support for same-sex relationships in religious doctrine and practice likewise has informed a diverse array of formal marriage rituals. The United Church of Christ promulgated a new Order for Marriage – a template for marriage ceremonies – that could be used in any marriage ceremony regardless of gender.¹⁸ The Unitarian Universalist Association began celebrating the unions of same-sex couples as it would any other consenting adult couple’s union in 1979 and formally affirmed this practice in 1984.¹⁹ The Conservative, Reform, and Reconstructionist

¹⁷ See, e.g., 11th Churchwide Assembly, Evangelical Lutheran Church in America, *Human Sexuality: Gift and Trust* at 20 (Aug. 19, 2009), available at <http://www.elca.org/Faith/Faith-and-Society/Social-Statements/Human-Sexuality>.

¹⁸ United Church of Christ, *Order for Marriage, An Inclusive Version*, available at http://www.ucc.org/worship/pdfs/323_346i_order-for-marriage-inclusive.pdf.

¹⁹ See LGBTQ Ministries Multicultural Growth and Witness, *LGBT History & Facts for Unitarian Universalists* (2012), available at <https://www.uua.org/>

Jewish movements allow their rabbis to perform religious wedding ceremonies for same-sex couples.²⁰ The Episcopal Church acknowledged in 2000 that its membership includes same-sex couples living in “lifelong committed relationships

documents/lgbtq/history.pdf; Resolution of Immediate Witness, General Assembly of the Unitarian Universalist Association, *Support of the Right to Marry for Same-Sex Couples* (1996), available at <https://www.uua.org/statements/statements/14251.shtml>; Unitarian Universalist Association, *Unitarian Universalist LGBTQ: History & Facts*, available at <http://www.uua.org/lgbtq/history/185789.shtml>.

²⁰ See, e.g., E. Dorff, D. Nevins, & A. Reisner, *Rituals and Documents of Marriage and Divorce for Same-Sex Couples*, Rabbinical Assembly (Spring 2012), available at <http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/same-sex-marriage-and-divorce-appendix.pdf> (Conservative movement); Resolution, 111th Convention of the Central Conference for American Rabbis, *Resolution On Same Gender Officiation* (Mar. 2000), available at <http://ccarnet.org/rabbis-speak/resolutions/2000/same-gender-officiation/> (Reform movement); *Reconstructionist Movement Endorses Civil Marriage for Same-Sex Couples* (Apr. 2004), Reconstructionist Rabbinical College, *et al.*, available at <http://www.rrc.edu/news-media/news/reconstructionist-movement-endorses-civil-marriage-same-sex-couples?print=1> (Reconstructionist movement).

... characterized by fidelity, monogamy, mutual affection and respect, careful, honest communication and the holy love which enables those in such relationships to see in each other the image of God,” and in 2012 approved a provisional liturgy for the blessing of same-sex unions that may be used with the permission of the local bishop.²¹ Individual Episcopal churches in Arkansas have been supporting same-sex marriage for years. For instance, St. Paul’s Episcopal Church in Fayetteville, Arkansas, began authorizing clergy to bless same-sex couples in 2006, long before the General Convention adopted a liturgy for church-wide use.²² And some faiths that do not celebrate or solemnize marriages of same-sex couples per se accord recognition to them in various other ways. For example, the

²¹ See Resolution 2000-D039, the 73rd General Convention of the Episcopal Church (2000), *available at* http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2000-D039; Resolution 2012-A049, the 77th General Convention of the Episcopal Church (2012), *available at* <http://www.generalconvention.org/old/gc/resolutions>.

²² Shelby Gill, *Blessings for Same-Sex Couples Expand from Northwest Arkansas to Episcopal Churches Worldwide*, Razorback Reporter, September 20, 2012, *available at* <https://wordpress.uark.edu/razorbackreporter/2012/09/blessings-for-same-sex-couples-expand-from-northwest-arkansas-to-episcopal-churches-worldwide>.

Evangelical Lutheran Church in America's 2009 Churchwide Assembly resolved by a vote of 619 to 402 to "commit itself to finding ways to allow congregations that choose to do so to recognize, support and hold publicly accountable lifelong, monogamous, same-gender relationships."²³ Following that action, more than 300 Evangelical Lutheran Church in America congregations have performed blessings over same-sex couples' unions, while many more have adopted other policies and practices affirming same-sex couples' relationships.²⁴

In short, even limited to the sphere of *religious* marriage, organized religion in the United States exhibits a tremendous diversity of views and practices regarding same-sex unions.

II. Recognizing The Necessary Distinction Between Civil And Religious Marriage, A Growing Number Of Faiths Support Civil Marriage Equality

Appellants invoke the Supreme Court's decision, more than a century ago, in *Maynard v. Hill* in defense of an "historical and deeply-rooted" view of the "meaning of marriage." Appellants' Br. at Arg 26 (citing 125 U.S. at 211). In

²³ Mark S. Hanson, *Message to Rostered Leaders* (Aug. 22, 2009), available at <http://stmarklutheran.wordpress.com/2009/08/22/now-tolerance-and-equality-next-domination>.

²⁴ See Reconciling Works, *RIC Congregations List*, available at <http://www.reconcilingworks.org/ric/ric-congregations-list#results>.

fact, however, *Maynard* specifically held that “marriage is often termed . . . a civil contract . . . and does not require any religious ceremony for its solemnization.”

125 U.S. at 210 (emphasis added). *Amici* are therefore mindful that their own theological perspectives on marriage are distinct from the civil law on marriage. Recognizing that civil and religious marriage necessarily are two different things, and further undercutting any claim that religion speaks with one voice on marriage, many religions – including those represented by *Amici* here – have distinct positions supporting equal *civil* marriage rights for same-sex couples.

Two Christian denominations that trace their history directly to the Puritans of New England support civil marriage for gay and lesbian couples.²⁵ Almost seventeen years ago, in 1996, the Unitarian Universalist Association formally resolved to support equal civil marriage rights.²⁶ In 2004, the Association further

²⁵ See generally Mark W. Harris, *Unitarian Universalist Origins: Our Historic Faith* (Oct. 2002), available at <http://www.uua.org/beliefs/history/151249.shtml>;

United Church of Christ, *Short Course in the History of the United Church of Christ*, available at <http://www.ucc.org/about-us/short-course/shortcourse.pdf>.

²⁶ Resolution of Immediate Witness, General Assembly of the Unitarian Universalist Association, *Support of the Right to Marry for Same-Sex Couples* (1996), available at <https://www.uua.org/statements/statements/14251.shtml>.

affirmed that “Civil Marriage is a Civil Right” and opposed any amendment of the United States Constitution to bar same-sex couples from marrying.²⁷ The following year, in 2005, the United Church of Christ “affirm[ed] equal marriage rights for couples regardless of gender and declar[ed] that the government should not interfere with couples regardless of gender who choose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage.”²⁸

In addition, in 1996 the Central Conference of American Rabbis (“CCAR”), of the Reform movement of Judaism, resolved to “support the right of gay and lesbian couples to share fully and equally in the rights of civil marriage.”²⁹ The Jewish Reconstructionist movement adopted a resolution in 2004 in favor of full

²⁷ Action of Immediate Witness, General Assembly of the Unitarian Universalist Association, *Oppose Federal Marriage Amendment* (2004), available at <http://www.uua.org/statements/statements/13433.shtml>.

²⁸ Resolution, General Synod of the United Church of Christ, *In Support of Equal Marriage Rights for All* (July 4, 2005), available at <http://www.ucc.org/assets/pdfs/in-support-of-equal-marriage-rights-for-all-with-background.pdf>.

²⁹ Resolution, 107th Convention of the Central Conference of American Rabbis, *On Gay and Lesbian Marriage* (Mar. 1996), available at <http://ccarnet.org/rabbis-speak/resolutions/1996/on-gay-and-lesbian-marriage-1996/>.

civil marriage equality for same-sex couples.³⁰ And the Rabbinical Assembly – representing Conservative Judaism – resolved in 2011 to “support the extension of civil rights and privileges granted to married persons to same sex couples” and, as early as 1990, had resolved to “work for full and equal civil rights for gays and lesbians in our national life.”³¹ In 2004, the Executive Committee of the American Friends Service Committee Board of Directors, of the Religious Society of Friends (Quakers), approved a “minute” at the direction of the full board setting forth its “support for equal civil marriage rights for lesbian, gay, bisexual, and transgender

³⁰ Reconstructionist Rabbinical College, *et al.*, *Reconstructionist Movement Endorses Civil Marriage for Same-Sex Couples* (Apr. 2004), available at <http://www.rrc.edu/news-media/news/reconstructionist-movement-endorses-civil-marriage-same-sex-couples>.

³¹ Resolution, Rabbinical Assembly, *Resolution In Support Of Equal Rights And Inclusion For Gay, Lesbian, Bisexual, And Transgender (GLBT) Persons* (2011), available at <http://www.rabbinicalassembly.org/story/resolution-support-equal-rights-and-inclusion-gay-lesbian-bisexual-and-transgender-glb-person>.

people.”³² Nearly 4,000 clergy from numerous faiths have endorsed an open letter by the Religious Institute, Inc. calling for marriage equality.³³

Amici also note that the very church founded by the Pilgrims who sailed on the Mayflower in 1620 – First Parish in Plymouth, now a Unitarian Universalist congregation – has issued a proclamation invoking its historical pursuit of religious freedom, recounting its long history of openness to lesbian and gay congregants, and calling for full civil marriage equality for same-sex couples.³⁴ Given its

³² American Friends Service Committee, *AFSC Board Statement on Equal Marriage* (2004), available at <http://afsc.org/sites/afsc.civicactions.net/files/documents/AFSC%20Board%20Minute.pdf>.

³³ Religious Institute, *Religious Declaration on Sexual Morality, Justice, and Healing* (Jan. 2010), available at <http://religiousinstitute.org/religious-declaration-on-sexual-morality-justice-and-healing>; See also Religious Institute, Inc. *List of Endorsers* (Jan. 10, 2012), available at <http://religiousinstitute.org/list-of-endorsers>.

³⁴ See Resolution, First Parish Church in Plymouth, *Resolution Demanding That All Persons, Regardless Of Sexual Orientation Or Gender Identification, Receive Equal Treatment Under The United States Constitution And The Laws Of The Land*

historical pedigree, the First Parish proclamation underscores the resonance of today's marriage equality debate with the nation's founding ideal of liberty.

In 2006, the Episcopal Church likewise called on federal, state, and local governments to provide same-sex couples protections equivalent to those "enjoyed by non-gay married couples" and "oppose[d] any state or federal constitutional amendment that prohibits same-sex civil marriage or civil unions," a stance growing out of its "historical support of gay and lesbian persons as children of God and entitled to full civil rights."³⁵ A decade ago, the United Methodist Church called for the "equal protection before the law" of couples and families who have "shared material resources, pensions, guardian relationships, mutual powers of attorney, and other such lawful claims."³⁶ In line with the advocacy of these faith

(Feb. 2013), *available at* <http://www.firstparishplymouth.org/SiteAssets/Social%20Action/Equal-treatment-lgbti-brief.pdf>.

³⁵ Resolution 2006-A095, the 75th General Convention of The Episcopal Church, *available at* http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2006-A095.

³⁶ *Equal Rights Regardless of Sexual Orientation*, from The Book of Discipline of The United Methodist Church (2004), *available at* <http://master.umc.org/interior.asp?mid=1753>.

groups, 62% of *all* white mainline Protestants today favor allowing same-sex couple to marry civilly.³⁷

Even within faiths that do not believe the government should recognize the marriages of same-sex couples – a position their leaders remain free to express – many adherents (in some cases, a majority) nonetheless have come to support equal recognition of same-sex couples' civil marriages. As *amicus curiae* Bishop Taylor confirms, the Roman Catholic Church hierarchy is strongly opposed to both civil and religious marriage for same-sex couples.³⁸ Yet Bishop Taylor, consonant with Catholic teaching more generally, joins other mainstream religions in affirming the “inherent dignity” of lesbian and gay individuals, and “teach[ing] against discrimination and bigotry towards all persons, including homosexuals.”³⁹

³⁷ Public Religion Research Institute, *A Shifting Landscape: A Decade of Change in American Attitudes about Same-sex Marriage and LGBT Issues* (Feb. 26, 2014), at 10, available at http://publicreligion.org/site/wp-content/uploads/2014/02/2014.LGBT_REPORT.pdf.

³⁸ See generally Br. of *Amicus Curiae* Anthony B. Taylor, *supra*, SOC 1.

³⁹ Br. of *Amicus Curiae* Anthony B. Taylor, *supra*, SOC 1, at ARG 12, 28; see also Statement, Bishops' Committee on Marriage and Family, *Always Our Children: A Pastoral Message To Parents Of Homosexual Children And Suggestions For*

Consistent with such teaching, many individual American Catholics have come to favor marriage equality: polling conducted by the Public Religion Research Institute in 2013 showed that 57% of Catholics support marriage for same-sex couples,⁴⁰ whereas just three years before, only 46% of Catholics had favored equal marriage rights while 42% were opposed.⁴¹ There are American Muslims, too, who have applauded the Supreme Court's marriage equality decisions in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), and *United States v. Windsor*, 133 S. Ct. 2675 (2013), and who believe that their religious faith is not contravened when the government affords marriage rights to same-sex couples.⁴² In fact, in a

Pastoral Ministers (1997), available at <http://www.usccb.org/>

[issues-and-action/human-life-and-dignity/homosexuality/always-our-children.cfm](http://www.usccb.org/issues-and-action/human-life-and-dignity/homosexuality/always-our-children.cfm).

⁴⁰ Public Religion Research Institute, *supra* note 37, at 10.

⁴¹ The Pew Forum on Religion and Public Life, *Religion and Attitudes Toward Same-Sex Marriage* (Feb. 7, 2012), available at <http://www.pewforum.org/Gay-Marriage-and-Homosexuality/Religion-and-Attitudes-Toward-Same-Sex-Marriage> (citing comparative data from Aug.-Sept. 2010 and Oct. 2011).

⁴² See, e.g., Press Release, Muslims for Progressive Values, *Muslims for Progressive Values Applauds President Obama's Support of Marriage Equality*

March 2014 survey, 59% of *all* adults nationwide, including 62% of White non-evangelical Protestants, 70% of White Catholics, and 81% of people who claim no religion, voiced support for marriage equality.⁴³

While individual liberties should not be subject to public opinion polls, the preceding surveys make clear that American religious thought and practice embrace a rich diversity. No one view speaks for “religion” – even if, contrary to the Establishment Clause, it were appropriate to give weight to religious views in the application of the Constitution’s secular promise of equal protection.

III. Permitting Same-Sex Couples To Marry Civilly (Or Recognizing Such Marriages Lawfully Performed) Will Not Impinge Upon Religious Beliefs, Practices, Or Operations, But Rather Will Prevent One Set Of Religious Beliefs From Being Imposed Through Civil Law

Affirming same-sex couples’ civil marriage rights will not threaten the First Amendment freedom of all religious communities to decide which religious unions are and are not consistent with their beliefs. Nor would affirmance here unduly burden religious persons and institutions in the pursuit of their public and business

(May 9, 2012), *available at* <http://prolong.org/11871240/muslims-for-progressive-values-applauds-president-obamas-support-of-marriage-equality.html>.

⁴³ *Gay issues find increasing acceptance*, Wash. Post, Mar. 6, 2014, *available at* http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2014/03/05/National-Politics/Polling/release_301.xml.

activities. To the contrary, reversal predicated on the notion that Arkansas could (under any standard of review) deny equal protection to one sub-group of married couples in order to preserve the “religious liberty” of those who wished to discriminate against them would improperly favor one set of religious views (*e.g.*, rejecting civil marriage for same-sex couples) against other religious views (*e.g.*, like those of *Amici* here, favoring equal treatment under law for same-sex couples).

A. Affirmance Would Not Interfere With The Exercise Of Religious Freedoms, Including The Freedom To Set Parameters For Religiously Sanctioned Marriage That May Differ From Those Established Under Civil Law

Any purported concern that marriage equality for same-sex couples would interfere with religious practice in Arkansas is wholly illusory. However civil authorities define marriage, existing constitutional principles protect religious entities’ autonomy to define *religious* marriages to comport with their respective tenets. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 709 (2012) (affirming principle that certain “matter[s are] ‘strictly ecclesiastical,’” meaning they are “the church’s alone” (citation omitted)). In this way, religion and state each respect the other’s own proper realm. *See generally McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948) (“[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.”).

This tradition of respect for religious autonomy has permitted various religions to define religious marriage in ways that would be unenforceable under civil law – e.g., declining to sanctify or recognize marriages between persons of different faiths and races, or successive marriage following divorce. Conservative Judaism, for example, prohibits interfaith marriages,⁴⁴ as did the Roman Catholic Church’s Code of Canon Law for much of the twentieth century.⁴⁵ The Mormon Church discouraged interracial marriage well after the Supreme Court’s ruling in *Loving v. Virginia*, 388 U.S. 1 (1967), that the Constitution requires states to allow interracial civil marriages.⁴⁶ And, as the Roman Catholic Church teaches that “[t]he remarriage of persons divorced from a living, lawful spouse is not permitted

⁴⁴ Leadership Council on Conservative Judaism, *Conservative View on Intermarriage* (Mar. 7, 1995), available at <http://www.mazorguide.com/living/Denominations/conservative-intermarriage.htm>.

⁴⁵ Michael G. Lawler, *Interchurch Marriages: Theological and Pastoral Reflections*, in *Marriage in the Catholic Tradition: Scripture, Tradition, and Experience*, Ch. 22, at 222 (Todd A. Salzman, et al., eds., 2004).

⁴⁶ See *Interracial Marriage Discouraged*, The Deseret News, June 17, 1978, at 4.

by God's law as taught by Christ,"⁴⁷ its priests "cannot recognize the union of people who are civilly divorced and remarried,"⁴⁸ even though states do.

The existence and persistence of such differences demonstrate that affirmance here would not burden religious liberty. Were Arkansas to recognize and permit the civil marriages of same-sex couples -- as they do for interfaith couples, interracial couples, and couples re-marrying after divorce -- religions that disapprove of such unions would remain free to define *religious* marriage however they wish. All faith groups could continue to withhold spiritual blessing from any marriages and indeed bar those entering into them from being congregants at all, just as they are now free to do so on grounds of faith, race, prior marital status, or any other characteristic deemed religiously significant.

Eliminating Arkansas's unconstitutional treatment of same-sex couples under civil law would not change, mandate, control, or interfere with any parties' religious practices. The religious freedoms embodied in the Constitution guarantee that diverse religious traditions and beliefs, including the sole right to define who can marry *religiously*, will flourish regardless of changes in civil marriage laws.

⁴⁷ United States Conference Of Catholic Bishops, *United States Catholic Catechism For Adults* 290 (2006).

⁴⁸ United States Conference Of Catholic Bishops, *Compendium – Catechism Of The Catholic Church* ¶ 349 (2006).

B. Civil Marriage Of Same-Sex Couples Does Not Unconstitutionally Burden Religious Organizations' Ability To Operate And Govern Their Own Religious Affairs

Appellants argue that Arkansas's exclusion of same-sex couples from marriage is consistent with "a variety of legitimate states interests" that "[t]he United States Supreme Court has recognized," including "stability, uniformity, and continuity of laws in the face of an ongoing public and political debate about the nature and role of marriage." Appellants' Br. at 25, 26 (citing cases). In fact, affirmance augurs no risk to the stability of religious free exercise – a point that counsel for Plaintiffs was sure to enter into the record below. *See* discussion *supra*, at 3-4. Quite simply, recognizing the civil marriages of same-sex couples will not curtail religious organizations' ability to operate their own affairs and serve their communities.

Concerns to the contrary appear to relate mainly to the enforcement of public accommodation laws that protect individuals from discrimination on account of sexual orientation, where such laws exist, rather than marital status. The extent to which any religious institution or business may be regulated as an employer or public accommodation is determined by existing statutes and relevant, binding case law. Indeed, just two years ago the Supreme Court unanimously ruled that an employment discrimination claim by the former employee of a religious institution had to yield to the First Amendment right of the employer to

determine who qualifies as a minister under its *religious* understanding of that term. *Hosanna-Tabor Evangelical Lutheran Church & Sch.*, 132 S. Ct. at 707, 709. When religious individuals or institutions act in a more secular sphere, the balance between civil rights enforcement and First Amendment liberties may vary in particular cases, but such issues are not presented for decision here.

In any event, evenhanded enforcement of public accommodation laws that does not unduly burden religious *practice* does not violate the Free Exercise Clause simply because it subjects religious actors who discriminate to social or political disapproval. It is no accident that the Free Exercise Clause shares an amendment with the Free Speech Clause, because robust enforcement of *all* constitutional guarantees best ensures equal access for all voices to discourse in the public square. See William P. Marshall, *Solving the Free Exercise Dilemma: Free Exercise as Expression*, 67 Minn. L. Rev. 545, 546-47 (1983) (arguing free exercise of religion bears directly on free speech, both having their proper public dimension, with Religion Clauses, together, offering “unitary protection for individual liberty”).

To the contrary, giving weight to religious concerns in deciding which valid civil marriages should be recognized and respected by the state would itself violate the Establishment Clause. Since this nation’s founding, the concept of religious liberty has included the equal treatment of all faiths without discrimination or

preference. *See Larson*, 456 U.S. at 244 (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”). Government action denying marriage rights on purported “religious liberty” grounds to same-sex couples violates this principle by putting the force of law behind one set of religious views. By affirming the judgment below, this Court will ensure that civil law neither favors nor disfavors any particular religious viewpoint, and it will leave individual faith communities free to determine for themselves whether to provide religious sanction to particular unions.

CONCLUSION


For the foregoing reasons, *Amici* respectfully submit that the Court should affirm the judgment of the court below that Arkansas's ban on marriages of same-sex couples is unconstitutional.

Respectfully submitted,

JEFFREY S. TRACHTMAN
NORMAN C. SIMON
JASON M. MOFF
KURT M. DENK
ANNA SCHOENFELDER
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
212-715-9100
jtrachtman@kramerlevin.com

Admissions Pro Hac Vice Pending

and


JOHN R. TISDALE (75127)
GARY D. MARTS, JR. (2004116)
JOHNATHAN D. HORTON (2002055)
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
FAX: (501) 376-9442
jtisdale@wlj.com


Counsel for Amici Curiae

October 3, 2014

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Title of Document: Brief of *Amici Curiae* Episcopal Bishop Larry R.
Benfield of the Diocese of Arkansas, *et al.*

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Gary D. Marts, Jr.
October 3, 2014

CERTIFICATE OF SERVICE

On October 3, 2014, a copy of the foregoing brief was served by U.S. Mail
on the following:

Jack Wagoner III
Angela Mann
Wagoner Law Firm, P .A.
1320 Brookwood, Suites D&E
Little Rock, AR 72202

- Cheryl K. Maples
P.O. Box 1504
Searcy, AR 72145

Colin R. Jorgensen
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

Michael R. Rainwater
Jason E. Owens
Rainwater, Holt & Sexton, P.A.
P.O. Box 17250
6315 Ranch Dr.
Little Rock, AR 72222-7250

David Mack Fuqua
Fuqua Campbell, P.A.
425 West Capitol, Suite 300
Little Rock, AR 72201



Gary D. Marts, Jr.

APPENDIX

Amicus curiae The Rt. Rev. Bishop Larry R. Benfield is the Thirteenth Bishop of the Episcopal Diocese of Arkansas. The Diocese comprises the entire state of Arkansas, from the Ozark Mountains to the Mississippi River Delta, and is home to 57 congregations in 48 communities. Bishop Benfield supports civil marriage equality for same-sex couples and is the second Episcopal Bishop to be elected to the Diocese of Arkansas from within the state.

Amicus curiae General Synod of the United Church of Christ is the representative body of the this Protestant denomination of approximately 1.1 million members worshipping in approximately 5,100 local churches throughout the United States.

Amicus curiae Mormons for Equality is composed of countless individuals associated with the Mormon faith and tradition who work to further the cause of full legal equality for lesbian, gay, bisexual, and transgender individuals, including recognition of civil marriage rights for same-sex couples.

Amicus curiae Reconstructionist Rabbinical Association (“RRA”), established in 1974, is the professional association of Reconstructionist rabbis. Comprised of over 300 rabbis, the RRA represents the rabbinic voice within the Reconstructionist movement.

Amicus curiae Reconstructionist Rabbinical College and Jewish Reconstructionist Communities educates leaders, advances scholarship, and develops resources for contemporary Jewish life.

Amicus curiae Union for Reform Judaism, whose 900 congregations across North America include 1.3 million Reform Jews, is committed to ensuring equality for all of God's children, regardless of sexual orientation.

Amicus curiae Unitarian Universalist Association was founded in 1961 and has nurtured a heritage of providing a strong voice for social justice and liberal religion. Unitarian Universalism is a caring, open-minded faith community that traces its roots in North America back to the Pilgrims and the Puritans.

Amicus curiae Affirmation represents lesbian, gay, bisexual, transgender, and queer concerns and their supporters in the United Methodist Community.

Amicus curiae Covenant Network of Presbyterians, a broad-based, national group of clergy and lay leaders, seeks to support the mission and unity of the Presbyterian Church (U.S.A.), articulate and act on the church's historic, progressive vision, work for a fully inclusive church, and find ways to live out the graciously hospitable gospel by living together with all our fellow members in the Presbyterian Church (U.S.A.).

Amicus curiae Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns ("FLGBTQC") is a faith community within the Religious Society of

Friends (Quakers). FLGBTQC deeply honors, affirms, and upholds that of God in all people.

Amicus curiae Methodist Federation for Social Action mobilizes clergy and laity within The United Methodist Church to take action on issues of peace, poverty, and people's rights within the church, the nation, and the world.

Amicus curiae More Light Presbyterians represents lesbian, gay, bisexual, and transgender people in the life, ministry, and witness of the Presbyterian Church (U.S.A.) and in society.

Amicus curiae Presbyterian Welcome is a diverse community of countless individuals representing lesbian, gay, bisexual, and transgender people in the Presbyterian Church (U.S.A.), through education, advocacy, and relationship building.

Amicus curiae Reconciling Ministries Network serves lesbian, gay, bisexual, and transgender United Methodists and their allies to transform their world into the full expression of Christ's inclusive love. Reconciling Ministries Network envisions a vibrant Wesleyan movement that is biblically and theologically centered in the full inclusion of God's children.

Amicus curiae ReconcilingWorks: Lutherans For Full Participation embodies, inspires, advocates and organizes for the acceptance and full

participation of people of all sexual orientations and gender identities within the Lutheran communion, its ecumenical and global partners, and society at large.

Amicus curiae Religious Institute, Inc. is a multi-faith organization whose thousands of supporters include clergy and other religious leaders from more than 50 faith traditions. The Religious Institute partners with the leading mainstream and progressive religious institutions in the United States.

Amici curiae leaders of Arkansas religious communities include: The Rev. Deacon Gary Baird (retired), Grace Episcopal Church, Siloam Springs; Tom Baker, Priest, St. Andrew's Episcopal Church, Salem; Reverend Jennie Barrington, Unitarian Universalist Church of Little Rock, Little Rock; Barry Block, Rabbi, Congregation B'nai Israel, Little Rock; The Rev. Amber Carswell, St. Mark's Episcopal Church, Jonesboro; Brooks Cato, Curate, Christ Episcopal Church, Little Rock; Jay Clark, Pastor with Youth & Their Families, Pulaski Heights United Methodist Church, Little Rock; Mark Currey, Pastor, R Street Community Church (Nondenominational), Little Rock; Teresa Daily, Rector, St. Peter's Episcopal Church, Conway; John Farthing, Reverend Doctor (retired), Trinity United Methodist Church & Hendrix College, Emeritus, Arkansas Conference of the United Methodist Church, Springdale; The Rev. Cindy Fribourgh, St. Margaret's Episcopal Church, Little Rock; The Rev. Gwen Fry, Christ Episcopal Church, Little Rock; Lisa Fry, Associate Rector, St. Mark's Episcopal Church, Little Rock;

Rev. Susan Gray, Vaughn Presbyterian Church, Fayetteville; The Rev. Lowell Grisham, St. Paul's Episcopal Church, Fayetteville; Katherine Guendling, Spiritual Leader (retired), Unity of Fayetteville (Unity Movement); Reverend Anne Holcomb, Quapaw Quarter United Methodist Church, Little Rock; Roger Joslin, Vicar, All Saints' Episcopal Church, Bentonville; Roy Lenington, Associate Pastor, Spirit of Peach Independent Christian Church, Prairie Grove; Reverend Abigail Letsinger, Good Shepherd Lutheran Church, Fayetteville; The Rev. Samuel Loudenslager, Episcopal Diocese of Arkansas, Bigelow; Reverend Jacob Lynn, Pulaski Heights United Methodist Church, Bryant; Reverend Kathryn Marie Mainard O'Connell, First Presbyterian Church, Little Rock; The Rev. Pam Morgan, St. Thomas Episcopal Church, Rogers; The Rev. Dr. Noland Murray (retired), St. Margaret's Episcopal Church, Little Rock; Thompson Murray, Senior Pastor, Quapaw Quarter United Methodist Church, Little Rock; Sheryl Myers, Associate Pastor, Open Community Church of Sherwood; Reverend Jim Parrish, Unitarian Universalist Fellowship of Fayetteville; Joy Prater, Deacon (retired), St. John's Episcopal Church of Harrison, Boone; Reverend Belinda Price, Pulaski Heights United Methodist Church, Little Rock; Reverend Donna Rountree, First Christian Church (Disciples of Christ), Scott; Rev. Dr. Ryan Rush, Good Faith Carr-Redfield Charge, United Methodist Church, Pine Bluff; Anne Russ, Pastor, First Presbyterian Church of Argenta, North Little Rock; Danny Schieffler,

Episcopal Priest and Rector, St. Mark's Episcopal Church, Little Rock; The Rev. Dr. Clint Schnekloth, Good Shepherd Lutheran Church, Fayetteville; Rev. Dr. Joanna Seibert, St. Luke's Episcopal Church, North Little Rock; Suzanne Stoner, Associate Rector, St. Paul's Episcopal Church, Fayetteville; Barbara Taylor, Senior Dharma Teacher, Morning Star Zen Center, Kwam Um School of Zen - Buddhist, Fayetteville; Michael Upson, Deacon, Second Presbyterian Church, Little Rock; The Rev. Mary Vano, St. Margaret's Episcopal Church, Little Rock; Lora Walsh, Priest, St. Paul's Episcopal Church, Fayetteville; Mark Williams, Senior Pastor, Spirit of Peach Church, Prairie Grove; and Ed Wills, Jr., Priest, St. Michael's Episcopal Church, Little Rock.

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

VS.

NO. CV-14-427

M. KENDALL WRIGHT, et al.

RECEIVED
SUPREME COURT OF ARKANSAS
2014 OCT 15 P 2:15
STACEY P. JONES
APPELLANTS
APPELLEES

**PETITION OF COUNSEL FOR *AMICI CURIAE*
TO APPEAR PRO HAC VICE**

Pursuant to Rule XIV of the Arkansas Rules Governing Admission to the Bar, petitioner Jeffrey S. Trachtman, through local counsel for *amici curiae*,¹ petitions the Court to permit him by comity and courtesy to appear, file pleadings and briefs, participate in oral argument, and otherwise participate in the appeal of this case. In support of this request, petitioner states the following:

1. Petitioner is a resident of New York.
2. Petitioner practices law with the firm of Kramer Levin Naftalis & Frankel LLP. Petitioner's business address is 1177 Avenue of the Americas; New York, New York 10036.
3. Since first being licensed in New York in 1985, petitioner has never had his license to practice law suspended or revoked. He is admitted to practice

¹ The *amici* are identified in the motion for permission to file an *amicus* brief, which was filed contemporaneously with this petition.

and is a member in good standing of the bar in the following jurisdictions: New York and Massachusetts. He currently resides and practices in New York.

4. Petitioner submits to all disciplinary procedures applicable to Arkansas lawyers.

5. Petitioner represents to this Court that New York courts would allow Arkansas attorneys to appear by comity.

6. Petitioner will be working on this case with attorneys John R. Tisdale, Gary D. Marts, Jr., and Johnathan D. Horton, who are serving as local counsel for the *amici curiae*. Notices in this case may be served upon them at 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201.

7. This petition is supported by the following:

- a. Exhibit 1, Affidavit of Petitioner; and
- b. Exhibit 2, Certificate of Good Standing.

WHEREFORE, petitioner prays that the Court grant his petition to appear *pro hac vice*, along with all other proper relief.

Respectfully submitted,

John R. Tisdale (75127)
Gary D. Marts, Jr. (2004116)
Johnathan D. Horton (2002055)
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
Fax: (501) 376-9442
jtisdale@wlj.com

By _____
Gary D. Marts, Jr.

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE AND IDENTIFICATION
OF PAPER DOCUMENTS NOT IN PDF FORMAT

Case Name: Smith, et al. v. Wright, et al.
Docket Number: CV-14-427
Title of Document: Petition of Counsel for Amicus Curiae to Appear
Pro Hac Vice

I hereby certify that I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.

Gary D. Marts, Jr.
October 3, 2014

CERTIFICATE OF SERVICE

On October 3, 2014, a copy of the foregoing was served by U.S. Mail on the following:

Jack Wagoner III
Angela Mann
Wagoner Law Firm, P .A.
1320 Brookwood, Suites D&E
Little Rock, AR 72202

Cheryl K. Maples
P.O. Box 1504
Searcy, AR 72145

Colin R. Jorgensen
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

Michael R. Rainwater
Jason E. Owens
Rainwater, Holt & Sexton, P.A.
P.O. Box 17250
6315 Ranch Dr.
Little Rock, AR 72222-7250

David Mack Fuqua
Fuqua Campbell, P.A.
425 West Capitol, Suite 300
Little Rock, AR 72201

Gary D. Marts, Jr.

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

APPELLANTS

VS.

NO. CV-14-427

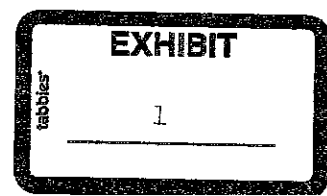
M. KENDALL WRIGHT, et al.

APPELLEES

AFFIDAVIT OF JEFFREY S. TRACHTMAN

Having been first sworn according to the law, Jeffrey S.
Trachtman, states the following:

1. I am a resident of New York.
2. I am an attorney duly admitted to the bar of the State of
New York since 1985 and the Commonwealth of Massachusetts since
2009. I am in good standing with the courts of both of these
jurisdictions. I have never had my license to practice suspended or
revoked.
3. I am an attorney in the law firm of Kramer Levin Naftalis &
Frankel LLP, 1177 Avenue of the Americas; New York, New York
10036.
4. I am an attorney for the *amici curiae* listed in the petition
for admission *pro hac vice*.



5. I consent to be subject to the jurisdiction of the courts in Arkansas in any manner arising out of my conduct in these proceedings and agree to be bound by all disciplinary procedures applicable to Arkansas lawyers.

6. I consent to be bound by all local rules of practice and conduct applicable to this Court.

7. I will be working on this case with John R. Tisdale; 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201. Notices in this case may be served upon him at this address.

8. The courts of New York accord similar comity and courtesy to Arkansas lawyers who may desire to appear and conduct cases in the courts of that State.

9. A certificate of good standing from New York, which is my state of residence, is attached to the petition.

10. All the statements in this affidavit are true and correct.


Jeffrey S. Trachtman

STATE OF NEW YORK)
)
COUNTY OF Nassau)

SWORN to and subscribed before me on this 1st day of October
2014.


NOTARY PUBLIC

My Commission Expires:

September 23, 2017

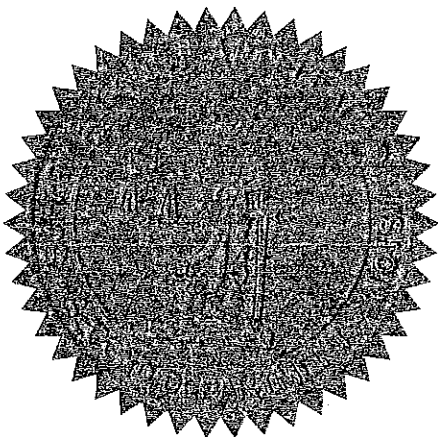
INES TAVAREZ
Notary Public, State of New York
NO. 01TA6289120
Qualified in Nassau County
Commission Expires September 23, 2017



**Appellate Division of the Supreme Court
of the State of New York
Second Judicial Department**

I, Aprilanne Agostino, Clerk of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, do hereby certify that **Jeffrey S. Trachtman** was duly licensed and admitted to practice as an Attorney and Counselor-at-Law in all the courts of the State, according to the laws of the State and the court rules and orders, on the 10th day of **April 1985**, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counselors-at-Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an Attorney and Counselor-at-Law.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Appellate Division on September 30, 2014.



Aprilanne Agostino

Clerk of the Court

EXHIBIT

2

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

VS.

NO. CV-14-427

M. KENDALL WRIGHT, et al.

STACEY
2014 OCT-3 P 2
APPELLANTS
APPELLEES

**PETITION OF COUNSEL FOR *AMICI CURIAE*
TO APPEAR PRO HAC VICE**

Pursuant to Rule XIV of the Arkansas Rules Governing Admission to the Bar, petitioner Jason M. Moff, through local counsel for *amici curiae*,¹ petitions the Court to permit him by comity and courtesy to appear, file pleadings and briefs, participate in oral argument, and otherwise participate in the appeal of this case. In support of this request, petitioner states the following:

1. Petitioner is a resident of New York.
2. Petitioner practices law with the firm of Kramer Levin Naftalis & Frankel LLP. Petitioner's business address is 1177 Avenue of the Americas; New York, New York 10036.
3. Since first being licensed in New York in 2006, petitioner has never had his license to practice law suspended or revoked. He is admitted to practice

¹ The *amici* are identified in the motion for permission to file an *amicus* brief, which was filed contemporaneously with this petition.

and is a member in good standing of the bar of the State of New York. He currently resides and practices in New York.

4. Petitioner submits to all disciplinary procedures applicable to Arkansas lawyers.

5. Petitioner represents to this Court that New York courts would allow Arkansas attorneys to appear by comity.

6. Petitioner will be working on this case with attorneys John R. Tisdale, Gary D. Marts, Jr., and Johnathan D. Horton, who are serving as local counsel for the *amici curiae*. Notices in this case may be served upon them at 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201.

7. This petition is supported by the following:


- a. Exhibit 1, Affidavit of Petitioner; and
- b. Exhibit 2, Certificate of Good Standing.

WHEREFORE, petitioner prays that the Court grant his petition to appear *pro hac vice*, along with all other proper relief.

Respectfully submitted,

John R. Tisdale (75127)
Gary D. Marts, Jr. (2004116)
Johnathan D. Horton (2002055)
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
Fax: (501) 376-9442
jtisdale@wlj.com

By




Gary D. Marts, Jr.

Attorneys for *Amici Curiae*

CERTIFICATE OF COMPLIANCE AND IDENTIFICATION
OF PAPER DOCUMENTS NOT IN PDF FORMAT

Case Name: Smith, et al. v. Wright, et al.
Docket Number: CV-14-427
Title of Document: Petition of Counsel for Amicus Curiae to Appear
Pro Hac Vice

I hereby certify that I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.



Gary D. Marts, Jr.
October 3, 2014

CERTIFICATE OF SERVICE

On October 3, 2014, a copy of the foregoing was served by U.S. Mail on the following:


Jack Wagoner III
Angela Mann
Wagoner Law Firm, P .A.
1320 Brookwood, Suites D&E
Little Rock, AR 72202

Cheryl K. Maples
P.O. Box 1504
Searcy, AR 72145

Colin R. Jorgensen
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

Michael R. Rainwater
Jason E. Owens
Rainwater, Holt & Sexton, P.A.
P.O. Box 17250
6315 Ranch Dr.
Little Rock, AR 72222-7250

David Mack Fuqua
Fuqua Campbell, P.A.
425 West Capitol, Suite 300
Little Rock, AR 72201



Gary D. Marts, Jr.

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

APPELLANTS

VS.

NO. CV-14-427

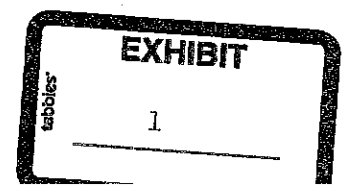
M. KENDALL WRIGHT, et al.

APPELLEES

AFFIDAVIT OF JASON M. MOFF

Having been first sworn according to the law, Jason M. Moff,
states the following:

1. I am a resident of New York.
2. I am an attorney duly admitted to the bar of the State of
New York since 2006. I am in good standing with the courts of New
York. I have never had my license to practice suspended or revoked.
3. I am an attorney in the law firm of Kramer Levin Naftalis &
Frankel LLP, 1177 Avenue of the Americas; New York, New York
10036.
4. I am an attorney for the *amici curiae* listed in the petition
for admission *pro hac vice*.
5. I consent to be subject to the jurisdiction of the courts in
Arkansas in any manner arising out of my conduct in these proceedings



and agree to be bound by all disciplinary procedures applicable to Arkansas lawyers.

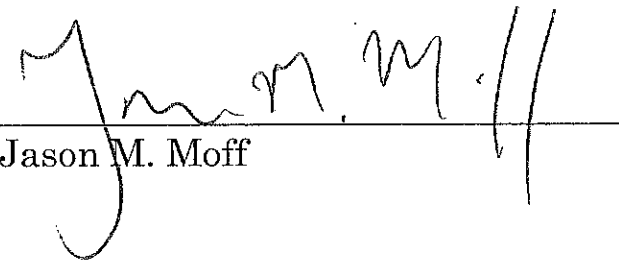
6. I consent to be bound by all local rules of practice and conduct applicable to this Court.

7. I will be working on this case with John R. Tisdale; 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201. Notices in this case may be served upon him at this address.

8. The courts of New York accord similar comity and courtesy to Arkansas lawyers who may desire to appear and conduct cases in the courts of that State.

9. A certificate of good standing from New York, which is my state of residence, is attached to the petition.

10. All the statements in this affidavit are true and correct.



Jason M. Moff

STATE OF NEW YORK)
)
COUNTY OF Nassau)

SWORN to and subscribed before me on this 1st day of October
2014.



NOTARY PUBLIC

My Commission Expires:

September 23, 2017

INES TAVAREZ
Notary Public, State of New York
NO. 01TA6289120
Qualified in Nassau County
Commission Expires September 23, 2017



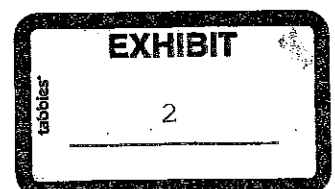
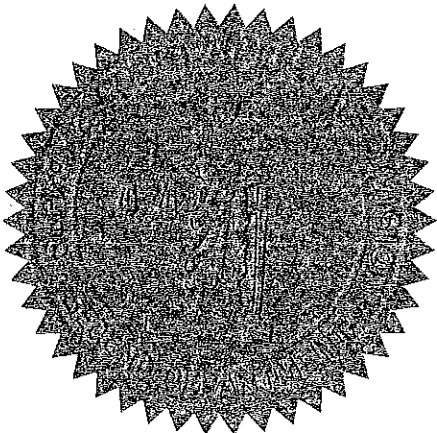
**Appellate Division of the Supreme Court
of the State of New York
Second Judicial Department**

I, Aprilanne Agostino, Clerk of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, do hereby certify that **Jason Michael Moff** was duly licensed and admitted to practice as an Attorney and Counselor-at-Law in all the courts of the State, according to the laws of the State and the court rules and orders, on the 26th day of **July 2006**, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counselors-at-Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an Attorney and Counselor-at-Law.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Appellate Division on September 30, 2014.

Aprilanne Agostino

Clerk of the Court



IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

VS.

NO. CV-14-427

M. KENDALL WRIGHT, et al.

RECEIVED
SUPREME COURT
CLERK'S OFFICE
2014 OCT - 3
2:20
APPELLANTS
APPELLEES
STACEY FRI

**PETITION OF COUNSEL FOR *AMICI CURIAE*
TO APPEAR PRO HAC VICE**

Pursuant to Rule XIV of the Arkansas Rules Governing Admission to the Bar, petitioner Kurt M. Denk, through local counsel for *amici curiae*,¹ petitions the Court to permit him by comity and courtesy to appear, file pleadings and briefs, participate in oral argument, and otherwise participate in the appeal of this case. In support of this request, petitioner states the following:

1. Petitioner is a resident of New York.
2. Petitioner practices law with the firm of Kramer Levin Naftalis & Frankel LLP. Petitioner's business address is 1177 Avenue of the Americas; New York, New York 10036.
3. Since first being licensed in New York in 2011, petitioner has never had his license to practice law suspended or revoked. He is admitted to practice

¹ The *amici* are identified in the motion for permission to file an *amicus* brief, which was filed contemporaneously with this petition.

and is a member in good standing of the bar of the State of New York. He currently resides and practices in New York.

4. Petitioner submits to all disciplinary procedures applicable to Arkansas lawyers.

5. Petitioner represents to this Court that New York courts would allow Arkansas attorneys to appear by comity.

6. Petitioner will be working on this case with attorneys John R. Tisdale, Gary D. Marts, Jr., and Johnathan D. Horton, who are serving as local counsel for the *amici curiae*. Notices in this case may be served upon them at 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201.

7. This petition is supported by the following:

- a. Exhibit 1, Affidavit of Petitioner; and
- b. Exhibit 2, Certificate of Good Standing.

WHEREFORE, petitioner prays that the Court grant his petition to appear *pro hac vice*, along with all other proper relief.

Respectfully submitted,

John R. Tisdale (75127)
Gary D. Marts, Jr. (2004116)
Johnathan D. Horton (2002055)
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
Fax: (501) 376-9442
jtisdale@wlj.com


By 
Gary D. Marts, Jr.

Attorneys for *Amici Curiae*

CERTIFICATE OF COMPLIANCE AND IDENTIFICATION
OF PAPER DOCUMENTS NOT IN PDF FORMAT

Case Name: Smith, et al. v. Wright, et al.
Docket Number: CV-14-427
Title of Document: Petition of Counsel for Amicus Curiae to Appear
Pro Hac Vice

I hereby certify that I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.



Gary D. Marts, Jr.
October 3, 2014

CERTIFICATE OF SERVICE

On October 3, 2014, a copy of the foregoing was served by U.S. Mail on the following:

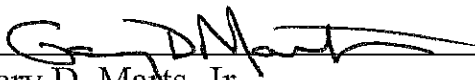
Jack Wagoner III
Angela Mann
Wagoner Law Firm, P .A.
1320 Brookwood, Suites D&E
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Cheryl K. Maples
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Little Rock, AR 72222-7250

David Mack Fuqua
Fuqua Campbell, P.A.
425 West Capitol, Suite 300
Little Rock, AR 72201



Gary D. Marts, Jr.

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

APPELLANTS

VS.

NO. CV-14-427

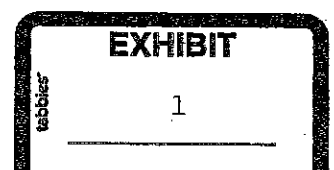
M. KENDALL WRIGHT, et al.

APPELLEES

AFFIDAVIT OF KURT M. DENK

Having been first sworn according to the law, Kurt M. Denk,
states the following:

1. I am a resident of New York.
2. I am an attorney duly admitted to the bar of the State of New York since 2011. I am in good standing with the courts of New York. I have never had my license to practice suspended or revoked.
3. I am an attorney in the law firm of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas; New York, New York 10036.
4. I am an attorney for the *amici curiae* listed in the petition for admission *pro hac vice*.
5. I consent to be subject to the jurisdiction of the courts in Arkansas in any manner arising out of my conduct in these proceedings



and agree to be bound by all disciplinary procedures applicable to Arkansas lawyers.

6. I consent to be bound by all local rules of practice and conduct applicable to this Court.

7. I will be working on this case with John R. Tisdale; 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201. Notices in this case may be served upon him at this address.

8. The courts of New York accord similar comity and courtesy to Arkansas lawyers who may desire to appear and conduct cases in the courts of that State.

9. A certificate of good standing from New York, which is my state of residence, is attached to the petition.

10. All the statements in this affidavit are true and correct.

A handwritten signature in cursive script, appearing to read "Kurt M. Denk", written over a horizontal line.

Kurt M. Denk

STATE OF NEW YORK)
)
COUNTY OF Nassau)

SWORN to and subscribed before me on this 1st day of October
2014.


NOTARY PUBLIC

My Commission Expires:

September 23, 2017

INES TAVAREZ
Notary Public, State of New York
NO. 01TA6289120
Qualified in Nassau County
Commission Expires September 23, 2017

Appellate Division of the Supreme Court
of the State of New York
First Judicial Department

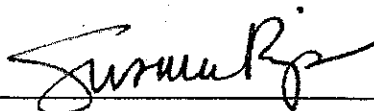
I, Susanna Rojas, Clerk of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, certify that

KURT MICHAEL DENK

was duly licensed and admitted to practice as an Attorney and Counsellor at Law in all the courts of the State of New York on January 31, 2011, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counsellors at Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an attorney and counsellor at law.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of this court on

September 30, 2014



Clerk of the Court

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

VS.

NO. CV-14-427

M. KENDALL WRIGHT, et al.

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APPELLANTS
APPELLEES
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**PETITION OF COUNSEL FOR *AMICUS CURIAE*
TO APPEAR PRO HAC VICE**

Pursuant to Rule XIV of the Arkansas Rules Governing Admission to the Bar, petitioner Anna Schoenfelder, through local counsel for *amici curiae*,¹ petitions the Court to permit her by comity and courtesy to appear, file pleadings and briefs, participate in oral argument, and otherwise participate in the appeal of this case. In support of this request, petitioner states the following:

1. Petitioner is a resident of New York.
2. Petitioner practices law with the firm of Kramer Levin Naftalis & Frankel LLP. Petitioner's business address is 1177 Avenue of the Americas; New York, New York 10036.
3. Since first being licensed in New York in 2014, petitioner has never had her license to practice law suspended or revoked. She is admitted to practice

¹ The *amici* are identified in the motion for permission to file an *amicus* brief, which was filed contemporaneously with this petition.

and is a member in good standing of the bar of the State of New York. She currently resides and practices in New York.

4. Petitioner submits to all disciplinary procedures applicable to Arkansas lawyers.

5. Petitioner represents to this Court that New York courts would allow Arkansas attorneys to appear by comity.

6. Petitioner will be working on this case with attorneys John R. Tisdale, Gary D. Marts, Jr., and Johnathan D. Horton, who are serving as local counsel for the *amici curiae*. Notices in this case may be served upon them at 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201.


7. This petition is supported by the following:

- a. Exhibit 1, Affidavit of Petitioner; and
- b. Exhibit 2, Certificate of Good Standing.

WHEREFORE, petitioner prays that the Court grant her petition to appear *pro hac vice*, along with all other proper relief.

Respectfully submitted,

John R. Tisdale (75127)
Gary D. Marts, Jr. (2004116)
Johnathan D. Horton (2002055)
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
Fax: (501) 376-9442
jtisdale@wlj.com

By 

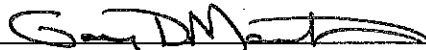
Gary D. Marts, Jr.

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE AND IDENTIFICATION
OF PAPER DOCUMENTS NOT IN PDF FORMAT

Case Name: Smith, et al. v. Wright, et al.
Docket Number: CV-14-427
Title of Document: Petition of Counsel for Amicus Curiae to Appear
Pro Hac Vice

I hereby certify that I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.



Gary D. Marts, Jr.
October 3, 2014

CERTIFICATE OF SERVICE

On October 3, 2014, a copy of the foregoing was served by U.S. Mail on the following:

Jack Wagoner III
Angela Mann
Wagoner Law Firm, P .A.
1320 Brookwood, Suites D&E
Little Rock, AR 72202

Cheryl K. Maples
P.O. Box 1504
Searcy, AR 72145

Colin R. Jorgensen
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

Michael R. Rainwater
Jason E. Owens
Rainwater, Holt & Sexton, P.A.
P.O. Box 17250
6315 Ranch Dr.
Little Rock, AR 72222-7250

David Mack Fuqua
Fuqua Campbell, P.A.
425 West Capitol, Suite 300
Little Rock, AR 72201



Gary D. Marts, Jr.

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

APPELLANTS

VS.

NO. CV-14-427

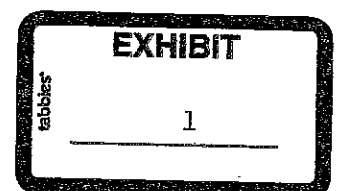
M. KENDALL WRIGHT, et al.

APPELLEES

AFFIDAVIT OF ANNA SCHOENFELDER

Having been first sworn according to the law, Anna Schoenfelder,
states the following:

1. I am a resident of New York.
2. I am an attorney duly admitted to the bar of the State of New York since 2014. I am in good standing with the courts of New York. I have never had my license to practice suspended or revoked.
3. I am an attorney in the law firm of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas; New York, New York 10036.
4. I am an attorney for the *amici curiae* listed in the petition for admission *pro hac vice*.
5. I consent to be subject to the jurisdiction of the courts in Arkansas in any manner arising out of my conduct in these proceedings



and agree to be bound by all disciplinary procedures applicable to Arkansas lawyers.

6. I consent to be bound by all local rules of practice and conduct applicable to this Court.

7. I will be working on this case with John R. Tisdale; 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201. Notices in this case may be served upon him at this address.

8. The courts of New York accord similar comity and courtesy to Arkansas lawyers who may desire to appear and conduct cases in the courts of that State.

9. A certificate of good standing from New York, which is my state of residence, is attached to the petition.

10. All the statements in this affidavit are true and correct.



Anna Schoenfelder

STATE OF NEW YORK)
)
COUNTY OF New York)

SWORN to and subscribed before me on this 1st day of October
2014.

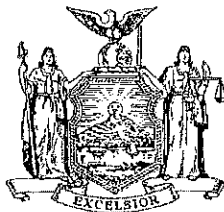


NOTARY PUBLIC

My Commission Expires:

May 21, 2015

GEOFFREY G. HU
NOTARY PUBLIC, State of New York
No. 02EU6166434
Qualified in New York County
Commission Expires May 21, 2015



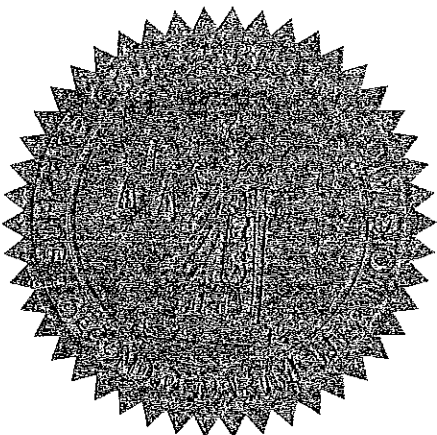
**Appellate Division of the Supreme Court
of the State of New York
Second Judicial Department**

I, Aprilanne Agostino, Clerk of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, do hereby certify that **Anna Colleen Schoenfelder** was duly licensed and admitted to practice as an Attorney and Counselor-at-Law in all the courts of the State, according to the laws of the State and the court rules and orders, on the 21st day of **May 2014**, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counselors-at-Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an Attorney and Counselor-at-Law.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Appellate Division on September 30, 2014.

Aprilanne Agostino

Clerk of the Court



EXHIBIT

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

VS.

NO. CV-14-427

M. KENDALL WRIGHT, et al.

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APPELLANTS
APPELLEES
STACEY H. HARRIS, CLERK

**PETITION OF COUNSEL FOR *AMICI CURIAE*
TO APPEAR PRO HAC VICE**

Pursuant to Rule XIV of the Arkansas Rules Governing Admission to the Bar, petitioner Norman C. Simon, through local counsel for *amici curiae*,¹ petitions the Court to permit him by comity and courtesy to appear, file pleadings and briefs, participate in oral argument, and otherwise participate in the appeal of this case. In support of this request, petitioner states the following:

1. Petitioner is a resident of New York.
2. Petitioner practices law with the firm of Kramer Levin Naftalis & Frankel LLP. Petitioner's business address is 1177 Avenue of the Americas; New York, New York 10036.
3. Since first being licensed in New Jersey in 1997, petitioner has never had his license to practice law suspended or revoked. He is admitted to practice

¹ The *amici* are identified in the motion for permission to file an *amicus* brief, which was filed contemporaneously with this petition.

and is a member in good standing of the bar in the following jurisdictions: New York and New Jersey. He currently resides and practices in New York.

4. Petitioner submits to all disciplinary procedures applicable to Arkansas lawyers.

5. Petitioner represents to this Court that New York courts would allow Arkansas attorneys to appear by comity.

6. Petitioner will be working on this case with attorneys John R. Tisdale, Gary D. Marts, Jr., and Johnathan D. Horton, who are serving as local counsel for the *amici curiae*. Notices in this case may be served upon them at 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201.


7. This petition is supported by the following:

- a. Exhibit 1, Affidavit of Petitioner; and
- b. Exhibit 2, Certificate of Good Standing.

WHEREFORE, petitioner prays that the Court grant his petition to appear *pro hac vice*, along with all other proper relief.

Respectfully submitted,

John R. Tisdale (75127)
Gary D. Marts, Jr. (2004116)
Johnathan D. Horton (2002055)
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
Fax: (501) 376-9442
jtisdale@wlj.com

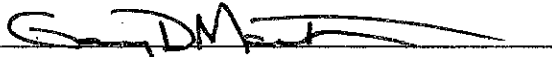
By 
Gary D. Marts, Jr.

Attorneys for *Amici Curiae*

CERTIFICATE OF COMPLIANCE AND IDENTIFICATION
OF PAPER DOCUMENTS NOT IN PDF FORMAT

Case Name: Smith, et al. v. Wright, et al.
Docket Number: CV-14-427
Title of Document: Petition of Counsel for Amicus Curiae to Appear
Pro Hac Vice

I hereby certify that I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.



Gary D. Marts, Jr.
October 3, 2014

CERTIFICATE OF SERVICE

On October 3, 2014, a copy of the foregoing was served by U.S. Mail on the following:


Jack Wagoner III
Angela Mann
Wagoner Law Firm, P .A.
1320 Brookwood, Suites D&E
Little Rock, AR 72202

Cheryl K. Maples
P.O. Box 1504
Searcy, AR 72145

Colin R. Jorgensen
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

Michael R. Rainwater
Jason E. Owens
Rainwater, Holt & Sexton, P.A.
P.O. Box 17250
6315 Ranch Dr.
Little Rock, AR 72222-7250

David Mack Fuqua
Fuqua Campbell, P.A.
425 West Capitol, Suite 300
Little Rock, AR 72201



Gary D. Marts, Jr.

IN THE ARKANSAS SUPREME COURT

NATHANIEL SMITH, M.D., MPH,
Director of the Arkansas Department of
Health, in his official capacity, et al.

APPELLANTS

VS.

NO. CV-14-427

M. KENDALL WRIGHT, et al.

APPELLEES

AFFIDAVIT OF NORMAN C. SIMON

Having been first sworn according to the law, Norman C. Simon,
states the following:

1. I am a resident of New York.
2. I am an attorney duly admitted to the bar of the State of
New York since 1998 and the State of New Jersey since 1997. I am in
good standing with the courts of both of these jurisdictions. I have
never had my license to practice suspended or revoked.
3. I am an attorney in the law firm of Kramer Levin Naftalis &
Frankel LLP, 1177 Avenue of the Americas; New York, New York
10036.
4. I am an attorney for the *amici curiae* listed in the petition
for admission *pro hac vice*.
5. I consent to be subject to the jurisdiction of the courts in
Arkansas in any manner arising out of my conduct in these proceedings

and agree to be bound by all disciplinary procedures applicable to Arkansas lawyers.

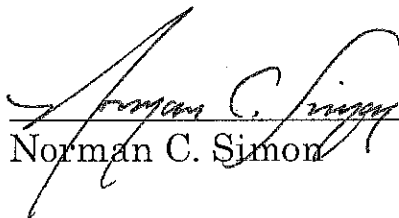
6. I consent to be bound by all local rules of practice and conduct applicable to this Court.

7. I will be working on this case with John R. Tisdale; 200 West Capitol Avenue, Suite 2300; Little Rock, Arkansas 72201. Notices in this case may be served upon him at this address.

8. The courts of New York accord similar comity and courtesy to Arkansas lawyers who may desire to appear and conduct cases in the courts of that State.

9. A certificate of good standing from New York, which is my state of residence, is attached to the petition.

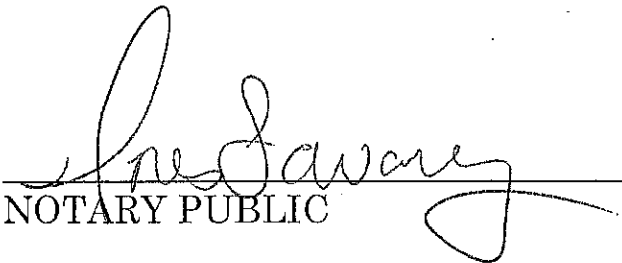
10. All the statements in this affidavit are true and correct.



Norman C. Simon

STATE OF NEW YORK)
)
COUNTY OF Nassau)

SWORN to and subscribed before me on this 1st day of October
2014.


NOTARY PUBLIC

My Commission Expires:

September 23, 2017

INES TAVAREZ
Notary Public, State of New York
NO. 01TA6289120
Qualified in Nassau County
Commission Expires September 23, 2017

**Appellate Division of the Supreme Court
of the State of New York
First Judicial Department**

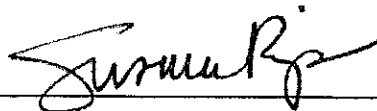
I, Susanna Rojas, Clerk of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, certify that

NORMAN CHRISTOPHER SIMON

was duly licensed and admitted to practice as an Attorney and Counsellor at Law in all the courts of the State of New York on March 2, 1998, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counsellors at Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an attorney and counsellor at law.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of this court on

September 30, 2014



Clerk of the Court