

IN THE SUPREME COURT OF ALABAMA

CASE NO. 1090084

THE HEALTH CARE AUTHORITY FOR BAPTIST HEALTH,
AN AFFILIATE OF UAB HEALTH SYSTEM d/b/a
BAPTIST MEDICAL CENTER EAST,

Defendant/Appellant,

v.

KAY E. DAVIS, AS EXECUTRIX OF THE ESTATE OF
LAUREE DURDEN ELLISON, DECEASED,

Plaintiff/Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
NO. CV-06-1475

MOTION FOR LEAVE TO APPEAR AS *AMICI CURIAE*

"One Man With Courage Makes a Majority"¹

No present Justice was a member of this Court when the original opinion in *Ex parte Cranman* was released with a 7-2 vote in favor of conferring the State's immunity on all State-employed health-care providers. After thoughtfully

¹Anonymous saying, *Bartlett's Familiar Quotations*, p. 503b (14th ed. 1968).

considering an earnest application for rehearing supported by a comprehensive *amicus curiae* brief that respectfully demonstrated the errors in the Court's reasoning, the Court withdrew its original opinion and voted that state-employed health-care providers are not immune under Art. § 14, Ala. Const. 1901.² Thoughtful Justices had the patience and courage to carefully consider the arguments on rehearing. The result was a reversal from 7-2 in favor of immunity to 7-2 *against* immunity.

The below-signed members of the Alabama State Bar likewise move for leave to file a brief as *amici curiae* to urge the Court on rehearing to reverse its January 14, 2011, opinion and to correctly declare that health care authorities are not entitled to § 14 immunity. Movants are Alabama educators, lawyers, and retired judges affiliated by nothing more than a sincere and genuine interest in the quality of

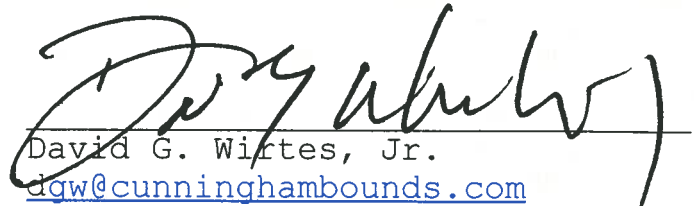
²*Ex parte Cranman*, 792 So. 2d 392 (Ala. 2000). Although the June 16, 2000, *Cranman* lead opinion received only a plurality vote, two appeals consolidated with *Cranman* similarly resulted after rehearing in the overturning of November 24, 1999, original opinions granting immunity. *Ex parte Rizk*, 791 So. 2d 911 (Ala. 2000) (June 30, 2000, opinion with 5 Justices in the majority, two concurring in the result, and two dissenting); *Wimpee by and through Johnston v. Stella*, 791 So. 2d 915 (Ala. 2000) (September 1, 2000, 7-to-2 majority opinion).


justice in the State of Alabama. We each are especially attuned to the timeless importance that opinions of this Court touching on constitutional concerns *be absolutely right every time*. We earnestly believe that the January 14, 2011, manuscript opinion in this appeal is *wrong*.

This Court's January 14, 2011, opinion in this appeal extended the reach of Section 14 to cover what is still essentially a private hospital. As legal educators, scholars of Alabama law, and practitioners before the Bar of the various courts of Alabama, the undersigned wish to show how this Honorable Court has viewed a single provision of the Alabama Constitution of 1901 in isolation and thereby has unwittingly created a situation in which the guarantees provided by multiple other sections of the Constitution against government "usurpation and oppression," Art. I, § 35, Ala. Const. 1901, have been circumvented. If State immunity reaches this far, the very fabric of the judicial system in Alabama is rent asunder.

For these and the other reasons argued in the brief that is conditionally filed with this motion for leave, the *amici curiae* seek leave to make these important arguments to this Honorable Court.

Respectfully submitted,


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The following *amici curiae* have given permission for their names to be electronically signed to the brief to which this motion pertains but do not wish to formally enter an appearance as counsel in this appeal or to receive service of subsequent filings:

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CERTIFICATE OF SERVICE

I do hereby certify that I have on this 4th day of February, 2011, filed the foregoing with the Clerk of the Court via the Alabama Appellate Court Electronic Filing system, and that the following parties have been served a copy

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