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

CARI D. SEARCY, et. al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 1:14-cv-00208-N**
	)	
LUTHER STRANGE et. al,	)	
	)	
Defendants.	)	

PLAINTIFFS' OBJECTION AND RESPONSE TO DEFENDANTS' MOTION TO STAY

COME NOW the Plaintiffs, by and through undersigned counsel, and files this their Objection and Response to Defendants' Motion to Stay as follows:

SUMMARY

The Defendants' motion is due to be denied because it seeks to continue to enforce a law that the Court has already held, as a matter of law, to be irrational. For many of the same reasons, it is respectfully submitted that it is also irrational to cause the Plaintiffs in this case to wait any longer to pursue the adoption that they have been seeking for nearly a decade. The State's Motion is one more attempt to prevent or delay the Plaintiffs' constitutionally guaranteed rights to equal protection and due process of law.

This past Friday, this Court entered judgment in favor of the Plaintiffs, declaring the Alabama Sanctity Laws are in deed unconstitutional as a matter of law as they violate the Due Process and Equal Protection Clauses of the 14th Amendment.

Later Friday, Attorney General Strange, seemingly dissatisfied with this Court's Order, filed a motion requesting that this Court stay its Order. For the reasons discussed herein, the Attorney General's motion is due to be denied.

ARGUMENT

There are four factors the Court should consider when ruling on a motion to stay: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). *See also Venus Lines Agency v. CVG Industrial Venezolana De Aluminio, C.A.,* 201 F. 3d 1309, 1313 (11th Cir. 2000) (applying the same test) and *Brenner v. Scott*, 999 F.Supp.2d 1278, 1292 (N.D.Fla.2014 order clarified, No.4:14CV107-RH/CAS, 2015 WL44260(N.D.Fla. 2015). Plaintiffs submit that this Court has in essence already found that Plaintiffs satisfy all four of these factors. Likewise, the Eleventh Circuit Court of Appeals denied a similar motion to stay the Southern District Court's order. *Brenner v. Scott*, 999 F.Supp.2d 1278, 1292 (N.D.Fla.2014) (4:14CV107-RH/CAS, 2015 WL44260(N.D.Fla. 2015).

Additionally, the Supreme Court recently denied certiorari from three circuit courts of appeals striking down marriage exclusions in four states, thus dissolving the stays in those cases and leaving those circuit court decisions as binding precedent to overturn marriage exclusions in eleven states. Moreover, the Supreme Court has denied stays in marriage cases in which appeals were still pending: it denied Idaho's application for stay pending a petition for certiorari, *Otter v. Latta*, No. 14A374, 2014 WL 5094190 (U.S. Oct. 10, 2014), and Alaska's application for a stay pending appeal, *Parnell v. Hamby*, No. 14A413, 2014 WL 5311581 (U.S. Oct. 17, 2014). These actions make clear that the Supreme Court no longer views the possible risk of reversal to be a basis to stay an injunction in a marriage case.

As this Court noted in its well-reasoned opinion, its decision is in line with similar cases from courts all over the country. Strange makes *no* showing, much less a "strong showing" that he likely to succeed on the merits. This past Friday, this Court held that Plaintiffs were due to receive judgment as a matter of law—a clear indication as to merits of Strange's arguments in this case.

Strange argues that "a stay will not harm the Plaintiffs, but would only maintain the status quo while these issues are considered by the appellate courts." Strange also argues that a stay will serve the public interest by avoiding the confusion and inconsistency that will result from an "on-again, off-again enforcement of marriage laws." This contention ignores the decision from the Eleventh Circuit Court of Appeals wherein it declined to issue the requested stay in the Florida cases, BRENNER, v. SCOTT, et al. and GRIMSLEY, v. SCOTT, 2014 WL 5891383 (N.D.Fla.).

More disconcerting, Strange continues to ignore the real consequences that affect real people in this case and many other LGBT Alabamians. Simply put, it defies reason for many of the same reason the Sanctity Laws are irrational.

The harm that Plaintiffs and other same-sex couples would suffer if a stay were issued far outweighs any harm to Strange at this juncture. Every day that couples have to wait to marry or have their marriages recognized profoundly affects Plaintiffs and other same-sex couples across the State. Plaintiffs and other same-sex couples are subjected to irreparable harm every day they are forced to live without the security that marriage provides. As they wait, children will be born, partners and spouses will get sick, and some will die. Each day that passes, some people will pass away without ever having been able to marry the person they love or to have their marriage

recognized in their home state, depriving their surviving spouse of important protections and dignity.

Therefore, by preventing couples who wish to marry now from doing so, a stay would have irreparable consequences for many couples who will be denied benefits or receive significantly diminished protections as a direct result of that delay. Issuing a stay would also inflict irreparable injury on Plaintiffs and other same-sex couples by exposing them, and their children, to continuing stigma. *Windsor*, 133 S. Ct. at 2694 (not recognizing the marriages of same-sex couples humiliates their children, making 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.) The consequences of such harms can never be undone.

Strange asks this Court to "maintain the status quo," i.e., Strange seeks to have the court allow the entire State of Alabama to continue to place children of same-sex parents in peril, to allow "thousands of children now being raised by same-sex couples" to continue to be humiliated; and to be allowed to continue to deny children of same-sex couples from understanding the "integrity and closeness of their own family and its concord with other families in their community and in their daily lives". Order of this Court, January 23, 2015 (citing *Windsor,* 133 S. Ct. at 2694).

Finally, Strange's request to maintain the status quo continues to "bring[] financial harm to children of same-sex couples" in Alabama "because it denies the families of these children a panoply of benefits that the State and federal government offer to families who are legally wed." Finally, the Court found that these laws further injure the "children of all couples who are

themselves gay or lesbian, and who will grow up knowing that Alabama does not believe they are as capable of creating a family as their heterosexual friends." *Id.*

Strange fails to adequately address the public policy element as is necessary to justify a stay. Be that as it is, the vindication of constitutional rights furthers the public interest. See, e.g., *Popham v. City of Kennesaw*, 820 F.2d 1570, 1580 (11th Cir. 1987). The public is harmed when families and children are deprived of the protections that marriage provides.

Strange asserts that a stay is in the public interest premised on a faulty notion that the validity of marriages entered into while appeal is pending would be uncertain should this Court be reversed. This is simply incorrect. Any marriages entered into in reliance on the court's injunction would be valid regardless of the outcome of the appeal. See *Evans v. Utah*, F. Supp. 2d, Case No. 2:14CV55DAK, 2014 WL 2048343, at *17 (D. Utah May 19, 2014) (holding that marriages entered into in Utah after district court entered injunction and prior to stay issued by Supreme Court were valid), appeal withdrawn. With respect to purported concern about stability of the law, the Supreme Court denied stays of injunctions in marriage cases that were still pending on appeal and thus could be reversed. *Otter v. Latta*, No. 14A374, 2014 WL 5094190 (U.S. Oct. 10, 2014); *Parnell v. Hamby*, No. 14A413, 2014 WL 5311581 (U.S. Oct. 17, 2014). Now that the Supreme Court has made clear that it does not deem the risk of reversal to be a basis to stay an injunction in marriage cases, this Court should not issue a stay on that basis.

Strange further claims an interest in uniformity of law throughout the state, arguing that if a stay is issued, it would mean that marriage licenses would be issued for same-sex couples only in the jurisdiction of the Southern District. Simply put, that is not true. This Court's ruling is binding on all of Alabama. The Court held that the marriage exclusion violates the Due Process

and Equal Protection Clauses of the U.S. Constitution. When a state statute has been ruled unconstitutional, state actors have an obligation to desist from enforcing that statute. *Soto-Lopez v. N.Y. City Civil Serv. Comm'n*, 840 F.2d 162, 168 (2d Cir. 1988) (citing *Cooper v. Aaron*, 358 U.S. 1, 17-18 (1958)); see also *Harris v. McDonnell*, No. 13-00077, 2013 WL 5720355, at *4 (W.D. Va. Oct. 18, 2013) (differences in the clerks named in separate lawsuits challenging Virginia's exclusion of same-sex couples from marriage are largely immaterial as a declaratory judgment decision against any one of the state defendants [in either case] would be binding as to all). Brenner v. Scott, 2014 WL 5891383 (N.D.Fla.)(Response brief to the Motion to Continue Stay Pending appeal in the Eleventh Circuit, December 2014 whereupon the Eleventh Circuit declined to continue the stay pending appeal).

Plaintiffs' specifically request Clarification of this Court's Order as to the Implications to Other State Agents

Clarification is necessary as the Probate Judges association in Alabama have assumed the position like George Wallace at the schoolhouse door staring defiantly upon this Court's order reasoning that not all citizens of Alabama are entitled to the same rights and privileges afforded under the Constitution of the United States and that as Probate Judges "it is [their] duty to issue marriage licenses in accordance with Alabama law and that means [they] can not legally issue marriage licenses to same sex couples." Alabama Probate Judges Association statement to the press on January 24, 2015. It is respectfully submitted that this Court's order declaring Ala. Const. Art. 1§ 36.03 (2006) and Ala. Code 1974 §30-1-19 unconstitutional for violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment shall meet with immediate defiance and confusion without further clarification.

Plaintiffs assert that this particular issue of enforcement in Alabama was specifically addressed in the anti miscegenation laws deemed unconstitutional in *Loving v. Virginia,* when a similar issue of nonconformity through the Probate Judges was heard in United States v. Brittain, 319 F. Supp. 1058, 1061 (N.D. Ala. 1970). The Court in *Brittain*, stated, "It would be inappropriate to withhold the general declaratory relief sought here until another similar request can be presented. Although the unconstitutionality of these miscegenation laws cannot be seriously questioned by any trained in the law, we find a situation where the chief law officer of the State of Alabama is not free (and this has been so stipulated) to advise Judges of Probate who are not members of the bar that these miscegenation laws are unconstitutional and should not be followed. Such advice could only (by force of custom if not of law) be given after the Alabama laws had been declared unconstitutional by a court of competent jurisdiction. Given such a situation, there is no reason for this Court to delay making such a declaration until another couple in just the right circumstances next feels the pinch of these laws. A judgment will be entered, declaring null, void and violative of the Fourteenth Amendment of the Constitution the Alabama laws in question; enjoining the State of Alabama, its officers, agents, employees, and their successors, and all those acting in concert or participation with them from enforcing or giving any effect to such laws; and requiring the Attorney General of the State of Alabama to advise the Judges of Probate of the several counties of Alabama of the invalidity of Title 14, Section 361, 1940 Code of Alabama under the decision of this Court. As it was necessary to educate the Probate courts across Alabama in 1970 it is again necessary that the Attorney General in this case be so ordered to educate the Probate courts across Alabama in 2015 that a

judgment declaring a law in Alabama is in violation of the Fourteenth Amendment of the United States Constitution is not subject to interpretation as to enforcement county by county.

CONCLUSION

As discussed above, every day that couples have to wait to marry or have their marriages recognized could make a critical difference to them and their families. therefore, Plaintiffs respectfully request that the Court decline to issue a stay in this case and further issue that in declaring Ala. Const. Art. 1§ 36.03 (2006) and Ala. Code 1974 §30-1-19 unconstitutional because they violate the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment that Alabama Attorney General be enjoined from enforcing these laws across the State of Alabama for all purposes. This further clarification is necessary as the Probate Judges association in Alabama have assumed the position like George Wallace at the schoolhouse door staring defiantly upon this Court's order reasoning that not all citizens of Alabama are entitled to the same rights and privileges afforded under the Constitution of the United States and that as Probate Judges "it is [their] duty to issue marriage licenses in accordance with Alabama law and that means [they] can not legally issue marriage licenses to same sex couples." Alabama Probate Judges Association statement to the press on January 24, 2015. It is respectfully submitted that this Court's order declaring Ala. Const. Art. 1§ 36.03 (2006) and Ala. Code 1974 §30-1-19 unconstitutional for violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment shall meet with immediate defiance and confusion without further clarification. There is no reason to delay any of Alabama's citizens their constitutional rights for even one more day.

Respectfully submitted this 25th day of January, 2015.

/s/ Christine C. Hernandez Christine C. Hernandez

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 25th day of January 2015 a true and correct copy of the aforesaid was served on the following via the E-file system:

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