

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

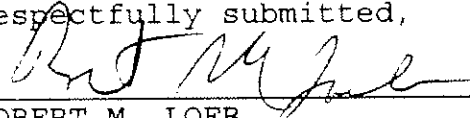
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FREEDOM FROM RELIGION FOUNDATION,	)	
INC.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 07-1292
	)	
R. JAMES NICHOLSON,	)	
	)	
Defendants-Appellees.	)	
_____	)	

**MOTION FOR STAY OF COMPLETION OF BRIEFING SCHEDULE  
UNTIL 30 DAYS AFTER THE SUPREME COURT DECIDES  
FREEDOM FROM RELIGION FOUNDATION V. HEIN**

Pursuant to Federal Rule of Appellate Procedure 27, the appellees respectfully request the Court to stay completion of the briefing schedule in this case by extending the time for filing the Brief for Appellees until 30 days after the Supreme Court decides Hein v. Freedom from Religion Foundation, Inc., No. 06-157 (S. Ct.).

In the alternative, if the Court decides against granting a stay, the appellees request the Court grant a 30-day extension of time in which to file the appellees brief, running from the date of the ruling on this motion. The grounds for this motion are set forth in the accompanying affidavit of counsel.

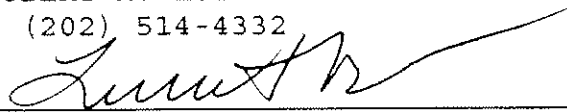
Respectfully submitted,



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ROBERT M. LOEB

(202) 514-4332



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LOWELL V. STURGILL JR.

(202) 514-3427

Attorneys, Appellate Staff

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Washington, D.C. 20530

IN THE UNITED STATES COURT OF APPEALS  
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FREEDOM FROM RELIGION FOUNDATION, INC.,	)	
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Plaintiffs-Appellants,	)	
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v.	)	No. 07-1292
	)	
R. JAMES NICHOLSON,	)	
	)	
Defendants-Appellees.	)	
	)	

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Affidavit of Counsel

I, Lowell V. Sturgill Jr., hereby state the following in support of appellees' Motion to Stay Completion of the Briefing Schedule in the above-captioned case:

1. I am the attorney with the Civil Division, Appellate Staff, Department of Justice, who has been assigned primary responsibility for preparing and filing the Brief for Appellees in the above case. The Brief for Appellees is currently due April 30, 2007.

2. One of the arguments appellees currently plan to include in their Appellees' Brief is that plaintiffs lack Establishment Clause taxpayer standing to file this suit because the case does not involve a congressional taxing and spending statute or any disbursement of federal funds to third parties who are outside the federal government.

3. A similar argument is pending before the Supreme Court in Freedom from Religion Foundation, Inc. v. Hein, No. 06-157 (S. Ct.). In that case, the Freedom From Religion Foundation is challenging certain conferences that are sponsored by the White House Office of Faith-Based and Community Initiatives ("FBCI") and several agency FBCI Centers. The Supreme Court granted certiorari in that case to decide whether taxpayers lack standing to challenge the conferences because the conferences are not financed through a taxing and spending statute and because no funds are disbursed to third parties outside the federal government.

4. We expect a ruling in Hein by no later than early July, 2007. Since the Supreme Court in that case will have opportunity to address the very standing issue that the defendants plan to raise in their Appellee Brief in this action, and that plaintiffs would then presumably address in their Reply Brief, it makes sense to stay completion of the briefing in this case until after the Supreme Court decides Hein.

5. A short stay until the Supreme Court decides Hein would not materially delay the resolution of this appeal or cause any prejudice to any party. The case could still be briefed by the end of this Summer and argued in the Fall, and a stay would prevent the parties from having to prepare and file briefs that could be largely overtaken by Hein, requiring the submission and filing of supplemental briefs addressing that decision.

6. For all the above reasons, therefore, we respectfully request the Court to stay completion of the briefing in this case, and to amend the briefing schedule so that the Brief for Appellees will be due 30 days after the Supreme Court issues a decision in Hein.

7. Alternatively, if the Court is unwilling to grant a stay, we request the Court to extend the time for filing the Brief for Appellees by thirty (30) days, running from the date on which the Court rules on this motion. Because of the press of other case responsibilities, Mr. Sturgill will be unable to prepare and file the Brief for Appellees by the current due date.

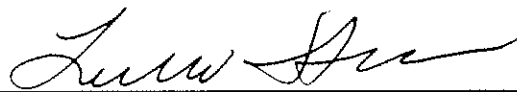
a. On April 11, 2007, Mr. Sturgill was responsible for filing the government's opposition to a petition for rehearing in banc in McConnell v. United States, No. 05-15025 (9<sup>th</sup> Cir.).

b. On April 18, 2007, Mr. Sturgill will be responsible for completing and transmitting to the Solicitor General a draft opposition to a petition for certiorari in Veitch v. England, 06-1187. That brief is already on one extension.

c. By April 25, 2007, Mr. Sturgill is responsible for filing the government's brief in Habecker v. Town of Estes Park, No. 06-1515 (10<sup>th</sup> Cir.), which also is already on one extension.

8. Plaintiffs have advised us that they do not agree with a stay of the briefing schedule pending Hein, but do not object to our request, in the alternative, for an extension of time to file the Appellees' Brief for 30 days, running from the date of the Court's order on this motion.

I declare under penalty of perjury that the foregoing is true and correct. See 28 U.S.C. 1746(2). Executed on April 17, 2007.



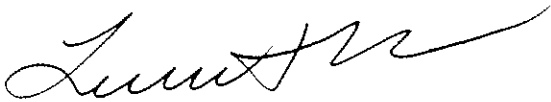
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**Certificate of Service**

I hereby certify that on this 17<sup>th</sup> day of April, 2007, I served the foregoing Motion for Stay of Completion of Briefing Schedule upon the following counsel by causing a copy of the Motion to be delivered to Federal Express for next-day delivery:

Richard L. Bolton  
Boardman, Suhr, Curry & Field, LLP  
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P.O. Box 927  
Madison, WI 53701-0927

  
\_\_\_\_\_  
Lowell V. Sturgill Jr.

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

April 23, 2007

*Before*

**Hon. JOEL M. FLAUM**, *Circuit Judge*

FREEDOM FROM RELIGION FOUNDATION,	]	No lower data for 07-1292
INCORPORATED, ANNE GAYLOR, ANNIE	]	
L. GAYLOR, et al.,	]	
Plaintiffs-Appellants,	]	
	]	
No. 07-1292	v.	]
		]
R. JAMES NICHOLSON, JONATHAN	]	
PERLIN, HUGH MADDRY, et al.,	]	
Defendants-Appellees.	]	
	]	

Upon consideration of the **MOTION FOR STAY OF COMPLETION OF BRIEFING SCHEDULE UNTIL 30 DAYS AFTER THE SUPREME COURT DECIDES FREEDOM FROM RELIGION FOUNDATION v. HEIN**, filed on April 18, 2007, by counsel for the appellees,

**IT IS ORDERED** that the motion is **GRANTED**. Briefing is **SUSPENDED** pending the Supreme Court's decision in *Hein v. Freedom from Religion Foundation*, 433 F.3d 989 (7<sup>th</sup> Cir. 2006), *cert. granted*, 127 S. Ct. 727 (Dec. 1, 2006) (No. 06-157). The parties are directed to file statements of position within 14 days of the Supreme Court's decision in *Hein*.



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Madison, WI 53701 - 927  
7-1292

Enclosed is a copy of a document issued by this court in the above captioned case. Since this will be the only copy your firm will receive, if applicable, please circulate this order to other members of your firm who may have an interest in this case.

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(fold)