CV-14-427

IN THE ARKANSAS SUPREME COURT

M. KENDALL WRIGHT, et al **PLAINTIFFS-APPELLEES**

VS. **Case No. CV-14-427**

NATHANIEL SMITH, MD, MPH, et al **DEFENDANTS-APPELLANTS**

STATE DEFENDANTS-APPELLANTS' MOTION FOR ORAL ARGUMENT

Come now the Director of the Arkansas Department of Health and the Director of the Arkansas Department of Finance and Administration, in their official capacities, and their successors in office (the "State" or "State Defendants"), and respectfully submit the following Motion for Oral Argument. The State Defendants are represented herein by the Office of the Arkansas Attorney General pursuant to Ark. Code Ann. § 25-16-702(a), which requires the Attorney General to serve as counsel for state agencies and entities when requested. *See id.* ("The Attorney General shall be the attorney for all state officials, departments, institutions, and agencies. Whenever any officer or department, institution, or agency of the state needs the services of an attorney, the matter shall be certified to the Attorney General for attention.").

FILED
JAN 23 2015
STACEY PECTOL
CLERK

1. This appeal is fully briefed, and oral argument was held on November 20, 2014.

2. Chief Justice Jim Hannah was not present at the oral argument held on November 20, 2014. Former Associate Justice Donald Corbin served as Chief Justice at the November 2014 oral argument. Justice Corbin has retired from the Court, and on or about January 6, 2015, Associate Justice Robin F. Wynne replaced Justice Corbin on the Court. Justice Wynne was not present at the oral argument on November 20, 2014.

3. Former Associate Justice Cliff Hoofman recused from this case and was replaced on this case by Special Justice Robert W. McCorkindale, appointed by former Governor Mike Beebe. Justice Hoofman's term on the Court has ended, and on or about January 6, 2015, Associate Justice Rhonda K. Wood replaced Justice Hoofman on the Court. Justice Wood was not present at the oral argument on November 20, 2014.

4. The United States Supreme Court has granted *certiorari* in four marriage cases arising out of the Sixth Circuit Court of Appeals. *See* Order List, 574 U.S. ___ (Jan. 16, 2015), *Obergefell, James, et al. v. Hodges, Richard, et al.* (No. 14-556), *Tanco, Valeria, et al. v. Haslem, Gov. of TN, et al.* (No. 14-562), *DeBoer, April, et al. v. Snyder, Gov. of MI, et al.* (No. 14-571), and *Bourke, Gregory, et al. v. Beshear, Gov. of KY, et al.* (No. 14-574). Although the Court

does not typically include language beyond *certiorari* grants and denials in order lists, the Court specified that the Sixth Circuit marriage cases are consolidated and the Court will consider the following questions: "1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex? 2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?" *Id.* The Court set a briefing schedule for the completion of briefing in the marriage cases by April 17, 2015.

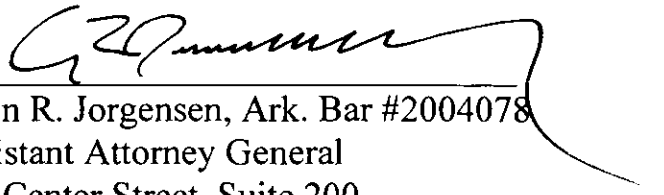
5. This appeal presents issues concerning the construction of both the Arkansas Constitution and the United States Constitution. Although the federal constitutional issues may be mooted by the Sixth Circuit appeals before the U.S. Supreme Court, *supra*, the U.S. Supreme Court will not address the state constitutional issues presented by this appeal.

6. The State respectfully requests that the Court schedule a second oral argument in this appeal, for the benefit of Chief Justice Hannah, Justice Wynne, and Justice Wood.

WHEREFORE, the State respectfully requests that the Court schedule this appeal for a second oral argument, and prays for all other just and appropriate relief.

Respectfully Submitted,

LESLIE RUTLEDGE
Arkansas Attorney General

By: 

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CERTIFICATE OF SERVICE

I, Colin R. Jorgensen, Assistant Attorney General, certify that on this 23rd day of January, 2015, I have served the foregoing upon the following via electronic mail attachment:

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Colin R. Jorgensen

CERTIFICATE OF COMPLIANCE

I, Colin R. Jorgensen, do hereby certify that I have submitted and served on opposing counsel an unredacted PDF document that complies with the Rules of the Supreme Court and the Court of Appeals of Arkansas. The PDF document is identical to the corresponding parts of the paper document from which it was created as filed with the Court. To the best of my knowledge, information, and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF document is free from computer viruses. A copy of this certificate has been submitted with the paper copies filed with the Court and has been served on all parties.

Colin R. Jorgensen