

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

JAMES N. STRAWSER, <i>et al.</i> ,	)	
Plaintiffs,	)	
v.	)	
LUTHER STRANGE, in his official	)	
capacity as Attorney General for the	)	Civil Action No. 14-0424-CG-C
State of Alabama, <i>et al.</i> ,	)	
Defendants.	)	
	)	
	)	

PLAINTIFFS’ MOTION FOR CLARIFICATION

While the majority of Alabama’s probate court judges are currently issuing marriage licenses to same-sex couples, there remain several who profess confusion about their obligations. Plaintiffs therefore move this Court for an order to clarify for Alabama’s probate court judges that the preliminary injunction, Doc. 123, is currently in effect and binding upon all probate court judges. In support of this motion, Plaintiffs state the following:

1. On May 21, 2015, this Court issued a preliminary injunction requiring all probate judges in the state to issue marriage licenses to same-sex couples on the same terms as such licenses are issued to opposite-sex couples. *See* Doc. 123 at 13. In accordance with the preliminary-injunction order, all of Alabama’s probate court judges were served with that order. *See* Docs. 126, 126-1, 137, 137-1.

2. The preliminary injunction was stayed by the Court “until the Supreme Court issues its ruling” in “*Obergefell v. Hodges* and related cases.” *See* Doc. 123 at

14 (footnote omitted). The United States Supreme Court issued its ruling on June 26. *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015). Accordingly, this Court's preliminary injunction is now in effect.

3. Following the decision in *Obergefell*, Plaintiffs' class counsel began receiving reports of various county probate court judges who were continuing to enforce Alabama's now-invalidated laws barring same-sex couples from marriage by refusing to issue marriage licenses to same-sex couples on the same terms as such licenses are issued to opposite-sex couples. Consequently, counsel sent an e-mail to Defendants' counsel seeking their assistance in notifying all probate court judges of their obligation under the preliminary injunction to issue marriage licenses to same-sex couples immediately. The e-mail, in turn, was distributed to all probate judges on June 29 at 10 a.m. *See* Exhibit 1 (e-mail from Plaintiff Class's counsel and response from Ken Webb).

4. A memorandum advising "that probate judges begin issuing marriage licenses to same-sex couples in the same manner and pursuant to the same requirements applied to traditional couples," was also distributed to the probate court judges by the Association of County Commissions of Alabama. *See* Exhibit 2. *See also* June 29 ACCA Update, available at <http://acca.informz.net/informzdataservice/onlineversion/ind/bWFpbGluZ2luc3RhbmNlaWQ9NDQ1OTA4NyZzdWJzY3JpYmVyaWQ9ODI2ODI2MDI3> (last visited July 1, 2015).

5. Accordingly, probate judges in most Alabama counties are now complying with this Court's May 21, 2015, injunction and issuing marriage licenses to same-sex couples on the same terms as such licenses are issued to opposite-sex couples.

6. Probate judges in a few counties, however, are erroneously maintaining that the Court's May 21, 2015, Order is stayed and that the preliminary injunction is not yet in effect. For example, Tuscaloosa County probate court judge W. Hardy McCollum is currently issuing marriage licenses to opposite-sex couples but not to same-sex couples. *See* Declaration of Jennifer Kenney, Exhibit 3.

7. An order clarifying that the preliminary injunction in the Court's May 21, 2015, Order is in effect and binding on all probate court judges is needed to bring about statewide compliance with the Court's orders.

WHEREFORE, Plaintiffs move this Court for an order stating that the preliminary injunction order, Doc. 123, is in full effect and binding on all Alabama probate court judges and requires immediate compliance.

Respectfully Submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

By: /s/ Shannon P. Minter

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*Attorneys for Plaintiffs*

\* Appearing *pro hac vice*

\*\* Motion for admission *pro hac vice* forthcoming

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system on July 1, 2015. I certify that service will be accomplished by the CM/ECF system to the following parties:

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/s/ Randall C. Marshall

PLAINTIFFS'  
EXHIBIT 1

**From:** [Ken Webb](#)  
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**Cc:** [Shannon Minter](#); [Chris Stoll](#); [David Dinielli](#); [Scott McCoy](#); [Heather Fann](#); [Zachary Dietert](#); [Ayesha Khan](#); [Jim Davis](#); [lhowell@ago.state.al.us](#)  
**Subject:** RE: Strawser v. Strange Preliminary Injunction Order  
**Date:** Monday, June 29, 2015 1:27:45 PM  
**Attachments:** [image002.png](#)

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While I am not counsel for the Defendant Class, please be advised that your email was forwarded by the ACCA to all probate judges at 10:00 this morning. The ACCA also asked the President of the Alabama Probates Judges Association to forward it to all probate judges.

Ken

Kendrick E. Webb



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**From:** [Randall Marshall](mailto:rmarshall@aclualabama.org) [<mailto:rmarshall@aclualabama.org>]  
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**Cc:** [Shannon Minter](#); [Chris Stoll](#); [David Dinielli](#); ['Scott McCoy'](#); [Heather Fann](#); [Zachary Dietert](#); [Ayesha Khan](#); [Jim Davis](#); [lhowell@ago.state.al.us](#)  
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Dear Counsel:

We are writing to demand immediate compliance by the Defendant Class of Alabama probate court judges with the United States District Court's preliminary injunction that is now in effect given the Supreme Court's decision in *Obergefell v. Hodges*. Unfortunately, we have received reports that a number of county probate judges currently are in violation of the Court's injunction, so we write to ask that you, as Class Counsel, assist in ensuring compliance.

Judge Granade's preliminary injunction order, Doc. 123, by its own terms lifted the stay as of the Supreme Court's decision this morning and is now binding on all probate court judges. Indeed, both the Governor and the Attorney General, while disagreeing with the decision, have issued statements saying that governmental officials must comply.

We have reports of some judges saying that they will wait for the Supreme Court's mandate to issue (Tuscaloosa) while others continue to refuse to issue licenses to same-sex couples while issuing them to opposite-sex couples (Shelby). Some probate judges apparently have simply closed their marriage license offices for the weekend without explanation.

Because you all are designated counsel for the Defendant Class, we cannot contact individual probate court judges directly and thus ask your assistance in notifying all judges that they are subject to the preliminary injunction and may be subject to contempt proceedings if they do not comply with its terms.

Please confirm no later than 1 p.m. Monday, June 29, that all probate judges have been notified of their obligations under the injunction to issue marriage licenses to same-sex couples immediately. We reserve the right to seek appropriate remedies against members of the Defendant Class who remain in

violation of the injunction.

Thank you.

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Christopher F. Stoll  
National Center for Lesbian Rights

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Boyd, Fernambucq, Dunn & Fann, P.C.

David Dinielli  
Scott D. McCoy  
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PLAINTIFFS'  
EXHIBIT 2



June 29, 2015

**MEMORANDUM**

The United States Supreme Court issued its opinion in *Obergefell et al. v. Hodges* on June 26, 2015. This case is a consolidated appeal from four separate cases arising out of Ohio, Tennessee, Michigan, and Kentucky, all of which challenged these states' laws defining marriage only as a union between one man and one woman. The Court held as follows:

[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. ***The Court now holds that same-sex couples may exercise the fundamental right to marry.*** No longer may this liberty be denied to them. *Baker v. Nelson* must be and now is overruled, and ***the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.***

\*\*\*

The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

*Obergefell v. Hodges*, 576 U.S. \_\_\_, No. 14-556, 2015 WL 2473451, at \*19, 22 (June 26, 2015) (emphasis added). The Court further held that “there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.” *Id.* at \*23.

No stay was issued in *Obergefell*. As Attorney General Strange acknowledged “the U.S. Supreme Court’s ruling is now the law of the land.” The preliminary injunction issued in *Strawser* went into effect immediately after the Supreme Court’s Opinion. It is therefore our recommendation that all probate judges begin issuing marriage licenses to same-sex couples in the same manner and pursuant to the same requirements applied to traditional couples.

The attorneys for the Plaintiff Class in *Strawser* sent an email Friday afternoon to defense counsel stating that some probate judges are waiting for the Supreme Court's mandate to issue while others continued issuing marriage licenses to opposite-sex couples while refusing to issue them to same-sex couples. The Plaintiff Class also objected to the closing of marriage license offices. Plaintiff Class Counsel asked that we notify "all probate judges that they are subject to the preliminary injunction and may be subject to contempt proceedings if they do not comply with its terms." The Plaintiff Class Counsel closed their email by stating:

Please confirm no later than 1 p.m. Monday, June 29, that all probate judges have been notified of their obligations under the injunction to issue marriage licenses to same-sex couples immediately. We reserve the right to seek appropriate remedies against members of the Defendant Class who remain in violation of the injunction.

Therefore, it is our recommendation that probate judges begin issuing marriage licenses to same-sex couples in the same manner and pursuant to the same requirements applied to traditional couples.

PLAINTIFFS'  
EXHIBIT 3

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

JAMES N. STRAWSER, *et al.*, )  
Plaintiffs, )  
v. )  
LUTHER STRANGE, in his official capacity )  
as Attorney General for the State of Alabama, )  
*et al.*, )  
Defendants. )

Civil Action No. 14-0424-CG-C

DECLARATION OF JENNIFER KENNEY

1. My name is Jennifer Kenney and I reside in Northport, Tuscaloosa County, Alabama.

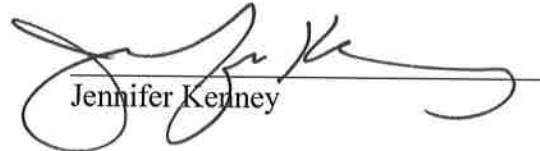
2. My partner, Hali Felt, and I went to the Tuscaloosa County probate court office on Friday, June 26, to obtain a marriage license. We were told by the head clerk that the probate court judge refuses to issue same-sex licenses because the judge had not received a formal order from the court.

3. We went back to the probate court office on Monday, June 29, in order to obtain a marriage license and were told by the same head clerk that the probate court judge will not be issuing marriage licenses to same-sex couples for twenty-one days from the Supreme Court's ruling on Friday. Thus, the office refused to issue us a marriage license because we are both women. I personally heard a probate court staff member state that the office was issuing marriage licenses to opposite-sex couples.

4. I called the Tuscaloosa County probate office today at about 1 p.m. and asked whether the probate court judge had changed his policy and would issue marriage licenses to

same-sex couples today. I was told they were not issuing licenses to same-sex couples until July 17 but that they are issuing licenses to opposite-sex couples today.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30<sup>th</sup> day of June, 2015.

  
Jennifer Kenney