

**NO. 17-1593**

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**UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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**SEXUAL MINORITIES UGANDA**

**Plaintiff-Appellee,**

**v.**

**SCOTT LIVELY, individually and as President of Abiding Truth Ministries,**

**Defendant-Appellant.**

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**DECLARATION OF HORATIO G. MIHET  
IN SUPPORT OF DEFENDANT-APPELLANT SCOTT LIVELY'S  
MOTION FOR RECONSIDERATION OF DENIAL OF MOTION  
TO SET ORAL ARGUMENT AND TO EXCLUDE APPELLEE  
FROM ORAL ARGUMENT FOR DEFAULT IN FILING BRIEF**

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I, Horatio G. Mihet, do hereby declare as follows:

1. I am over the age of eighteen years and am one of the attorneys for Defendant-Appellant, Scott Lively (“Lively”), in this appeal. The statements in this Declaration are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called to testify to them, I would and could do so competently.

2. I am submitting this Declaration in support of Defendant-Appellant Scott Lively’s Motion for Reconsideration of Denial of Motion to Set Oral Argument and to Exclude Appellee from Oral Argument for Default in Filing Brief (EID 6140152, the “Reconsideration Motion”), and in reply to certain facts in the Opposition to Lively’s Reconsideration Motion (EID 6141632, the “Opposition”) filed by Plaintiff-Appellee Sexual Minorities Uganda (“SMUG”).

3. In reply to Mr. McNeely’s e-mail of October 3, 2017, identified in paragraph 13 of SMUG’s Opposition (Opp’n, EID 6141632, ¶ 13), I wrote by e-mail to Mr. McNeely, “We do not share the understanding that the pendency of SMUG’s motions tolls briefing deadlines – if you care to share the basis for your understanding, please do.” A true and correct copy of my e-mail reply is attached hereto as Exhibit A. Mr. McNeely never responded.

DATED this January 3, 2018.

I declare under penalty of perjury of the laws of the United States and the Commonwealth of Massachusetts that the foregoing statements are true and correct.

/s/ Horatio G. Mihet  
Horatio G. Mihet

**From:** [Horatio Mihet](mailto:Horatio.Mihet)  
**To:** "mcneely.kaleb@dorsey.com"  
**Cc:** [Roger Gannam](mailto:Roger.Gannam); [pspees@ccrjustice.org](mailto:pspees@ccrjustice.org)  
**Subject:** RE: SMUG v. Lively - motion for extension of time nunc pro tunc  
**Date:** Tuesday, October 3, 2017 2:41:00 PM  
**Attachments:** [image001.png](#)

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Thank you for your prompt response and consent, Kaleb. We do not share the understanding that the pendency of SMUG's motions tolls briefing deadlines – if you care to share the basis for your understanding, please do.

Regards,

**Horatio G. Mihet, Esq.**  
*Vice President of Legal Affairs &  
Chief Litigation Counsel*  
**Liberty Counsel**  
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**From:** mcneely.kaleb@dorsey.com [mailto:mcneely.kaleb@dorsey.com]  
**Sent:** Tuesday, October 3, 2017 1:52 PM  
**To:** Horatio Mihet <hmihet@lc.org>  
**Cc:** Roger Gannam <rgannam@lc.org>; [pspees@ccrjustice.org](mailto:pspees@ccrjustice.org)  
**Subject:** RE: SMUG v. Lively - motion for extension of time nunc pro tunc

Harry,

It is our understanding that, in light of the pending motion to dismiss and motion to stay, there are currently no deadlines for the parties to file their briefs on the merits. Given that, if Lively nevertheless intends to file the motion referenced below for an extension of time *nunc pro tunc*, SMUG does not oppose said motion.

Regards,

**Kaleb McNeely**

Associate



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**EXHIBIT A**

**CONFIDENTIAL COMMUNICATION**

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**From:** Horatio Mihet [<mailto:hmihet@lc.org>]  
**Sent:** Tuesday, October 3, 2017 10:39 AM  
**To:** McNeely, Kaleb <[mcneely.kaleb@dorsey.com](mailto:mcneely.kaleb@dorsey.com)>; [pspees@ccrjustice.org](mailto:pspees@ccrjustice.org)  
**Cc:** Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>  
**Subject:** SMUG v. Lively - motion for extension of time nunc pro tunc  
**Importance:** High

Kaleb or Pam – we encountered technical difficulties in filing Lively’s brief last night, and missed the midnight deadline by 23 minutes. Out of an abundance of caution, we are filing a quick motion asking the First Circuit for an extension, nunc pro tunc. We would like to file it in the next couple hours. May we have your quick confirmation that SMUG does not oppose the relief?

Thanks.

**Horatio G. Mihet, Esq.\***  
*Vice President of Legal Affairs &  
Chief Litigation Counsel*

**Liberty Counsel**

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