

U.S. Court of Appeals Vindicates American Pastor in LGBT Case

Last Friday, the U.S. Court of Appeals for the First Circuit vindicated the name of Pastor Scott Lively, in an appeal Liberty Counsel filed in June 2017. Lively filed the appeal after winning summary judgment against the foreign LGBT activists, Sexual Minorities of Uganda (SMUG), which had sued Lively in 2012 for sharing his biblical views on homosexuality during three visits to Uganda in 2002 and 2009.

Although Lively's summary judgment win put an end to SMUG's attempt to silence him, he filed the appeal to strike the outrageous statements and unnecessary, unsupportable findings made against Lively by U.S. District Judge Michael A. Ponsor in the order delivering the win. The court of appeals' opinion neutralizes the gratuitous language, making it clear that Judge Ponsor's statements have no legal effect.

In a direct challenge to the U.S. Constitution and the rule of law, SMUG had tried to create new and dangerous precedent by accusing Lively of international "crimes against humanity"—akin to genocide and war crimes—in reliance on the obscure Alien Tort Statute (ATS). But the Supreme Court confirmed in a 2013 decision that the ATS was never intended to allow a foreign citizen to sue a U.S. citizen in America alleging violation of some supposed international law. Judge Ponsor, who has a long history of active support for the LGBT agenda, and remarkably considers judges "the unappointed legislators of mankind," should have dismissed SMUG's claims in 2013 under the binding Supreme Court precedent. Instead, he allowed SMUG to subject Lively to over four years of litigation, including 100 hours of depositions and the review of 40,000 pages of documents.

Unsurprisingly, the extensive litigation record revealed no evidence of any conspiracy or persecution by Lively. Rather, the evidence showed that Lively, in a country where homosexuality has been illegal for decades, urged treatment of people identifying as LGBT with respect and dignity, and the liberalization of Uganda's laws against homosexuality, even as he spoke in favor of biblical sexual morality and against the LGBT political agenda.

When confronted with SMUG's complete failure of evidence in 2017, Judge Ponsor finally dismissed SMUG's claims as he should have done in 2013, giving Lively a complete, albeit delayed, victory. But Judge Ponsor let his personal bias against pro-family values and support for the LGBT agenda infect what should have been a short and straightforward legal opinion, polluting his order with a prolonged tirade against Lively, badly distorting Lively's Christian views and activism, and insulting him with such unbecoming epithets as "crackpot bigot," "pathetic," "ludicrous," "abhorrent" and numerous others. Even more egregiously, and even though he admittedly lacked jurisdiction to rule on SMUG's claims, Judge Ponsor purported to conclude, without even a pretense of legal or factual analysis, that Lively's Christian beliefs and pro-family activism violated "international law" and that Lively's peaceful speaking on homosexuality in Uganda somehow "aided and abetted" international crimes supposedly committed by people Lively has never even spoken to or met.

With SMUG promising to use Judge Ponsor's order against Lively in other courts, Lively appealed his win, but only to have stricken Judge Ponsor's improper and prejudicial statements. The court of appeals made it clear that Judge Ponsor's statements "lack any binding or preclusive effect" and "should not be accorded any binding effect in future litigation..."

"The court of appeals has legally cleared Lively's name, stating unequivocally that Judge Ponsor's baseless findings and insults have no legal effect whatsoever," said Horatio

Mihet, Liberty Counsel's Vice President of Legal Affairs and Chief Litigation Counsel. "The decision also thwarts SMUG's promise to weaponize Judge Ponsor's attack against Lively, leaving SMUG with what it always deserved from this case, which is nothing." {eo}

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