

**AFFIDAVIT OF ANDY WIGHTMAN
MSP**

in the petition of

ANDY WIGHTMAN MSP and Others

PETITIONERS

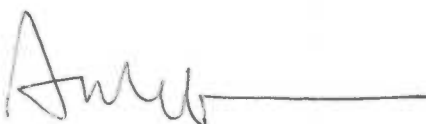
against

**THE RIGHT HONOURABLE DAVID
DAVIS MP, SECRETARY OF STATE FOR
EXITING THE EUROPEAN UNION,
Office of the Advocate General for
Scotland, Victoria Quay, Edinburgh**

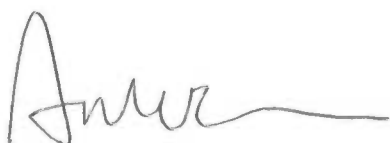
RESPONDENT

At Edinburgh on the Twenty Ninth day of January Two Thousand and Eighteen in the presence of Elaine Joyce Motion, 56-66 Frederick Street, Edinburgh, Notary Public, compeared ANDREW DEARG WIGHTMAN, who being solemnly sworn depones as follows:

1. My full name is Andrew Dearn Wightman. I was born in Dundee on 29 May 1963. I reside in Scotland.
2. I am a Member of the Scottish Parliament in Edinburgh. I was elected for the first time on 5 May 2016 in the Scottish Parliamentary elections as a regional member representing the Lothian region. I represent the interests of the constituents residing in that region. They include UK citizens as well as citizens from European Union ("EU") Member States who have exercised their rights of freedom of movement to come to work and live in Scotland.
3. I have read through the affidavit that one of my fellow petitioners has sworn to. I agree with everything that is said in that affidavit. I wish to add the following observations from the point of view of a Member of the Scottish Parliament.

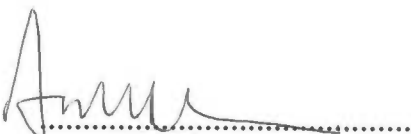
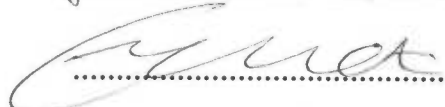


4. As a Member of the Scottish Parliament, I am involved along with all other Members in scrutinizing aspects of the European Union (Withdrawal) Bill given that the Scottish Parliament will be required to pass a legislative consent motion on it. As matters currently stand, it seems unlikely that legislative consent will be given and that is a view which is shared across all the political parties represented in the Scottish Parliament. That said, I am aware that steps are being taken by both the Scottish and UK Governments to resolve the impasse with a view to being able to give legislative consent. If the Parliament is unable to do that, I note that the Scottish Government has announced that it is preparing its own Continuity Bill in order to ensure continuity of law within devolved competence after the UK exits the EU.
5. I have noted that the UK Parliament has voted in the House of Commons for it to have a meaningful vote on the final terms of the withdrawal agreement negotiated between the UK and the EU. That vote will be either to approve the terms of that agreement or to reject them with the possibility of a cliff edge as my fellow petitioner has explained in her affidavit. And timing wise, it is understood that that vote will take place in or around October 2018.
6. Members of the Scottish Parliament fully expects that a legislative consent motion will have to be passed in relation to the final terms of the withdrawal agreement negotiated between the UK and the EU. I have been advised that Section 28(8) of the Scotland Act 1998 requires that and I understand that that is not controversial advice. Thus, the Scottish Parliament will also be engaged in or around that time on whether it should give consent to or reject the final withdrawal agreement terms.
7. It is therefore critical that I, and all other Members of the Scottish Parliament fully understand the ramifications of a vote to withhold consent. It is fundamental for us to know whether there is a legal possibility which exists outside the binary decision of accepting terms which fall short of what my constituents wish or rejecting those terms, and falling over the "cliff edge". Neither scenario is acceptable, in particular to constituents who overwhelmingly voted to stay in the EU, as mine did, and who would prefer as soft a Brexit as possible, as mine do. I therefore need to know if Members of



Parliament at Westminster can legally offer another option, in the shape of a Bill seeking to revoke unilaterally the letter that Prime Minister May sent on 29 March 2017 to the European Council notifying it of the UK's intention to leave the EU. Knowledge of the fact that that Bill could have legal validity and effect would inform me and my fellow Members of the Scottish Parliament that a refusal to pass a legislative consent motion is not the be all and end all but that the cliff edge (and or a "bad" deal) can be avoided by way of this alternative legal mechanism.

8. Yet no one knows if that mechanism is legally valid.
9. It is for this reason that I am petitioning the Court of Session, specifically to ask the Court of Justice of the European Union in Luxembourg for its definitive answer. I have been advised that only that court can produce such an answer and that that advice is uncontroversial. I have also been advised that this petition is the only way I can ask the CJEU to become involved via the Article 267 Treaty on the Functioning of the European Union preliminary reference procedure.
10. Timing wise, I understand that the reference must be sent with some urgency if we are to receive the answer from Luxembourg in time for the vote in or around October 2018.
11. If I do not have an answer, I cannot vote on the legislative consent motion knowing what my and our full rights are. I am at risk of not discharging the public duty that I owe my constituents.
12. All of which is the truth as the deponent shall answer to God.


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ANDREW WIGHTMAN

ELAINE JOYCE MOTION Notary Public