

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

**JAMES N. STRAWSER and JOHN E.  
HUMPHREY; ROBERT POVILAT and  
MILTON PERSINGER; MEREDITH  
MILLER and ANNA LISA CARMICHAEL;  
and KRISTY SIMMONS and MARSHAY  
SAFFORD,**

**Plaintiffs,**

**v.**

**LUTHER STRANGE, in his official  
capacity as Attorney General for  
the State of Alabama, DON DAVIS,  
in his official capacity as Probate Judge of  
Mobile County, Alabama,**

**Defendants.**

**Civil Action No. 14-0424-CG-C**

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

1. Alabama law denies the issuance of marriages licenses to same-sex couples, and refuses to recognize the marriages of same-sex couples lawfully entered in other jurisdictions. *See* Ala. Const., art. I, § 36.03; Ala. Code § 30-1-19. In so doing, Alabama violates the guarantees of the Fourteenth Amendment to the Constitution of the United States.

2. Plaintiffs are same-sex couples who live in Alabama. The situations faced by these couples are similar to those faced by many other same-sex couples in Alabama who are denied the basic rights, privileges, and protections of marriage for themselves and their children.

3. Alabama, like other states, encourages and regulates marriage through hundreds of laws that provide benefits to and impose obligations upon married couples. In exchange, Alabama

receives the well-established benefits that marriage brings: stable, supportive families that create loving homes for children and contribute to both the social and economic well-being of Alabama.

4. Alabama's refusal to permit same-sex couples to marry and to recognize the existing marriages of same-sex couples violates the Due Process and Equal Protection Clauses of the United States Constitution. This Court should so declare and issue an injunction requiring defendants to issue marriage licenses to Plaintiffs without regard to their status as same-sex couples, and to recognize the existing marriages of same-sex couples for all purposes under state law.

5. Plaintiffs James N. Strawser and John E. Humphrey, Robert Povilat and Milton Persinger, Meredith Miller and Anna Lisa Carmichael, and Kristy Simmons and Marshay Safford are unmarried same-sex couples in committed relationships who live in Alabama and desire to marry in their home state. Plaintiffs meet all the requirements Alabama imposes for the issuance of marriage licenses except that they are same-sex couples.

6. Plaintiffs wish to publicly declare their love and commitment before their family, friends, and community; to join their lives together and to enter into a legally binding commitment to one another; and to share in the protections and security that marriage provides. Plaintiffs have strong ties to Alabama and getting married in their home state of Alabama is of immense personal importance to them. Plaintiffs are spouses in every sense except for their inability to legally marry under Alabama law.

7. Alabama's exclusion of same-sex couples from marriage and refusal to respect the marriages of legally married same-sex couples adversely impact the Plaintiff couples in real and significant ways. When Alabama withholds a marriage license from a same-sex couple, or refuses to recognize a same-sex couple's valid marriage, it circumscribes the affected individuals' basic

life choices, classifies the affected individuals and couples in a manner that denies them the public recognition and myriad benefits of marriage, prevents the couple from making a legally binding commitment to one another and from being treated by the government and by others as a family rather than as unrelated individuals, and harms society by burdening and disrupting committed families and preventing couples from being able to fully protect and assume responsibility for one another and their children.

8. Alabama's exclusion of same-sex couples from marriage and refusal to respect existing marriages undermines the Plaintiff couples' ability to achieve their life goals and dreams, disadvantages them financially, and denies them "dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Alabama's disparate treatment of same-sex couples "tells those couples and all the world that their [relationships] are unworthy" of recognition. *Windsor*, 133 S. Ct. at 2694. By singling out same-sex couples and their families and excluding them from any type of marital protection, Alabama "humiliates . . . children now being raised by same-sex couples" and "makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Windsor*, 133 S. Ct. at 2694.

9. Alabama's exclusion of same-sex couples from marriage and its refusal to respect the marriages of same-sex couples deprive the Plaintiffs of their fundamental right to marry and infringe upon their constitutionally protected interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

10. Alabama's treatment of the Plaintiff couples is subject to strict scrutiny because it burdens fundamental constitutional rights. Alabama's treatment of the Plaintiff couples and other same-sex couples cannot survive any level of constitutional scrutiny, however, because it does not

rationality further any legitimate government interest, but serves only to injure and humiliate same-sex couples and their families.

11. Plaintiffs seek a declaration from this Court that Ala. Const., art. I, § 36.03 and Ala. Code § 30-1-19 violate the Fourteenth Amendment to the United States Constitution, and a judgment permanently enjoining the enforcement of those provisions and any other Alabama laws that prohibit same-sex couples from marrying within the state or that prohibit recognition of valid marriages of same-sex couples.

12. Specifically, Plaintiffs seek: (a) a declaration that Alabama's prohibition of marriage for same-sex couples violates the Due Process and Equal Protection Clauses of the United States Constitution; (b) a declaration that Alabama's refusal to recognize the marriages of same-sex couples under state law violates the Due Process and Equal Protection Clauses of the United States Constitution; and (c) a temporary restraining order and/or preliminary injunction, as well as a permanent injunction, (i) preventing Defendants from denying Plaintiffs the right to marry, (ii) directing Defendant Davis to issue marriage licenses to Plaintiffs; and (iii) directing Defendants to recognize the marriages of Plaintiffs validly entered into pursuant to those licenses.

13. Plaintiffs further seek attorney fees pursuant to 42 U.S.C. § 1988.

14. Plaintiffs state the below causes of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

15. The declaratory and injunctive relief requested in this action is sought against each Defendant; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

### **JURISDICTION AND VENUE**

16. This action arises under the Constitution and laws of the United States, including Article III, Section 1, of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction supporting Plaintiffs' claims for attorneys' fees is conferred by 42 U.S.C. § 1988.

17. Venue is proper in the Southern District of Alabama pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Alabama, and all of the parties are and were residents of the State of Alabama at all relevant times.

### **PARTIES**

#### **A. The Plaintiffs**

18. Plaintiffs James Strawser and John Humphrey, who reside in Mobile County, Alabama, applied for a marriage license in that county but were denied a license because of Alabama's constitutional and statutory prohibitions on marriage for same-sex couples. Plaintiff Strawser is facing health issues requiring surgery that put his life at great risk. Prior to previous hospitalizations for surgery, Plaintiff Strawser had given Plaintiff Humphrey a medical power of attorney, but was told by the hospital that the facility would not honor the document because Humphrey was not a family member or spouse. In addition, Plaintiff Strawser's mother faces health issues, and he is concerned that Humphrey will not be permitted to assist his mother with her affairs should Strawser pass away in the near future. On February 9, 2015, the effective date of this Court's entry of an order and preliminary injunction declaring Alabama's marriage ban for same-sex couples unconstitutional, Plaintiffs Strawser and Humphrey again appeared at Defendant Davis's office in Mobile, Alabama, to apply for a marriage license, but were unable to obtain a

license because Defendant Davis has elected to cease issuance of marriage licenses in Mobile County until this Court clarifies his legal obligations.

19. Plaintiffs Robert Povilat and Milton Persinger have been in a committed relationship for two years and reside in Mobile County, Alabama. Plaintiff Povilat has survived two bouts of prostate cancer and fears that he could be diagnosed with cancer again. The couple wishes to be married in Alabama, because, among other things, it is extremely important to them that Plaintiff Persinger be permitted to care for Plaintiff Povilat should further health problems arise. On February 9, 2015, Plaintiffs Povilat and Persinger appeared at Defendant Davis's office in Mobile, Alabama, to apply for a marriage license, but were unable to obtain a license because Defendant Davis has elected to cease issuance of marriage licenses in Mobile County until this Court clarifies his legal obligations.

20. Plaintiffs Meredith Miller and Anna Lisa Carmichael have been in a committed relationship for almost 9 years and reside in Mobile County, Alabama. The couple hope to have children, but are concerned that if they are not married, their children will be exposed to the damaging message that their family is not as worthy of dignity and respect as other families in Alabama and that their children will be denied important legal protections that come with marriage. On February 9, 2015, Plaintiffs Miller and Carmichael appeared at Defendant Davis's office in Mobile, Alabama, to apply for a marriage license, but were unable to obtain a license because Defendant Davis has elected to cease issuance of marriage licenses in Mobile County until this Court clarifies his legal obligations.

21. Plaintiffs Kristy Simmons and Marshay Safford have been in a committed relationship for more than 2 years and reside in Mobile County, Alabama. The couple are raising together three of Plaintiff Simmons's children from a prior relationship. They want to get married

in order to have a legal family relationship and to build stability for their children. In addition, Simmons has been diagnosed with Wegener's Granulomatosis, a rare disorder that causes her blood vessels to become inflamed and that can damage major organs. Being able to marry is especially important to the couple that Plaintiff Safford and their children have legal protections in the event that Plaintiff Simmons becomes ill or incapacitated. On February 9, 2015, Plaintiffs Simmons and Safford appeared at Defendant Davis's office in Mobile, Alabama, to apply for a marriage license, but were unable to obtain a license because Defendant Davis has elected to cease issuance of marriage licenses in Mobile County until this Court clarifies his legal obligations.

**B. The Defendants**

22. Defendant Luther Strange is Attorney General of the State of Alabama. Defendant Strange is responsible for enforcing and ensuring compliance with the state constitution and statutes prescribed by the legislature, including Alabama's law barring same-sex couples from marriage. Attorney General Strange was acting under color of state law at all times relevant to this complaint. He is sued in his official capacity.

23. Defendant Don Davis is Probate Judge of Mobile County, Alabama. Under Alabama law, his administrative duties include issuance of marriage licenses. His duties in issuing marriage licenses are ministerial in nature, and not part of any judicial or discretionary function. Defendant Davis was acting under color of state law at all times relevant to this complaint. He is sued in his official capacity.

24. Defendants, through their respective duties and obligations, are responsible for enforcing Alabama's laws barring same-sex couples from marriage and Alabama's policy of refusing to recognize the valid marriages of same-sex couples. Each Defendant, and those subject to their supervision and control, have caused the harms alleged, and will continue to injure

Plaintiffs if not enjoined. Accordingly, the relief requested is sought against all Defendants, as well as all persons under their supervision and control, including their officers, employees and agents.

### **GENERAL ALLEGATIONS**

#### **Alabama's Laws Barring Same-Sex Couples from Marriage**

25. The "Sanctity of Marriage Amendment" to the Alabama Constitution provides, among other things, that "[n]o marriage license shall be issued in the State of Alabama to parties of the same sex," and that "[t]he State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued." Ala. Const., art. I, § 36.03. The Alabama Code contains identical provisions. Ala. Code § 30-1-19.

#### **Harms Caused by Alabama's Laws Barring Same-Sex Couples from Marriage**

26. The Plaintiff couples are residents of Alabama who experience the same joys and challenges of family life as their neighbors, co-workers, and other community members who may marry freely and whose legal marriages are respected under Alabama law. The Plaintiffs are productive, contributing citizens who are denied the same legal shelter, dignity, and respect afforded by Alabama to other families through access to the universally celebrated status of marriage.

27. Alabama's exclusion of the Plaintiffs from marriage, and Defendants' enforcement of that exclusion, as well as Alabama's refusal to respect the marriages of legally married same-sex couples, subject the Plaintiff couples to an inferior "second class" status as Alabama citizens relative to the rest of the community. These laws deprive the Plaintiff couples of equal dignity, security, and legal protections afforded to other Alabama families.



28. In addition to stigmatizing an entire class of Alabama's population as second-class citizens, Alabama's prohibition on marriage by same-sex couples, and its refusal to recognize valid marriages from other jurisdictions, deprive same-sex couples of critically important rights and responsibilities that married couples rely upon to secure their marriage commitment and safeguard their families

29. In reliance on this Court's orders of January 23, 26, and 28, 2015, which declared Alabama's laws excluding same-sex couples from marriage unconstitutional and made clear that the federal Constitution requires Alabama officials to issue marriage licenses to same-sex couples and to recognize the valid marriages of same-sex couples for all purposes, each Plaintiff couple appeared in person at the offices of Defendant Davis on February 9, 2015, to apply for a marriage license. Each couple was unable to obtain a license. The reason each couple was unable to obtain a marriage license from Defendant Davis was that they are a same-sex couple, and Defendant Davis elected to close the marriage licensing office in Mobile until this Court issues further clarifications concerning his legal obligations with respect to issuance of marriage licenses to same-sex couples.

30. In addition, in the absence of the preliminary injunction previously entered by the Court in this action, Defendant Strange would continue to deny recognition to the marriages of Plaintiffs or other same-sex couples validly entered into in Alabama or any other jurisdiction. A permanent injunction is therefore warranted to ensure that Defendant Strange will recognize any marriage that Plaintiffs enter into as a result of this Court's orders in this action.

**CLAIMS FOR RELIEF**

**First Claim for Relief:  
Alabama's Ban on Marriage by Same-Sex Couples Deprives  
Plaintiffs of Their Fundamental Right to Marry under the Due Process and Equal  
Protection Clauses of the United States Constitution**

31. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this complaint as though fully set forth herein.

32. The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process or law." U.S. CONST. AMEND. XIV § 1. The Due Process Clause protects individuals from arbitrary government intrusion into life, liberty, and property.

33. Under the Due Process and Equal Protection Clauses of the United States Constitution, those who wish to marry a person of the same sex are entitled to exercise the same fundamental right as is recognized for persons who wish to marry a person of the opposite sex; accordingly Ala. Const., art. I, § 36.03, Ala. Code § 30-1-19, and any other Alabama law, regulation, policy, or practice that excludes same-sex couples from marriage do not withstand constitutional scrutiny.

34. As Alabama's Attorney General, Defendant Strange's duties and actions to enforce Alabama's exclusion of same-sex couples from marriage, violate Plaintiffs' fundamental right to marry and fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

35. As Probate Judge of Mobile County, Alabama, Defendant Davis currently ensures compliance with Alabama's exclusion of same-sex couples from marriage by, for example, refusing to issue marriage licenses to same-sex couples. This violates Plaintiffs' fundamental right

to marry and fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

36. Defendants cannot satisfy the requirements of due process because Alabama's exclusion of same-sex couples from marriage is not rationally related to any legitimate governmental interest and thus cannot survive even rational basis review, much less the strict level of scrutiny that applies to deprivation of the fundamental right to marry and interference with fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

37. The Equal Protection Clause is essentially a direction that all persons similarly situated should be treated alike. There is no relevant distinction between same-sex couples and opposite-sex couples with respect to marriage.

38. Alabama's exclusion of same-sex couples from marriage is subject to heightened scrutiny under the Equal Protection Clause because it discriminates on the basis of sexual orientation and gender, and because it selectively deprives a class of persons of fundamental rights.

39. Defendants cannot satisfy the requirements of equal protection because Alabama's exclusion of same-sex couples from marriage is not rationally related to any legitimate governmental interest and thus cannot survive even rational basis review, much less the heightened level of scrutiny that applies.

40. Ala. Const., art. I, § 36.03, Ala. Code § 30-1-19, and any other Alabama law, regulation, policy, or practice that excludes same-sex couples from marriage violate the Due Process and Equal Protection guarantees of the United States Constitution, both facially and as applied to the Plaintiff couples.

41. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm, and Plaintiffs are entitled to declaratory and injunctive relief on this basis.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

42. Declaring that the provisions of and enforcement by Defendants of Alabama's laws excluding same-sex couples from marriage, including Ala. Const., art. I, § 36.03, Ala. Code § 30-1-19, and any other sources of state law that exclude same-sex couples from marrying violate Plaintiffs' rights under the Due Process and Equal Protection Clauses of the United States Constitution;

43. Declaring that the practice, by Defendants and their subordinates, of refusing to recognize the marriages of same-sex couples violates Plaintiffs' rights under the Due Process and Equal Protection Clauses of the United States Constitution;

44. Declaring that the any marriages entered into by Plaintiffs pursuant to any injunction issued by this Court are valid in the State of Alabama;

45. Temporarily, preliminarily, and permanently enjoining enforcement by Defendants of Ala. Const., art. I, § 36.03, Ala. Code § 30-1-19, and any other sources of state law, policy, or practice that exclude Plaintiffs from marriage or that refuse recognition of the marriages of Plaintiffs;

46. Requiring Defendants to issue marriage licenses to Plaintiffs, pursuant to the same restrictions and limitations applicable to opposite-sex couples, and without regard to the gender or sexual orientation of the applicants, and to recognize the marriages thereby validly entered into;

47. Awarding plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws;

48. Awarding pre- and post-judgment interest at the lawful rate as allowed by law; and

49. Granting such other and further relief as the Court deems just and proper and any other relief as allowed by law.

DATED: February 10, 2015

Respectfully submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

By: /s/ Shannon P. Minter

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\*(*Motions for admission pro hac vice forthcoming*)

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Alabama



JAMES N. STRAWSER and JOHN E. HUMPHREY,
ROBERT POVILAT and MILTON PERSINGER,
MEREDITH MILLER and ANNA LISA CARMICHAEL,
and KRISTY SIMMONS and MARSHAY SAFFORD,

Plaintiff(s)

v.

LUTHER STRANGE, in his official capacity as
Attorney General for the State of Alabama, and DON
DAVIS, in his official capacity as Probate Judge of
Mobile County, Alabama,

Defendant(s)

Civil Action No. 14-0424-CG-C

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Don Davis
Probate Judge of Mobile County, Alabama
Mobile County Government Center Annex
151 Government Street
Mobile, AL 36602

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Christopher F. Stoll
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/10/2015

Signature of Clerk or Deputy Clerk

Civil Action No. 14-0424-CG-C

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: