

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

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

and

THE STATE OF ARKANSAS

vs.

Case No. 72CV-15-1510

THE CITY OF FAYETTEVILLE, Washington County, Arkansas;
LIONELD JORDAN, in his official capacity as Mayor of Fayetteville;
ADELLA GRAY, SARAH MARSH, MARK KINION, MATTHEW
PETTY, JUSTIN TENANT, MARTIN W. SCHOPPMAYER JR.,
JOHN LATOUR and ALAN LONG, in their official capacities as
Aldermen of the Fayetteville City Council

FILED FOR RECORD
2017 AUG 23 PM 2:21
WASHINGTON COUNTY ARKANSAS
CIRCUIT CLERK
K. SYLVESTER

DEFENDANTS

PFLAG OF NORTHWEST ARKANSAS;
ANTHONY CLARK; NOAH MEEKS; and
LIZ PETRAY

INTERVENOR DEFENDANTS/
COUNTER-PLAINTIFFS

**RESPONSE TO STATE OF ARKANSAS'S MOTION AND ANY MOTION OR CLAIM
BY PLAINTIFFS TO QUASH SUBPOENAS AND FOR PROTECTIVE ORDER BY
DEFENDANT CITY OF FAYETTEVILLE, MAYOR LIONELD JORDAN, ADELLA
GRAY, SARAH MARSH, MARK KINION, MATTHEW PETTY, JUSTIN TENANT,
MARTIN W. SCHOPPMAYER JR., JOHN LATOUR and ALAN LONG**

Defendant City of Fayetteville, Mayor Jordan and all named City Council Members of the City of Fayetteville (hereinafter "Fayetteville") request denial of the State's Motion to Quash and in support, state:

1. Fayetteville agrees that the questionable constitutionality of Act 137 of 2015 as interpreted by the Arkansas Supreme Court in relation to the Fayetteville citizen enacted Uniform Protection of Civil Rights Ordinance is before this Court.
2. The City of Fayetteville agrees with the Intervening Defendants' right to seek through discovery the items deemed proper, important and advisable for the Intervening Defendants'

defense of the Uniform Protection of Civil Rights Ordinance. However, the City of Fayetteville has merely sought two oral depositions of Representative Bob Ballinger and Senator Bart Hester as the drafters, sponsors and supporters of Act 137 of 2015 and has not sought any documentary discovery.

3. The City of Fayetteville shall allow the Intervening Defendants to support their own documentary discovery requests, but believes that the Attorney General has vastly overstated the breadth of the documentary request with its supposed “millions of pages” as alleged in the Attorney General’s paragraphs 3 through 11.

4. The Attorney General mischaracterizes Fayetteville’s simple request for oral depositions of the two legislative sponsors of Act 137 of 2015 by implying Fayetteville is also demanding documents which its subpoenas (State’s Exhibits D & E) categorically reveal as untrue. These subpoenas will seek information that appears reasonably calculated to lead to discovery of admissible evidence. The Attorney General is wrong that legislators can never be deposed or questioned. Although the Arkansas Supreme Court has never directly addressed legislative privilege for state legislators, the United States Supreme Court has recognized that “(t)he legislative or administrative history may be highly relevant (in an equal protection case), especially where there are contemporary statements by members of the decision making body (T)he members might be called to the stand at trial to testify concerning the purpose of the official action” *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 (1977).

5. Any legislative privilege that Senator Hester or Representative Ballinger might enjoy would be very limited at best and would have to be claimed personally by Senator Hester or Representative Ballinger if they are reluctant or fearful to explain their drafting, sponsorship and

support of their statute. If either is afraid to be questioned, they must affirmatively and personally claim their legislative privilege not to be questioned about their legislative speeches in support of their statute.

6. In response to the Attorney General's paragraph 13, the Attorney General as part of the Executive Department is trying to assist these elected Legislators as part of the Legislative Department to deny important evidence and facts for this Court's analysis prior to its decision. The Separation of Powers Doctrine was placed into our Constitution by our citizens and has been enforced by our Courts as a check and balance against such combination of power and thereby to protect our citizens and independent judiciary.

7. Regarding the Attorney General's remaining paragraphs (#14, #15, #16 and #17), Fayetteville objects to the request to quash its subpoenas, recognizes the exhibits and brief presented by the Attorney General and agrees the issues surrounding the Motion to Quash need to be resolved by this Court.

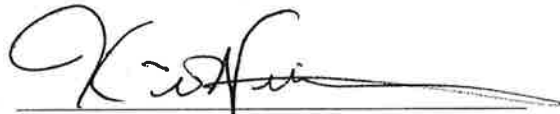
WHEREFORE, the City of Fayetteville and all named defendants pray that the State of Arkansas's Motion to Quash Fayetteville's subpoenas be denied and the subpoenaed Bob Ballinger and Bart Hester be ordered to attend their depositions and answer the questions presented to them, that the State's objections to Intervening Defendants' discovery requests be denied and, in the alternative, if any relief is to be afforded to the Attorney General by means of a protection order that such order be properly limited pursuant to the law as further explained and documented in the supporting briefs.

Furthermore, in accordance with Rule 508 of the Arkansas Rules of Evidence: "If a claim of government privilege is sustained and it appears that a party is thereby deprived of material

evidence, the court shall make any further orders the interest of justice require, including . . . finding upon an issue as to which the evidence is relevant, or dismissing the action.” The City and all defendants request that further order be granted by this court if any government privilege is granted.

Respectfully submitted,

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

By: 
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CERTIFICATE OF SERVICE

I, Kit Williams, certify that I have emailed the above Response to State of Arkansas's Motion to Quash Subpoenas and for Protective Order by Defendant City of Fayetteville, Mayor Lioneld Jordan, Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tenant, Martin W. Schoppmeyer Jr., John Latour and Alan Long on this the 24th day of August, 2017, to:

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