

# United States Court of Appeals For the First Circuit

---

No. 17-1593

SEXUAL MINORITIES UGANDA

Plaintiff - Appellee

v.

SCOTT LIVELY, individually and as President of Abiding Truth Ministries

Defendant - Appellant

---

## **Declaration of Kaleb McNeely**

I, Kaleb McNeely, declare pursuant to 28 U.S.C. § 1746:

1. I am an associate with Dorsey & Whitney LLP, which represents Plaintiff-Appellee Sexual Minorities Uganda (“SMUG”) in the above captioned-matter.
2. On October 3, 2017, Horatio Mihet, counsel for Defendant-Appellant Scott Lively (“Lively”), sent me an email requesting SMUG’s consent to a motion Lively intended to file for an extension, *nunc pro tunc*, of Lively’s merits brief in this appeal.
3. In response, I stated, *inter alia*, that “[i]t 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.” A true and correct

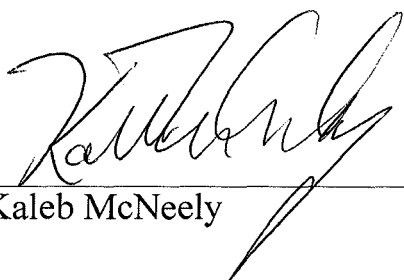
copy of my email exchange with Lively counsel is attached hereto as Exhibit

A.

4. On November 9, 2017, I received a telephone call from Roger Gannam, counsel for Lively, inquiring about SMUG's understanding of the merits briefing schedule in this appeal and, specifically, SMUG's understanding of whether its response to Lively's merits brief ("SMUG's Response") was due. I informed Mr. Gannam that, based on conversations that had taken place with the Clerk of this Court, it was SMUG's understanding that because SMUG's motion to stay merits briefing was still pending, SMUG's Response was not yet due.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
December 27, 2017



---

Kaleb McNeely

# Exhibit A

## McNeely, Kaleb

---

**From:** McNeely, Kaleb  
**Sent:** Tuesday, October 3, 2017 1:52 PM  
**To:** 'Horatio Mihet'  
**Cc:** Roger Gannam; 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



DORSEY & WHITNEY LLP  
51 West 52nd Street | New York, NY 10019-6119  
P: 212.415.9215 F: 212.953.7201 C: 9178162491

**CONFIDENTIAL COMMUNICATION**

*E-mails from this firm normally contain confidential and privileged material, and are for the sole use of the intended recipient. Use or distribution by an unintended recipient is prohibited, and may be a violation of law. If you believe that you received this e-mail in error, please do not read this e-mail or any attached items. Please delete the e-mail and all attachments, including any copies thereof, and inform the sender that you have deleted the e-mail, all attachments and any copies thereof. Thank you.*

---

**From:** Horatio Mihet [mailto:hmihet@lc.org]  
**Sent:** Tuesday, October 3, 2017 10:39 AM  
**To:** McNeely, Kaleb <mcneely.kaleb@dorsey.com>; pspees@ccrjustice.org  
**Cc:** Roger Gannam <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**  
PO Box 540774

Orlando, FL 32854  
407-875-1776 phone  
407-875-0770 fax  
Offices in FL, VA and DC  
[www.LC.org](http://www.LC.org) ▪ [hmihet@LC.org](mailto:hmihet@LC.org)  
\*Licensed in Florida and Ohio  
Subscribe to *Liberty Alert*: <https://www.lc.org/newsroom/liberty-alert>  
Support Liberty Counsel: <https://www.lc.org/make-a-donation>

This message (including any attached files) is intended for the person to whom it is addressed and may contain confidential information. If you are not the intended recipient, please notify us immediately by replying to this message and deleting it from your computer, because any distribution or use of this message by you is strictly prohibited. Email cannot be guaranteed secure or error-free. We do not accept responsibility for errors or omissions herein that result from email transmission. Any views or opinions expressed in this email are solely those of the author and do not necessarily represent those of Liberty Counsel.