STATE OF TENNESSEE

Office of the Attorney General

HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

July 29, 2019

Deborah S. Hunt, Clerk
U.S. Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202-3988

Re: *Thomas v. Bright*, No. 17-6238

Dear Ms. Hunt:

Appellant Clay Bright respectfully submits this letter in response to Appellee William Thomas's notice of supplemental authority filed on July 23, 2019, Dkt. 73.

Thomas cites *Willson v. City of Bel-Nor*, 924 F.3d 995 (8th Cir. 2019), in support of his contention that the Tennessee Billboard Act does not satisfy strict scrutiny. But *Willson* is directly contrary to recent Supreme Court precedent and easily distinguishable from this case.

Willson invalidated a sign ordinance that allowed property owners to post only one freestanding sign and one flag. *Id.* at 999. The Eighth Circuit concluded that the flag exception was content based and did not satisfy strict scrutiny. *Id.* at 1000-02. The court reasoned that the city's asserted interests in "traffic safety and aesthetics . . . [were] not compelling," and, in any event, the city had not "cite[d] any evidence that [the ordinance] further[ed] its stated interests." *Id.* at 1001.

The Eighth Circuit's conclusion that "traffic safety" is not a compelling interest is flatly inconsistent with the Supreme Court's recent decision in *Mitchell v. Wisconsin*, 139 S. Ct. 2525 (2019). In *Mitchell*, which considered whether police officers may administer a warrantless blood alcohol test to an unconscious driver, a plurality of the Court reaffirmed that "highway safety is a *vital public interest*." *Id.* at 2535 (emphasis added).[1] The plurality called the government's interest in highway safety "critical," "compelling," and "paramount" and explained that, "[f]or decades, [the Court] ha[s] strained [its] vocal chords to give adequate expression to the stakes." *Id.* (internal quotation marks omitted).

Moreover, in contrast to *Willson*, the State has presented ample evidence that the Tennessee Billboard Act, including its exception for on-premises signs, furthers the State's compelling interests in highway safety, *see* Brief of Appellant at 9, 49, and safeguarding First Amendment rights, *see id.* at 11-12, 44-55; Reply Brief of Appellant at 18-26.

Respectfully submitted,

/s/ Sarah K. Campbell
Sarah K. Campbell
Associate Solicitor General
P.O. Box 20207
Nashville, TN 37202
(615) 532-6026
Sarah.Campbell@ag.tn.gov

Counsel for Defendant-Appellant

[1] The concurring and dissenting opinions in *Mitchell* did not disagree with the plurality's view that highway safety is a compelling interest. *See* 139 S. Ct. at 2539-41 (Thomas, J., concurring in the judgment); *id.* at 2541-51 (Sotomayor, dissenting); *id.* at 2551 (Gorsuch, J., dissenting).

CERTIFICATE OF SERVICE

I, Sarah K. Campbell, counsel for Defendant-Appellant and a member of the Bar of this Court, certify that, on July 29, 2019, a copy of the foregoing response to Appellee's Rule 28(j) letter was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

/s/ Sarah K. Campbell
SARAH K. CAMPBELL
Special Assistant to the Solicitor General and the Attorney General