

# The Case against Scott Lively: Frequently Asked Questions



Pepe Onziema of SMUG speaks at press conference outside federal court in Springfield, MA. Photo: Camilo Ramirez

## What is the case about?

Beginning at least as far back as 2002, Scott Lively, an anti-gay extremist, has worked with Stephen Langa and Martin Ssempe – and later James Buturo and David Bahati – on a plan to strip rights away from and suppress Uganda’s lesbian, gay, bisexual, transgender, and intersex (LGBTI) community. Lively put forth and helped implement the “blueprint” that is now being used in Uganda to severely discriminate against the LGBTI community there. For example, Lively has explicitly called for the silencing and criminalization of advocacy and for codifying discrimination against LGBTI people and LGBTI people and advocates in Uganda have been deprived of basic rights as a result. Sexual Minorities Uganda (SMUG) and the Center for Constitutional Rights (CCR) brought a lawsuit against Scott Lively. The case, *SMUG v. Lively*, is for persecution, which is defined as the intentional and severe deprivation of fundamental rights based on a group’s identity. We have seen that the very existence of SMUG and its member organizations have been criminalized and its members’ physical safety has been threatened. This amounts to persecution because it is the deprivation of the fundamental rights of LGBTI people – and those who advocate on their behalf – to expression, assembly and association and to be free from arbitrary arrest and detention and cruel, inhuman and degrading treatment.

## Why is this case in the United States and not in Uganda?

Scott Lively lives in and is a citizen of the United States, therefore CCR and SMUG are suing him not in Uganda but in a U.S. court (in his hometown of Springfield, Massachusetts). SMUG and other LGBTI advocates are fighting separate legal battles in Uganda against people there who are also working to further the program of persecution. But because Scott Lively is not now present in Uganda, no Ugandan court could exercise jurisdiction over him. This case does not seek to impose U.S. law on Ugandan actors who may be held liable by Uganda’s court system, as the High Court of Uganda has already found that LGBTI persons enjoy basic protections of the law. Rather, this case seeks to hold liable that person who has instigated and pursued this severe repression in Uganda while based in the U.S.: Scott Lively.

## But how is it possible for Ugandans to sue a U.S. citizen in U.S. courts?

The Alien Tort Statute, part of U.S. law since 1789, allows foreign citizens to bring legal claims for severe human rights violations in U.S. Courts. The law reads, “The district courts shall have original jurisdiction of any civil action by

an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” It is not uncommon for foreign nationals to sue U.S. citizens and corporations in U.S. courts for every day civil suits like personal injury cases, also known as tort suits. The ATS simply gives federal courts the power to hear civil cases about severe human rights violations.

### What is the Anti-Homosexuality Bill in Uganda and how is Scott Lively connected to it? Hasn't he distanced himself from the bill?

The Anti-Homosexuality Bill enumerates degrees of homosexuality and imposes punishments, including life imprisonment for certain cases of consensual sex between consenting adults. The bill also includes lengthy prison sentences for advocating about LGBTI rights and issues, bans any organizations that advocate on behalf of LGBTI rights, and would require families, associates and even medical professionals to report people suspected of being gay.

Lively has freely admitted that he went to Uganda to help his partners there prepare the groundwork for the bill and consulted on its contents. We hope through this case we can determine exactly what his role was in the development of the bill and other efforts to strip away basic rights from the LGBTI community.

Lively has not distanced himself from the bill. He suggested the death penalty be removed but still called the bill with the death penalty the “lesser of two evils.” He has never distanced himself from other problematic aspects of the bill such as the criminalization of speech and advocacy, and



Silent march in Springfield, MA to commemorate violence against LGBTI community in Uganda and mark filing of lawsuit against Scott Lively. Photo: CCR

banning of organizations.

It is important to point out that this case is not just about Lively’s involvement in the legislation. Separate from the bill, LGBTI organizations, advocates and individuals have suffered severe and widespread violations of basic rights – including raids of meetings and arrests of staff – due to Lively’s efforts to bring about the repression of the LGBTI community in Uganda.

## Separating Fact from Fiction: Responding to Scott Lively's claims about the case

Q: Lively says that CCR and SMUG are trying to punish him for things he is saying that are protected under the First Amendment of the U.S. Constitution. **Is this true?**

**FALSE**

This is false. This is not a hate speech or incitement case.

CCR and SMUG could have and would have still brought this case if Lively had never said *anything* publicly in Uganda. Any of Lively’s speech

highlighted in the context of this case is simply evidence of his involvement and even leadership in the effort to repress the LGBTI community in Uganda and of his specific intention to bring about the suppression of the LGBTI community. We know he intends to deny rights to expression, assembly and association of LGBTI people and organizations because he says so.

As the court noted in a historic decision rendered in August 2013, the case sets out “plausible claims to hold defendant liable for his role in system-

atic persecution, rather than merely for opinions that Plaintiff finds abhorrent” and actions that “have fallen well outside the protections of the First Amendment.” The court noted that the allegations are that Lively, “along with others in Uganda, devised and carried out a program of persecution aimed at Plaintiff’s organization and its members based on their sexual orientation and gender identity” and that Lively “helped coordinate, implement, and justify ‘strategies to dehumanize, demonize, silence, and further criminalize the LGBTI community.’”





Pepe Onziema of SMUG and Holly Richardson of OutNow outside federal court in Springfield, MA. Photo: Laura Raymond.

It is in fact Lively who is trying to stop SMUG and its members from speaking. Lively has been very specific and explicit that gay advocates must be silenced and their advocacy must be criminalized to effectively erase their existence from political life. He has also tried to silence and repress the LGBTI community in other parts of the world, for example in Russia where he advised lawmakers to “criminalize the public advocacy of homosexuality” because, “[t]he easiest way to discourage ‘gay pride’ parades and other homosexual advocacy is to make such activity illegal.”

Recently, in 2013, Russia passed a series of measures outlawing a broad definition of “propaganda about non-traditional sexual relations,” and banning adoptions by gay people or from any country where marriage equality exists. Lively again acknowledged that he influenced the Russian laws that have led to the Russian LGBTIQ community’s rights being stripped away and claimed it’s one of the “proudest achievements” of his career.

**Q: Lively says that the group that is being persecuted here is Christians, not LGBTI Ugandans, because SMUG and its lawyers are coming after them for their religious beliefs. Is this true?**

**FALSE** This is false. Nothing about this lawsuit seeks to strip any rights away from Lively or other anti-gay US evangelicals. It is not trying to stop them from practicing their version of their religion. The lawsuit is only seeking to stop their persecution of others. Persecution is not a right. It is a crime.

Moreover, Scott Lively’s rabidly anti-gay version of his religion has been rejected by the overwhelming majority of those in the faith-based community. Christian ministers around the world have come out in support of this lawsuit against Scott Lively. In fact, in July 2012, 46 American Christian leaders put out a statement that referenced extremist evangelicals such as Lively

who spread hate in Uganda: “As American Christians we recognize that groups and leaders within our own country have been implicated in efforts to spread prejudice and discrimination in Uganda. We urge our Christian brothers and sisters in Uganda to resist the false arguments, debunked long ago, that LGBT people pose an inherent threat to our children and our societies...”

**Q: Lively has said that discrimination against LGBTI persons cannot violate international law because many countries around the world still criminalize sodomy or otherwise discriminate against LGBTI people. Is this true?**

**FALSE** This is false. As Judge Michael Ponsor, the judge in this case, explained when rejecting Lively’s arguments to dismiss this case: “Widespread, systematic persecution of LGBTI people constitutes a crime against humanity that unquestionably violates international norms. The history and current existence of discrimination against LGBTI people is precisely what qualifies them as a distinct targeted group eligible for protection under international law. The fact that a group continues to be vulnerable to widespread, systematic persecution in some parts of the world simply cannot shield one who commits a crime against humanity from liability.”

**Q: Lively has said that his conduct abroad would be legal if it were undertaken in the United States. Is this true?**

**FALSE** This is false. Lively’s actions and conduct abroad would not be legal if he were doing the same thing in the United States. Imagine if there were LGBTIQ groups in your community whose meetings were raided and shut down by police and government

officials and whose staff was arrested when they tried to legally demonstrate and raise awareness about the issues they're concerned about, and if their offices were raided and equipment seized and they faced criminal penalties for speaking out publicly. If Lively were working in the same way to strip basic rights away from LGBTI advocates – for example preventing pro-gay speech, including parades and other forms of advocacy, and banning LGBTI organizations – those whose rights were deprived would have claims against him under the Ku Klux Klan Act, specifically 42 U.S.C. § 1985(3), which allows civil actions against private actors for conspiracies to violate civil rights when motivated by group-based animus.

**Q: Lively is saying that the Alien Tort Statute was "stripped of its power to hold Americans accountable for their conduct in foreign countries by the United States Supreme Court in the *Kiobel* case." Is this true?**

**FALSE** This is false. The *Kiobel* case that the Supreme Court ruled on in April 2013 was a case where Nigerian plaintiffs sued a British corporation for conduct that took place in Nigeria. After this Supreme Court ruling, Scott Lively asked for *SMUG v. Lively* to be dismissed, arguing that because the Nigerian plaintiffs in *Kiobel* could not sue a British corporation in U.S. courts Ugandans could not sue a U.S. citizen. However, in a victory for human rights, Judge Michael Ponsor ruled in August 2013 that the Supreme Court ruling in *Kiobel* did not impact SMUG's ability to bring the case. He wrote, "Two facts alleged in this case distinguish it



Scott Lively enters court in Springfield, MA. Photo: Joe Oliverio

*from Kiobel. First, unlike the British and Dutch corporations, [Scott Lively] is an American citizen residing within the venue of this court in Springfield, Massachusetts. Second, read fairly, the Amended Complaint alleges that the tortious acts committed by [Lively] took place to a substantial degree within the United States, over many years, with only infrequent actual visits to Uganda. The fact that the impact of [Lively's] conduct was felt in Uganda cannot deprive [SMUG] of a claim. [Lively's] alleged actions in planning and managing a campaign of repression in Uganda from the United States are analogous to a terrorist designing and manufacturing a bomb in this country, which he then mails to Uganda with the intent that it explode there."*

**Q: Lively claims that "homosexuality" is a western import and is being imposed on Uganda and other countries through a global gay movement. Is this true?**

**FALSE** This is false. In Uganda, as with everywhere around the world, there have always been people with different sexual orientations and gender identities. The criminalization of "homosexuality" is the western import as during the process of colonization, colonial powers brought with them laws which criminalized and attitudes which shamed LGBTI people and communities. This is true in Uganda, which was colonized by Great Britain as well as the United States, India and other former colonies of the British Empire.