

In The
United States Court of Appeals
For The Sixth Circuit

WILLIAM ANDREW WRIGHT,

Petitioner – Appellant,

v.

STEPHEN SPAULDING, Warden,

Respondent – Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO, D. CT. No. 4:17-CV-2097
(HON. CHRISTOPHER A. BOYKO)**

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**UNOPPOSED MOTION BY
THE LAW & LINGUISTICS RESEARCH TEAM
TO FILE *AMICUS* BRIEF IN SUPPORT OF NEITHER PARTY**
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***for identification only**

**UNOPPOSED MOTION FOR LEAVE
TO FILE BRIEF AS AMICI CURIAE**

The following persons seek leave to file an amicus brief pursuant Federal Rule of Appellate Procedure 29(a)(3):

Professor Clark D. Cunningham

Professor Jesse E. Egbert

Professor Noor Abbady

Margaret Wood

Heather M. Kuhn

These proposed amici curiae are referred to collectively as The Law and Linguistics Research Team (“research team”). The amicus brief accompanying this motion is offered in support of neither party; however, both parties consent to the filing of this amicus brief. The brief takes no position as to whether the decision of the district court should be affirmed or reversed.

On July 18, 2019, the parties filed supplementary briefs at the request of the court, addressing the following four questions:

1. What is the original meaning of the Article III Cases or Controversies requirement?
2. How does the corpus help inform that determination?
 - a. See <https://lcl.byu.edu/projects/cofea/>.
3. How does that original meaning relate to the distinction between holding and dicta?
4. How does that ultimate determination relate to which test in *Hill* should govern?

The attached brief is offered to help the court in addressing these questions by providing research results from linguistic analysis of texts from the Constitutional Convention augmented by linguistic analysis of a large corpus of texts from that period, the Corpus of Founding Era American English (*COFEA*) – the corpus specifically mentioned in the court’s request for supplemental briefing. The findings from the Law & Linguistics Research Team suggest that the current interpretation of “cases” in Article III may be more narrow than the ways the term would have been used and understood by those who drafted and ratified the Constitution, a finding that may raise questions about whether the doctrine of dicta is supported by the text of Article III. The methods and conclusions of the amicus brief do not duplicate what the parties have presented in their supplementary briefs.

Following the guidance of Federal Rule of Appellate Procedure 29, the research team is filing this motion and attached brief on July 25, 2017, which is within 7 days of when the supplemental briefs of the parties were filed on July 18, 2019. The attached brief is one-half the maximum length of 25 pages authorized for the supplemental briefs filed by the parties.

The members of the Law & Linguistics Research Team have a serious and sustained interest in developing and promoting the use of linguistic analysis to inform the interpretation of statutory and constitutional provisions.

Clark D. Cunningham is Professor of Law and the W. Lee Burge Chair in Law & Ethics at the Georgia State University College of Law.¹ He received the Association of American Law Schools (AALS) annual scholarly paper award for his application of linguistic theory to interpreting the meaning of “search” in the Fourth Amendment, later published as *A Linguistic Analysis of the Meanings of 'Search' in the Fourth Amendment: A Search for Common Sense*, 73 Iowa L. Rev. 541 (1988). His article co-authored with three linguists which provided the U.S. Supreme Court with linguistic analysis of three statutory interpretation issues then pending before the Court, *Plain Meaning and Hard Cases*, 103 Yale L.J. 1561 (1994), was cited in the principal opinion in one of those cases, *United States v. Granderson*, 114 S. Ct. 1259 (1994) and in a concurring opinion in another, *Staples v. United States*, 114 S. Ct. 1793 (1994). He teaches a course at Georgia State on applying linguistic and historical analysis to research the original meaning of the Constitution and Bill of Rights. He is the chair-elect of the AALS Section on Law and Interpretation.²

Jesse A. Egbert received his Ph.D. in Applied Linguistics with distinction at Northern Arizona University, where his dissertation chair was the world’s leading expert on corpus linguistics, Professor Douglas Biber. He currently serves as a linguistics professor at Northern Arizona University. He is founder and General Editor

¹ Employers are provided for identification only; neither this motion nor the brief are filed on behalf of any of the identified employers.

² A complete Cunningham CV is available at: <http://www.clarkcunningham.org/>

of the international scholarly journal *Register Studies*. He has authored more than 60 peer reviewed publications and has authored or co-edited three books.³

An amicus brief co-authored by Professors Cunningham and Egbert on the original meaning of “emolument” in the Constitution was filed in the 4th Circuit last January and subsequently cited by parties on both sides of the case. *In re Trump*, No. 18-2486, ___ F.3d ___, 2019 WL 2998602 (4th Cir. July 10, 2019). The brief was also cited by parties on both sides of the case in *Blumenthal v. Trump*, 335 F.Supp.3d 45 (D.D.C. 2018). This brief was recently mentioned with approval in *Wilson v. Safelite Group, Inc.*, No. 18-3408, ___ F.3d ___, 2019 WL 3000995, at *15,*16 (6th Cir. July 10, 2019) (Stranch, J., concurring). The brief is available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3334017.

Noor Abbady received her MA in applied linguistics from Georgia State University, and is Professor of English as a Second Language at the Savannah College of Art & Design.

Margaret Wood is a PhD candidate in applied linguistics at Northern Arizona University, where she is studying applications of linguistics to legal interpretation under Professor Egbert’s supervision.

Heather Kuhn, Data Privacy and Security Consultant, Cox Communications, received her JD from Georgia State University. While graduate students, Professor

³ A complete Egbert CV is available at: <http://oak.ucc.nau.edu/jae89/>

Abbady and Ms. Kuhn collaborated on a research project in the course taught by Professor Cunningham using linguistic analysis to investigate the original meaning of “cases” in Article III. They are currently collaborating with Ms. Wood, under the supervision of Professors Cunningham and Egbert, to expand that research into a paper to be presented in October at a national workshop on law and linguistics hosted by Georgia State University.

The members of the Law & Linguistics Research Team respectfully request that their motion be granted and that the attached amicus brief be filed.

The attached amicus brief contains only a portion of the team’s research to date on the original meaning of “cases” due to the 12 ½ page length limitation. The team will also be conducting further analysis of the usage of “case” and “cases” in the *COFEA* corpus over the next month. Accordingly, the Law & Linguistics Research Team further requests leave to file an additional supplemental brief not to exceed 25 pages on or before August 29, 2019, to present these additional research findings to the court, which they will believe will further assist the court in addressing the important questions it has raised.

Dated: July 25, 2019

Respectfully submitted,

/s/ Clark D. Cunningham

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This motion complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this motion contains 1,100 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because: this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Garamond font.

Dated: July 25, 2019

/s/ Clark D. Cunningham

Counsel for Amici Curiae

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 25th day of July, 2019, I caused this Motion to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all of the registered CM/ECF users.

Dated: July 25, 2019

/s/ Clark D. Cunningham

Counsel for Amici Curiae