

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

PLAINTIFFS’ OPPOSITION TO DEFENDANT DAVIS’S AMENDED MOTION TO  
WITHDRAW AS CLASS REPRESENTATIVE AND CLASS COUNSEL (DOC. 147)

Defendant Davis’s Amended Motion adds nothing of substance to his original motion (Doc. 130). Plaintiffs have responded to that motion and incorporate their response by reference herein. *See* Response, Doc. 135.

Defendant Davis now contends that after the Supreme Court’s decision in *Obergefell v. Hodges*, \_\_ S. Ct. \_\_, 2015 WL 2473451 (June 26, 2015), Plaintiffs asked him to notify the class that he represents of its legal obligations, and that he has been asked to respond to Plaintiff’s Motion for Permanent Injunction and Final Judgment. *See* Doc. 147, ¶3.

Defendant Davis is correct that Plaintiffs asked the Defendant Class’s counsel to ensure that his clients were complying with this Court’s preliminary injunction. But it was Defendant Russell’s counsel, not class counsel, who has actually provided that assistance. *See* Exhibit 1 (June 29 e-mail from Plaintiff

Class's counsel and response from Ken Webb); Exhibit 2 (response to same e-mail from Clay Carr); Exhibit 3 (July 1 e-mail from Plaintiff Class's counsel and response from Ken Webb); Exhibit 4 (response to same e-mail from Mark Boardman). More generally, Defendant Davis has not shown that he would be burdened by serving as class representative for the remainder of the case; the Supreme Court's decision in *Obergefell* has already resolved the key legal questions.

Because Defendant Davis has not been burdened by serving as class representative, Plaintiffs urge the Court to deny Defendant Davis's motion to withdraw. To the extent that additional Class Counsel is needed, Plaintiffs request the Court to consider appointing Defendant Russell's counsel, Kendrick E. Webb and Jamie Helen Kidd, Webb & Eley, P.C., as additional co-counsel for the Defendant class given their previous attention to issues of compliance.

Respectfully Submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

By: /s/ Shannon P. Minter

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Christopher F. Stoll\*  
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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 7, 2015. I certify that service will be accomplished by the CM/ECF system to the following parties:

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Andrew L. Brasher  
*Solicitor General*  
James W. Davis  
Laura Howell  
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Attorneys for Defendant Tim Russell

/s/ Randall C. Marshall

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EXHIBIT 1

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**To:** [Randall Marshall](#); [lee.hale@comcast.net](mailto:lee.hale@comcast.net); [mike@satterwhitelaw.com](mailto:mike@satterwhitelaw.com); [harry@satterwhitelaw.com](mailto:harry@satterwhitelaw.com); [mboardman@boardmancarr.com](mailto:mboardman@boardmancarr.com); [ccarr@boardmancarr.com](mailto:ccarr@boardmancarr.com); [tpetelos@boardmancarr.com](mailto:tpetelos@boardmancarr.com); [Jamie Kidd](#); [davidwhetstone1@yahoo.com](mailto:davidwhetstone1@yahoo.com)  
**Cc:** [Shannon Minter](#); [Chris Stoll](#); [David Dinielli](#); [Scott McCoy](#); [Heather Fann](#); [Zachary Dietert](#); [Ayesha Khan](#); [Jim Davis](#); [lhowell@ago.state.al.us](mailto: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>]  
**Sent:** Friday, June 26, 2015 1:12 PM  
**To:** [lee.hale@comcast.net](mailto:lee.hale@comcast.net); [mike@satterwhitelaw.com](mailto:mike@satterwhitelaw.com); [harry@satterwhitelaw.com](mailto:harry@satterwhitelaw.com); [mboardman@boardmancarr.com](mailto:mboardman@boardmancarr.com); [ccarr@boardmancarr.com](mailto:ccarr@boardmancarr.com); [tpetelos@boardmancarr.com](mailto:tpetelos@boardmancarr.com); [Ken Webb](#); [Jamie Kidd](#); [davidwhetstone1@yahoo.com](mailto:davidwhetstone1@yahoo.com)  
**Cc:** [Shannon Minter](#); [Chris Stoll](#); [David Dinielli](#); ['Scott McCoy'](#); [Heather Fann](#); [Zachary Dietert](#); [Ayesha Khan](#); [Jim Davis](#); [lhowell@ago.state.al.us](mailto:lhowell@ago.state.al.us)  
**Subject:** Strawser v. Strange Preliminary Injunction Order

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John David Whetstone  
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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.

Shannon P. Minter  
Christopher F. Stoll  
National Center for Lesbian Rights

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

David Dinielli  
Scott D. McCoy  
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June 29, 2015

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Via email to: [rmarshall@actualalabama.org](mailto:rmarshall@actualalabama.org)

Randall C. Marshall, Esq.  
Legal Director  
American Civil Liberties Union of Alabama  
P.O. Box 6179  
Montgomery, Alabama 36106

Re: *Strawser v. Strange*, Preliminary Injunction Order

Dear Mr. Marshall:

Your email dated Friday June 26, 2015, which was not received by everyone you appear to have attempted to email, is based on the incorrect premise that you cannot contact the 68 probate judges in Alabama directly. You have also asked us to reveal to you what you clearly consider to be communications privileged by the attorney-client privilege. We cannot do so.

Sincerely,



Clay R. Carr

PLAINTIFFS'  
EXHIBIT 3

From: [Randall Marshall](#)  
To: [RCM](#)  
Subject: Fwd: Strawser v. Strange: preliminary injunction and clarifying order  
Date: Thursday, July 2, 2015 8:00:44 AM  
Attachments: [image002.png](#)

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----- Forwarded message -----

From: **Ken Webb** <[kwebb@webbeley.com](mailto:kwebb@webbeley.com)>

Date: Wed, Jul 1, 2015 at 5:12 PM

Subject: Strawser v. Strange: preliminary injunction and clarifying order

To: [Randall Marshall <rmarshallaclu@gmail.com>](#), [Jamie Kidd <jkidd@webbeley.com>](#), [lee.hale@comcast.net](#), [mike@satterwhitelaw.com](#), [harry@satterwhitelaw.com](#), [mboardman@boardmancarr.com](#), [ccarr@boardmancarr.com](#), [tpetelos@boardmancarr.com](#), [davidwhetstone1@yahoo.com](#)

Cc: [Shannon Minter <SMinter@nclrights.org>](#), [Chris Stoll <CStoll@nclrights.org>](#), [David Dinielli <david.dinielli@splcenter.org>](#), [Scott McCoy <scott.mccoy@splcenter.org>](#), [Heather Fann <hfann@bfattorneys.net>](#), [Zachary Dietert <dietert@au.org>](#), [Ayesha Khan <khan@au.org>](#), [Jim Davis <JimDavis@ago.state.al.us>](#), [lhowell@ago.state.al.us](#)

Randall,

I forwarded your email to the ACCA who in turn sent an email to the probate judges with a link to the preliminary injunction order (Doc. 123), today's clarifying order (Doc. 145) and your email. The probate judges have been requested to follow the injunction.

Again, please remember that I do not represent the Defendant Class. I also do not represent the probate judges in Clay, Elmore, Escambia, Marion, Randolph, Tallapoosa and Tuscaloosa counties and do not know what their policies are. I have been advised, however, that the Tuscaloosa County probate judge has been out of town for the past week and the issue has now been resolved.

We will cooperate with you in any way we can. The ACCA has worked hard to be responsive on this issue. Please let me know if we can be of any further assistance.

Ken

Kendrick E. Webb



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**From:** Randall Marshall [mailto:[rmarshallaclu@gmail.com](mailto:rmarshallaclu@gmail.com)]

**Sent:** Wednesday, July 01, 2015 10:47 AM

**To:** Ken Webb; Jamie Kidd

**Subject:** Fwd: FW: Strawser v. Strange: preliminary injunction and clarifying order

Counsel:

This was returned when I sent it from my ACLU Alabama account so I am re-sending it from my personal account.

Randall C. Marshall | Legal Director

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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'; Chinyere Ezie; Heather Fann; Ayesha Khan; Zachary Dietert; Greg Lipper; Jim Davis; [lhowell@ago.state.al.us](mailto:lhowell@ago.state.al.us)

**Subject:** Strawser v. Strange: preliminary injunction and clarifying order

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John David Whetstone

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Dear Counsel:

We request that you circulate this morning's clarifying order, Doc. 144, and the underlying preliminary injunction that it references, Doc. 123, to all probate court judges and inform them that Plaintiffs will seek contempt sanctions against any judge who does not issue marriage licenses to same-sex couples on the same terms and conditions under which licenses are issued to opposite-sex couples. Please confirm when this has been done.



Furthermore, we have been told that Clay, Elmore, Escambia, Marion, Randolph, Tallapoosa, and Tuscaloosa counties are currently issuing licenses to opposite-sex couples but not to same-sex couples. Some of these counties have publicly stated that they are waiting for the expiration of the rehearing period in *Obergefell* before they will begin issuing licenses to same-sex couples; others have said that they have no intention of issuing licenses to same-sex couples even after that rehearing period expires. Neither approach can be squared with the court's preliminary injunction, which calls for equal treatment of same-sex couples *now*. We ask that you inform us by the close of business today as to the policies of the counties listed in this paragraph.

Thank you for your attention to this matter.

Sincerely,

Shannon P. Minter

Christopher F. Stoll

National Center for Lesbian Rights

Randall Marshall

ACLU of Alabama

Heather Fann

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

David Dinielli

Scott D. McCoy

Southern Poverty Law Center

Ayesha N. Khan

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PLAINTIFFS'  
EXHIBIT 4

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July 1, 2015

\*ALSO ADMITTED IN MISSISSIPPI  
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Via Email Only [rmarshall@actualalabama.org](mailto:rmarshall@actualalabama.org)

Randall C. Marshall, Esq.  
Legal Director  
American Civil Liberties Union of Alabama  
P.O. Box 6179  
Montgomery, Alabama 36106

Re: *Strawser v. Strange*

Dear Mr. Marshall:

As we advised in our letter to you Monday, we cannot and will not waive what you obviously consider to be attorney-client communications with defendant class members. Your email of today again asks for such.

As we noted in our earlier letter, the assumption that this litigation prevents you from sending a letter or email to the probate judges of any county in Alabama, all of whom are public officials, is erroneous.

Sincerely,

  
Mark S. Boardman

MSB/lad