

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’ RESPONSE TO DEFENDANT DAVIS’S SUPPLEMENT
TO EMERGENCY MOTION TO STAY**

Defendant Davis has filed a supplement to his emergency motion to stay, Doc. 71, in which he asserts that two recent events that postdate the filing of his motion – the Alabama Supreme Court’s March 10, 2015, injunction against Davis in *Ex parte State v. King*, No. 1140460 (Ala.), and the imposition of a stay in *Hard v. Bentley*, No. 2:13-CV-922-WKW (M.D. Ala.) – provide additional grounds for a stay here. Defendant Davis’s assertions are legally and factually incorrect. They provide no basis to stay this action or to deny the class-wide relief that the proposed Plaintiffs and Plaintiff Class seek here. That requested relief, which would confirm that probate judges must comply with the United States Constitution’s guarantee of due process and equal protection by issuing marriage licenses to same-sex couples and fully recognizing their marriages, would provide the uniformity that Defendant

Davis seeks, but without violating the constitutional rights of Plaintiffs and other similarly situated same-sex couples in Alabama.

I. The Alabama Supreme Court's March 10 Order Provides No Basis for a Stay.

Defendant Davis notes that the Alabama Supreme Court on March 10, 2015, issued an order directing Davis not to issue any additional marriage licenses to same-sex couples or to otherwise recognize their marriages. Doc. 85 ¶ 2. Defendant Davis maintains that, because of the “conflicting rulings,” he and other probate judges face an “almost insurmountable problem” that has sown “confusion in all 67 Alabama counties.” *Id.* ¶ 9.

Plaintiffs agree that actions and rulings by the Chief Justice and the Alabama Supreme Court and other Alabama officials have sown confusion and, more importantly, have resulted in renewed enforcement of unconstitutional laws that deprive an entire class of Alabama residents of fundamental liberties and equal protection of the laws. But it is illogical to suggest, as Defendant Davis does, that the proper course of action in the face of that confusion is for this Court to stay its hand and to permit the current state of affairs to continue until the United States Supreme Court rules later this year, thereby exposing same-sex couples and their families not only to the continued deprivation of fundamental constitutional rights and equal dignity, but to irreparable material harms. Instead, Plaintiffs respectfully urge this Court to deny the motion to stay and to grant Plaintiffs' motion to amend and to certify plaintiff and defendant classes and for a preliminary injunction that would bring about uniformity and certainty with respect to the obligations of

probate judges, including Defendant Davis, to comply with the United States Constitution.

Both the Plaintiffs and other similarly situated couples throughout the state suffer each day they are denied the right to marry, with all the attendant protections and obligations that legal status confers. *See United States v. Windsor*, 133 S. Ct. 2675 (2013); *Searcy*, Doc. 53 (quoting *Windsor*); Doc. 55 at 6-7. Indeed, this Court has already recognized that couples should not be required to wait to exercise their rights, by granting a short stay that neither the Eleventh Circuit nor the United States Supreme Court chose to extend. Defendant Davis's suggestion that reversing course and imposing a stay now would impose no significant burdens on the plaintiff couples disregards both the importance of the constitutional rights at stake and the very real vulnerability that these families face.

II. The Stay in *Hard v. Bentley* Has No Bearing on this Case.

Defendant Davis also argues that a recent stay entered by Chief Judge Watkins of the Middle District of Alabama in the unrelated *Hard* case, Doc. 81-2, counsels in favor of a stay here. His argument misconstrues the limited effect of that order and is without basis.

Defendant Davis's assertion that Plaintiffs have engaged in "forum shopping" by seeking class relief in this Court has no merit. Doc. 85 ¶ 4. Plaintiffs filed their motion for leave to amend, class certification, and preliminary injunction in this Court on March 6, 2015 (Doc. 76), four days *before* Judge Watkins *sua sponte* stayed *Hard*, a case that the Southern Poverty Law Center ("SPLC") filed in 2013 and in

which summary-judgment briefing was completed in October 2014. There was no briefing on whether that case should be stayed, and no notice to any counsel – including to any counsel in this case – that Judge Watkins was contemplating a stay until the order issued. The insinuation that Plaintiffs and/or their counsel in this case filed the motion for leave to amend, class certification, and for preliminary injunction in this Court to evade a stay entered in the Middle District is nonsense.¹

So too is the assertion that the *Hard* stay order somehow binds non-parties in the Middle District, including every probate judge and every same-sex couple in all 23 counties in that District. Defendant Davis asserts that a class action encompassing residents of the Middle District “would effectively exempt them and their counsel from Judge Watkins’ stay.” Doc. 85 ¶ 5. This unusual and unsupported argument is apparently premised on the erroneous assumption that all of the “counties within the Middle District are potentially subject to Judge Watkins Order to Stay.” *Id.* ¶ 6. To the contrary, however, the *Hard* order stays only one case, with one plaintiff, one defendant, and one intervenor. That order does not purport to enjoin Plaintiff’s counsel in that case from representing other plaintiffs in other cases in any district. Nor does the *Hard* stay order purport to preclude anyone anywhere from pursuing his or her own separate lawsuit seeking a marriage license or marriage recognition. The *Hard* order also does not purport to limit the conduct of any probate judge anywhere, none of whom in any event is a defendant in that case. For these reasons, this Court’s certification of classes that include plaintiffs

¹ Defendant Davis mistakenly asserts that Heather Fann, one of Plaintiffs’ counsel in this case, is an attorney at the SPLC working on the *Hard* case. Ms. Fann is neither counsel in the *Hard* case nor an employee of the SPLC.

and defendants in the Middle District would not run afoul of the *Hard* stay order in any way.

More broadly, Defendant Davis's argument disregards the very purpose of a class action, which seeks to secure relief for parties who live in various jurisdictions. Indeed, impracticality of joinder – a circumstance that is typical when multiple parties reside in various jurisdictions – is one of the prerequisites for certification of a class. The purpose of the class device is to streamline litigation by providing a mechanism for questions common to multiple parties in multiple jurisdictions to be decided by a single judge or jury; that is precisely what Plaintiffs seek here.

Indeed, the federal venue statute expressly contemplates and intends that cases such as this, involving constitutional violations by government officials throughout the state, can be brought in a single district. That is why Congress provided for venue in a district where any defendant resides, as long as all defendants are residents of the same state. *See* 28 U.S.C. § 1391(b)(1) (“A civil action may be brought in . . . a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located”).

III. The Need to Serve an Additional Defendant Does Not Support a Stay.

Finally, Davis argues that this Court should enter a stay rather than grant Plaintiffs' motion to amend because, he suggests, the time required to serve and hear from Baldwin County Probate Judge Tim Russell would push this Court's decision on the motion beyond the time in which the United States Supreme Court is expected to rule. That argument is misguided on two counts. First, it has no

bearing on whether this Court should stay its current order enjoining *Davis* from enforcing unconstitutional marriage laws. Second, it disregards that Plaintiffs have requested expedited relief, which this Court has the authority to provide and which many other federal district courts have provided under similarly compelling circumstances. *See* Pls.' Mot., Doc. 76, at 24-25 (collecting cases).

In sum, Defendant Davis has identified no reason for this Court to modify its earlier conclusion that same-sex couples should not be forced to suffer ongoing irreparable harms while awaiting a ruling from the United States Supreme Court. For the foregoing reasons and those set forth in Plaintiffs' Response in Opposition to the Emergency Motion for Stay, Plaintiffs respectfully request that Davis's stay motion be denied.

DATED: March 16, 2015

Respectfully Submitted,

By: /s/ Shannon P. Minter

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** Motions 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 March 16, 2015. I certify that service will be accomplished by the CM/ECF system to the following parties:

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