

SUPREME COURT OF ARKANSAS

No. CV-16-586

PROTECT FAYETTEVILLE, F/K/A
REPEAL 119; PAUL SAGAN; PETER
TONNESSON; AND PAUL PHANEUF
APPELLANTS

AND

THE STATE OF ARKANSAS
INTERVENOR

V.

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
LATOIR, AND ALAN LONG, IN THEIR
OFFICIAL CAPACITIES AS ALDERMEN
OF THE FAYETTEVILLE CITY
COUNCIL

APPELLEES

Opinion Delivered: February 23, 2017

APPEAL FROM THE
WASHINGTON COUNTY
CIRCUIT COURT [NO. 72CV-15-
1510]

HONORABLE DOUG MARTIN,
JUDGE

REVERSED AND REMANDED.

JOSEPHINE LINKER HART, Associate Justice

Appellants, Protect Fayetteville, f/k/a Repeal 119; Paul Sagan; Peter Tonnesson; and Paul Phaneuf, appeal from the circuit court's decision finding that the passage of Ordinance 5781 by the Fayetteville City Council, entitled "An Ordinance To Ensure Uniform Nondiscrimination Protections Within The City of Fayetteville For Groups Already Protected To Varying Degrees Throughout State Law," did not violate Act 137 of 2015,

the Intrastate Commerce Improvement Act, codified at Ark. Code Ann. § 14-1-401 to - 403 (Supp. 2015). We reverse and remand.

On February 24, 2015, Act 137 was approved without an emergency clause. The effective date of all acts without an emergency clause or a specified effective date was July 22, 2015. Arkansas Code Annotated section 14-1-402 provides as follows:

(a) The purpose of this subchapter is to improve intrastate commerce by ensuring that businesses, organizations, and employers doing business in the state are subject to uniform nondiscrimination laws and obligations, regardless of the counties, municipalities, or other political subdivisions in which the businesses, organizations, and employers are located or engage in business or commercial activity.

(b) The General Assembly finds that uniformity of law benefits the businesses, organizations, and employers seeking to do business in the state and attracts new businesses, organizations, and employers to the state.

In sum, the General Assembly's stated purpose for passage of the Act was to improve intrastate commerce by ensuring that various entities in the state are subject to uniform nondiscrimination laws. Arkansas Code Annotated section 14-1-403 provides as follows:

(a) A county, municipality, or other political subdivision of the state shall not adopt or enforce an ordinance, resolution, rule, or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law.

(b) This section does not apply to a rule or policy that pertains only to the employees of a county, municipality, or other political subdivision.

On June 16, 2015, the Fayetteville City Council passed Ordinance 5781. The Ordinance notes that various laws, including the Civil Rights Act, the Arkansas Civil Rights Act of 1993, and the Arkansas Fair Housing Act, provide "Fayetteville citizens with protections against discrimination on the basis of race, ethnicity, national origin, age, sex, religion and disability." The Ordinance further notes that the Arkansas General Assembly "has determined that attributes such as 'gender identity' and 'sexual orientation' require protection," citing Ark. Code Ann. § 6-18-514(b)(1) (Repl. 2013), which is a statute