

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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March 21, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 14-15499-U

Case Style: Flanigan's Enterprises, Inc of, et al v. City of Sandy Springs, Georgia

District Court Docket No: 1:13-cv-03573-HLM

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

For the purpose of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus on their briefs on the following issues:

1. Is *Williams v. Attorney General (Williams IV)*, 378 F.3d 1232 (11th Cir. 2004), still good law in light of *United States v. Windsor*, 133 S. Ct. 2675 (2013), and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)?
2. If not, how do we define the due process right at issue and what is its relation to the ability to lawfully buy and sell sexual devices? What are the historic and precedential bases for granting or denying constitutional protection of that right?
3. Does the City of Sandy Springs's ordinance banning the sale of devices "use[d] primarily for the stimulation of human genital organs" unconstitutionally burden that due process right or any other protected right?

APPELLANT'S EN BANC BRIEF IS TO BE SERVED AND FILED ELECTRONICALLY ON OR BEFORE MONDAY, APRIL 17, 2017 BY 5:00 p.m. APPELLEE'S EN BANC BRIEF SHALL BE SERVED AND FILED ELECTRONICALLY ON OR BEFORE THURSDAY, MAY 18, 2017 BY 5:00 p.m. An en banc reply brief shall be filed electronically on or before Monday, May 29, 2017 by 5:00 p.m. NO EXTENSIONS WILL BE GRANTED. 20 paper copies of the en banc briefs should be sent to the clerk's office (appellant's in blue covers, appellee's in red covers and any reply in gray covers). The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing. NO

TIME FOR MAILING SHALL BE ALLOWED. The usual page limitations will apply. The filing on an en banc amicus brief is governed by 11th Cir. R. 35-8.

All counsel are requested to submit 20 copies of their original panel briefs, appendix and supplemental authorities prior to 5:00 p.m., Monday, April 17, 2017.

Oral argument will be conducted Tuesday, June 6, 2017, in Atlanta, Georgia at 9:00 a.m. Each party will be allotted 20 minutes per side for oral argument.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs
Phone #: 404-335-6166 or 404-335-6131

BR-1CIV Civil appeal briefing ntc issued