

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES N. STRAWSER, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	1:14-cv-00424-CG-C
LUTHER STRANGE, Attorney General, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANT ATTORNEY GENERAL STRANGE’S ANSWER TO
PLAINTIFFS’ SECOND AMENDED COMPLAINT (DOC. 95)**

Defendant Luther Strange, in his official capacity as Attorney General of the State of Alabama, responds as follows in answer to the Plaintiffs’ second amended complaint:

1. Admitted to the extent that Alabama law recognizes only opposite-sex couples as eligible to receive a marriage license pursuant to Ala. Const. art. I § 36.03 and Ala. Code § 30-1-19. Otherwise, denied.

2. Admitted to the extent that plaintiffs are same-sex couples living in Alabama, and the Probate Judge defendants are Alabama state officials tasked with enforcing and/or upholding Alabama state laws prohibiting same-sex marriage. Denied that plaintiffs have been deprived of any “basic rights, privileges, and protections of marriage” pursuant to those laws, that the Attorney General enforces Alabama’s marriage laws, and that class certification is appropriate.

3. Admitted.

4. Denied. Furthermore, the Court should not certify the proposed plaintiff or defendant classes until the named Plaintiffs present evidence showing they satisfy the class requirements of Fed. R. Civ. P. 23, or until the Probate Judges have the opportunity to respond.

5. Admitted on information and belief.

6. General Strange lacks sufficient information to admit or deny what the Plaintiffs wish or believe about their own relationships.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. General Strange admits that Plaintiffs seek the relief requested in their complaint, but denies that they are entitled to such relief.

12. General Strange admits that Plaintiffs seek the relief requested in their complaint, but denies that they are entitled to such relief.

13. General Strange admits that Plaintiffs seek the relief requested in their complaint, but denies that they are entitled to such relief.

14. Admitted, but denied that any relief is appropriate.

15. General Strange admits that Plaintiffs seek the relief requested in their complaint, but denies that they are entitled to such relief.

16. General Strange does not contest jurisdiction, except to the extent Plaintiffs lack standing to assert these claims against the Attorney General.

17. General Strange does not contest venue.

18. General Strange lacks sufficient information to admit or deny personal facts about the Plaintiffs, but admits that Plaintiffs could not receive a marriage license until a different party was enjoined.

19. General Strange lacks sufficient information to admit or deny personal facts about the Plaintiffs, but admits that Plaintiffs could not receive a marriage license until a different party was enjoined.

20. General Strange lacks sufficient information to admit or deny personal facts about the Plaintiffs, but admits that Plaintiffs could not receive a marriage license until a different party was enjoined.

21. General Strange lacks sufficient information to admit or deny personal facts about the Plaintiffs, but admits that Plaintiffs could not receive a marriage license until a different party was enjoined.

22. General Strange lacks sufficient information to admit or deny personal facts about the Plaintiffs.

23. General Strange lacks sufficient information to admit or deny personal facts about the Plaintiffs.

24. General Strange lacks sufficient information to admit or deny personal facts about the Plaintiffs. General Strange denies that plaintiffs have been injured in any way.

25. General Strange admits that he is the Attorney General of the State of Alabama, sued in his official capacity. General Strange denies that he has the duty under Alabama law to enforce all laws, or the marriage laws specifically.

26. Admitted that Don Davis is the Probate Judge of Mobile County, Alabama, and that Probate Judges issue marriage licenses.

27. Admitted that Tim Russell is the Probate Judge of Baldwin County, Alabama, and that Probate Judges issue marriage licenses.

28. Admitted that the Probate Judges enforce marriage laws. Denied that the Attorney General enforces marriage laws or that Plaintiffs have been injured as a result of any act or omission of the Attorney General

29. The legal provisions cited speak for themselves.

30. Denied that Plaintiffs have suffered injury.

31. Denied.

32. Denied.

33. General Strange lacks sufficient information to admit or deny the allegations of paragraph 33.

34. General Strange lacks sufficient information to admit or deny the allegations of paragraph 34.

35. General Strange lacks sufficient information to admit or deny the allegations of paragraph 35.

36. Denied.

37. Denied.

Class Allegations

38. Admitted that Plaintiffs bring claims on behalf of a purported class, but denied that class certification is appropriate.

39. Denied.

40. Admitted.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Admitted that Plaintiffs bring claims against a purported defendant class, but denied that class certification is appropriate.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

First Claim for Relief

52. General Strange adopts and incorporates the foregoing paragraphs as if set forth fully herein.

53. The cited Constitutional provision speaks for itself.

54. Denied.

55. Denied.

56. Admitted that Probate Judges enforce marriage laws in Alabama. Otherwise, denied.

57. Admitted that Probate Judges enforce marriage laws in Alabama. Otherwise, denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

65. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

66. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

67. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

68. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

69. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

70. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

71. General Strange admits that Plaintiffs seek the relief requested in the complaint, but denies that they are entitled to such relief.

Additional Defenses

1. Defendant denies any allegation in Plaintiffs' Second Amended Complaint that is not expressly admitted above.

2. Plaintiffs' claims against the Attorney General are moot, or otherwise non-justiciable.

3. Plaintiffs' claims are non-justiciable, and/or this Court lacks jurisdiction, because the Attorney General is subject to an injunction pursuant to a final judgment in a separate case, which is currently on appeal.

4. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

5. Plaintiffs' Complaint raises a non-justiciable political question.

6. Plaintiffs' claims are barred by the Tenth Amendment.

7. Sexual orientation is not a protected or suspect class to which heightened scrutiny applies.

8. Alabama's marriage laws are rationally related to legitimate state interests.

9. Alabama's marriage laws are closely related to important governmental interests.

10. Alabama's marriage laws are narrowly tailored and further compelling governmental interests.

11. There is no fundamental due-process right to marry someone of the same sex.

12. It is the public policy of the State of Alabama to recognize marriage as the legal union of one man and one woman.

13. Alabama's recognition of marriage as the legal union of one man and one woman does not violate the United States Constitution.

14. Plaintiffs have not stated a valid § 1983 claim against the Defendants, who are sued in their official capacities, and Plaintiffs may not recover damages, costs or attorney's fees against the Defendants.

15. Plaintiffs' claims are barred by sovereign immunity.

16. Plaintiffs lack standing to assert claims against the Attorney General.

17. The Court should not consider the Plaintiffs' class allegations or request for preliminary injunctive relief until the Probate Judges are provided notice and an opportunity to be heard.

18. Plaintiffs' proposed plaintiff class does not meet the numerosity, typicality, commonality, or adequacy of representation requirements of Fed.R.Civ.P. 23(a).

19. Plaintiffs' proposed plaintiff class does not meet the requirements of Fed.R.Civ.P. 23(b).

20. Plaintiffs' proposed defendant class does not meet the numerosity, typicality, commonality, or adequacy of representation requirements of Fed.R.Civ.P. 23(a).

21. Plaintiffs' proposed defendant class does not meet the requirements of Fed.R.Civ.P. 23(b).

22. The Court should not rule upon the Plaintiffs' motion for class certification for either the plaintiff or defendant class without notice and a hearing.

23. The legal issues in this case are presently before the United States Supreme Court, and that Court is expected to rule on those issues in June 2015. This matter should be stayed until such ruling.

Respectfully submitted,

LUTHER STRANGE (ASB-0036-G42L)
Attorney General

s/ James W. Davis
Andrew L. Brasher (ASB-4325-W73B)
Solicitor General

James W. Davis (ASB-4063-I58J)
Laura E. Howell (ASB-0551-A41H)
Assistant Attorneys General

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36130-0152
(334) 242-7300
(334) 353-8440 (fax)
abrasher@ago.state.al.us
jimdavis@ago.state.al.us
lhowell@ago.state.al.us

CERTIFICATE OF SERVICE

I certify that on May 7, 2015, I electronically filed the foregoing document using the Court's CM/ECF system which will send notification of such filing to the following persons:

Shannon P. Minter
National Center for Lesbian Rights
1100 H Street, NW, Suite 540
Washington, DC 20005
(202) 734-3545
SMinter@nclrights.org

Heather Rene Fann
Boyd, Fernambucq, Dunn & Fann, P.C.
3500 Blue Lake Drive, Suite 220
Birmingham, AL 35243
(205) 930-9000
hfann@bfattorneys.net

Mark S. Boardman
Boardman, Carr, Bennett, Watkins,
Hill & Gamble, P.C.
400 Boardman Dr.
Chelsea, AL 35043-8211
(205)678-8000
2056780000 (fax)
mboardman@boardmancarr.com

Randall C. Marshall
ACLU of Alabama Foundation, Inc.
P.O. Box 6179
Montgomery, AL 30106-0179
334-420-1741
334-269-5666 (fax)
rmarshall@aclualabama.org

Clay Richard Carr
Boardman, Carr & Hutcheson, P.C.
400 Boardman Dr.
Chelsea, AL 35043-8211
(205)678-8000
205-678-0000 (fax)
ccarr@boardmancarr.com

Joseph Michael Druhan, Jr.
Johnston Druhan, LLP
P.O. Box 154
Mobile, AL 36601
(251) 432-0738
mike@satterwhitelaw.com

Harry V. Satterwhite
Satterwhite & Tyler, LLC
1325 Dauphin Street
Mobile, AL 36604
(251) 432-8120
(251) 405-0147 (fax)
harry@satterwhitelaw.com

Lee L. Hale
Hale and Hughes
501 Church Street
Mobile, AL 36602
251-433-3671 ext 2
251-432-1982 (fax)
lee.hale@comcast.net

Teresa Bearden Petelos
400 Boardman Dr.
Chelsea, AL 35043
205-678-8000
tpetelos@boardmancarr.com

Jeffrey M. Sewell
Sewell Sewell McMillan, LLC
1841 Second Avenue N., Suite 214
Jasper, AL 35501
(205) 544-2350
jeff@sewellmcmillan.com

French Andrew McMillan
Sewell Sewell McMillan
1841 Second Avenue South, Suite 214
Jasper, AL 35501
205-544-2350
205-544-2345 (fax)
french@sewellmcmillan.com

Christopher F. Stoll
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
(415) 365-1320
CStoll@nclrights.org

Scott D. McCoy
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
(334) 956-8200
scott.mccoy@splcenter.org

Ayesha Khan
1901 L Street N.W., Suite 400
Washington, DC 20036
202-466-3234
khan@au.org

Zachary Alan Dietert
1901 L St. NW, Suite 400
Washington, DC 20036
202-466-3234
dietert@au.org

David Dinielli
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
(334) 956-8200

s/ James W. Davis
Of Counsel