

PLAINTIFFS'
EXHIBIT A

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;)
KRISTY SIMMONS and MARSHAY)
SAFFORD; KRISTIE OGLE and JENNIFER)
OGLE; KEITH INGRAM and ALBERT)
HALLOWAY PIGG III; GARY WAYNE)
WRIGHT II and BRANDON MABREY,)
individually and as Class Representatives,)

Plaintiffs,)

v.)

Civil Action No. 14-0424-CG-C

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, individually and as)
Class Representative; and TIM RUSSELL, in)
his official capacity as Probate Judge of)
Baldwin County, Alabama, individually and as)
Class Representative,)

Defendants.)

**[PROPOSED] SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

CLASS ACTION

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. The Named Plaintiffs and the members of the Plaintiff Class¹ 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. The Named Defendants and the members of the Defendant Class² are Alabama state officials whose duties include enforcement, under color of state law, of Alabama's prohibition on the issuance of marriages licenses to same-sex couples and its refusal to recognize the lawful marriages of same-sex couples.

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 Named Defendants Davis and Russell and the members of the Defendant Class to issue marriage licenses to Plaintiffs and members of the Plaintiff Class without regard to their status as same-sex couples, and requiring all members of the Defendant Class to recognize the marriages of same-sex couples for all purposes under state law.

5. Named Plaintiffs James N. Strawser and John E. Humphrey, Robert Povilat and Milton Persinger, Meredith Miller and Anna Lisa Carmichael, and Kristy Simmons and Marshay

¹ The Plaintiff Class is defined in paragraph 38 below. The Named Plaintiffs and the members of the Plaintiff class are collectively referred to herein as "Plaintiffs."

² The Defendant Class is defined in paragraph 45 below. The Named Defendants and the members of the Defendant Class are collectively referred to herein as "Defendants."

Safford are same-sex couples who have married in Alabama, pursuant to marriage licenses duly issued by an Alabama probate judge as a result of the Court's preliminary injunction in this action. Named Plaintiffs Kristie Ogle and Jennifer Ogle, Keith Ingram and Albert Halloway Pigg III, Gary Wayne Wright II and Brandon Mabrey, 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 and the recognition of lawful marriages 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 marriage 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 Plaintiffs is subject to strict scrutiny because it burdens fundamental constitutional rights. Alabama's treatment of Plaintiffs cannot survive any level of constitutional scrutiny, however, because it does not rationally 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 Defendants from enforcing those provisions and any other Alabama laws or orders 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 Defendant Class members from denying Plaintiffs and Plaintiff Class members the right to marry, (ii) directing Named Defendants Davis and Russell and the members of the Defendant Class to issue marriage licenses to all same-sex couples who otherwise satisfy the qualifications for marriage under Alabama law; and (iii) directing Defendants to recognize for all purposes the marriages of all same-sex couples validly entered into pursuant to marriage licenses issued in Alabama or any other jurisdiction at any time.

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 Named Plaintiffs

18. Named 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 elected to cease issuance of marriage licenses in Mobile County until this Court clarified his legal obligations. As a result of this Court's further order of February 12, 2015, granting a preliminary injunction in this action, Plaintiffs Strawser and Strange married in Alabama pursuant to a marriage license issued by Defendant Davis.

19. Named 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 elected to cease issuance of marriage licenses in Mobile County until this Court clarified his legal obligations. As a result of this Court's further order of February 12, 2015, granting a preliminary injunction in this action, Plaintiffs Povilat and Persinger married in Alabama pursuant to a marriage license issued by Defendant Davis.

20. Named 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 elected to cease issuance of marriage licenses in Mobile County until this Court clarified his legal obligations. As a result of this Court's further order of February 12, 2015, granting a preliminary injunction in this action, Plaintiffs Miller and Carmichael married in Alabama pursuant to a marriage license issued by Defendant Davis.

21. Named 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 elected to cease issuance of marriage licenses in Mobile County until this Court clarified his legal obligations. As a result of this Court's further order of February 12, 2015, granting a preliminary injunction in this action, Plaintiffs Simmons and Safford married in Alabama pursuant to a marriage license issued by Defendant Davis.

22. Named Plaintiffs Kristie Ogle and Jennifer Ogle have been in a committed, loving relationship for 22 years and have lived in Alabama for most of the last 14 years. They have a child who was born in the state in 2002. They wish to marry in order to obtain legal recognition for their family and to build stability for their child. Each day that they are not permitted to marry, they and their child experience uncertainty about whether they will be treated as family members in the event of an emergency. On March 4, 2015, they went to Defendant Davis's office in Mobile County to obtain a marriage license but were unable to obtain one. On March 5, 2015, Kristie Ogle called Defendant Russell's office in Baldwin County and was told that while Defendant

Russell is issuing marriage licenses to opposite-sex couples, he is not issuing licenses to same-sex couples.

23. Named Plaintiffs Keith Ingram and Albert Halloway Pigg III, have been in a committed, loving relationship for approximately one year. They moved together to Dothan, Alabama, the town in which Plaintiff Ingram grew up, to be near his family. They wish to marry in order to obtain legal recognition for their family and to declare their commitment to each other before their loved ones and community. Each day that they are not permitted to be married, they experience uncertainty about whether they will be treated as family members in the event of an emergency. Plaintiffs Ingram and Pigg drove to the probate office in the county in which they live, Houston County, on February 10, 2015, and again on February, 17, 2015, to obtain a marriage license, but were refused. On March 5, 2015, Plaintiff Ingram called Defendant Russell's office in Baldwin County and was told that while Defendant Russell is issuing marriage licenses to opposite-sex couples, he is not issuing licenses to same-sex couples.

24. Named Plaintiffs Gary Wayne Wright II and Brandon Mabrey have been in a committed, loving relationship for eighteen years and have lived together in Alabama for six years. Plaintiff Wright served in the U.S. Navy and was honorably discharged under the federal government's now-repealed Don't Ask, Don't Tell policy when he was asked to reveal his sexual orientation and admitted that he is gay. Since that time, the couple have fought together to receive veteran's benefits and coverage for Wright, including coverage for treatment for a muscular disorder that leaves him dependent on a wheelchair. They wish to marry in order obtain legal recognition for their family legal and to declare their commitment to each other before their loved ones and community. Each day that they are not permitted to be married, they experience uncertainty about whether they will be treated as family members in the event of an emergency.

After this Court declared Alabama's exclusion of same-sex couples from civil marriage unconstitutional, the couple drove to the probate office in Marshall County, the county in which they live, to obtain a marriage license. When they arrived, they were told that the Marshall County Probate Judge refused to issue marriage licenses to same-sex couples, although he would continue to issue marriage licenses to couples of different sexes. Plaintiff Wright visited the Marshall County Probate Judge's Office again on March 2, 2015, to obtain a marriage license, and a clerk told him that the probate judge would no longer issue marriage licenses to anyone. On March 5, 2015, Plaintiffs Wright and Maybrey called Defendant Russell's office in Baldwin County and were told that while Defendant Russell is issuing marriage licenses to opposite-sex couples, he is not issuing licenses to same-sex couples.

B. The Named Defendants

25. Named 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.

26. Named 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.

27. Named Defendant Tim Russell is Probate Judge of Baldwin 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 Russell was acting under color of state law at all times relevant to this complaint. He is sued in his official capacity.

28. 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

29. 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

30. Plaintiffs 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.

31. 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.

32. 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

33. 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, Named 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 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 issued further clarifications concerning his legal obligations with respect to issuance of marriage licenses to same-sex couples. As a result of this

Court's further order and preliminary injunction issued on February 12, 2015, each of these couples was able to marry in Alabama pursuant to a marriage license issued by Defendant Davis.

34. Named Plaintiffs Kristi Ogle and Jennifer Ogle, Keith Ingram and Albert Holloway Pigg III, Gary Wayne Wright II and Brandon Mabrey have been unable to obtain a marriage license from Defendant Russell. The reason each couple was unable to obtain a marriage license from Defendant Russell was that they are a same-sex couple. Defendant Russell is not issuing marriage licenses to same-sex couples.

35. Named Plaintiffs Kristi Ogle and Jennifer Ogle attempted to obtain a marriage license from Defendant Davis but were unable to do so because he has ceased issuing marriage licenses.

36. 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 the Named 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.

37. Like the Named Plaintiffs, each member of the Plaintiff Class either has been unable to marry his or her same-sex partner in Alabama because of the marriage ban or has validly married a partner of the same sex but is treated as a legal stranger to his or her spouse under Alabama law.

CLASS ALLEGATIONS

The Plaintiff Class

38. Named Plaintiffs bring this action for themselves and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all same-sex couples

who are injured by Alabama's marriage ban (the "Plaintiff Class"). The Plaintiff Class, as proposed by Named Plaintiffs, consists of all persons in Alabama who wish to obtain a marriage license in order to marry a person of the same sex and to have that marriage recognized under Alabama law, and who are unable to do so because of the enforcement of Alabama's laws prohibiting the issuance of marriage licenses to same-sex couples and barring recognition of their marriages.

39. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Upon information and belief, there are thousands of same-sex couples in Alabama who are married or would marry if Alabama law permitted them to do so. Alabama's marriage ban, and Defendants' enforcement of it, prevents all of those couples from either marrying or having their valid marriage from another jurisdiction recognized in the State.

40. There are questions of law and fact common to the members of the class. Fed. R. Civ. P. 23(a)(2). Such questions include, but are not limited to:

- a. whether Alabama's marriage ban violates the Fourteenth Amendment's guarantee of due process by denying Plaintiffs the fundamental right to marry, and by depriving them of constitutionally protected interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association;
- b. whether Alabama's marriage ban violates the Fourteenth Amendment's guarantee of equal protection by discriminating on the basis of sex and sexual orientation; and
- c. the level of constitutional scrutiny applicable to governmental discrimination based on sexual orientation.

41. The claims of Named Plaintiffs are typical of those of the Plaintiff Class, as their claims all arise from Alabama's marriage ban and are based on the same constitutional provisions and arguments.

42. Named Plaintiffs are capable of fairly and adequately protecting the interests of the Plaintiff Class because they do not have any interests antagonistic to the class. Named Plaintiffs and the Plaintiff Class both seek to enjoin enforcement of Alabama's marriage ban and obtain a declaration that the ban violates the guarantees of the Fourteenth Amendment. Moreover, Named Plaintiffs are represented by counsel experienced in complex civil rights litigation, including litigation seeking the freedom to marry for same-sex couples in many states across the nation.

43. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of separate actions by individuals would create a risk of inconsistent and varying adjudications, resulting in some Alabama same-sex couples having access to marriage, or recognition for their valid marriage, and others not. In addition, prosecution of separate actions by individual members could result in adjudications with respect to individual members that, as a practical matter, would substantially impair the ability of other members to protect their interests.

44. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendants' enforcement of the marriage ban applies generally to the class, by precluding all class members from marrying or having a valid marriage from another jurisdiction recognized. The injunctive and declaratory relief sought is appropriate respecting the class as a whole.

The Defendant Class

45. Plaintiffs bring this action against the Named Defendants both individually and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all Alabama probate judges who are or may enforce Alabama's marriage ban (the "Defendant

Class”). The Defendant Class, as proposed by Named Plaintiffs, consists of all Alabama county probate judges who are enforcing or in the future may enforce Alabama’s laws barring the issuance of marriage licenses to same-sex couples and refusing to recognize their marriages.

46. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Upon information and belief, more than sixty (60) county probate judges in Alabama currently are enforcing the marriage ban and are declining to issue marriage licenses to otherwise qualified same-sex couples. Defendants’ enforcement of the marriage ban prevents same-sex couples from either marrying or having their valid marriage from another jurisdiction recognized in the State.

47. There are questions of law and fact common to the members of the class. Fed. R. Civ. P. 23(a)(2). Such questions include, but are not limited to:

- a. whether Alabama’s marriage ban violates the Fourteenth Amendment’s guarantee of due process by denying Plaintiffs the fundamental right to marry, and by depriving them of constitutionally protected interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association;
- b. whether Alabama’s marriage ban violates the Fourteenth Amendment’s guarantee of equal protection by discriminating on the basis of sex and sexual orientation; and
- c. the level of constitutional scrutiny applicable to governmental discrimination based on sexual orientation.

48. The claims against the Named Defendants are typical of those of the claims against the Defendant Class, as their claims all arise from Alabama’s marriage ban and are based on the

same constitutional provisions and arguments. The defenses expected to be asserted by the Named Defendants likewise are common to the members of the Defendant Class.

49. Named Defendants are capable of fairly and adequately protecting the interests of the Defendant Class because they do not have any interests antagonistic to the class. Named Defendants and the Defendant Class both assert that they are bound to enforce Alabama's marriage ban. Moreover, the Attorney General of Alabama is named herein as a Defendant, asserts that the marriage ban does not violate the guarantees of the Fourteenth Amendment, and is capable of fairly and adequately protecting the interests of the Defendant Class.

50. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of separate actions against individuals would create a risk of inconsistent and varying adjudications, resulting in some Alabama probate judges being required to issue marriage licenses to same-sex couples and required to respect the marriages of same-sex couples, and others not. In addition, prosecution of separate actions against class members could result in adjudications with respect to individual members that, as a practical matter, would substantially impair the ability of other members to protect their interests.

51. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Plaintiffs' desire to obtain marriage licenses and to have their marriages respected applies generally to the Defendant Class, as Alabama couples may request marriage licenses from any county probate judge or may seek to have a valid marriage from another jurisdiction recognized by any probate judge. The injunctive and declaratory relief sought is appropriate respecting the class as a whole.

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**

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

53. 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.

54. 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.

55. 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.

56. As Probate Judge of Mobile County, Alabama, Defendant Davis 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.

57. As Probate Judge of Baldwin County, Alabama, Defendant Russell 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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:

64. 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;

65. 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;

66. Declaring that the any marriages validly entered into by Plaintiffs in any jurisdiction, including Alabama, are valid in the State of Alabama;

67. 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;

68. Requiring Named Defendants Davis and Russell and the members of the Defendant Class to issue marriage licenses to Plaintiffs and members of the Plaintiff Class, 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;

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

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

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

DATED: March 6, 2015

Respectfully submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

By: /s/ Shannon P. Minter

Shannon P. Minter *
Christopher F. Stoll*
National Center for Lesbian Rights
1100 H Street, NW, Suite 540
Washington, DC 20005
Telephone: (202) 734-3545
Facsimile: (415) 392-8442
Email: sminter@nclrights.org
Email: cstoll@nclrights.org

Heather Fann
Boyd, Fernambucq, Dunn & Fann, P.C.
3500 Blue Lake Drive, Suite 220
Birmingham, AL 35243
Telephone: (205) 930-9000
Facsimile: (205) 930-9010
Email: hfann@bfattorneys.net

Randall C. Marshall (MARSR3023)
ACLU Foundation of Alabama

P.O. Box 6179
Montgomery, Alabama 36106-0179
Tel: (334) 420-1741
Fax: (334) 269-5666
Email: rmarshall@actualabama.org

David Dinielli**
Cal. Bar No. 177904
Scott D. McCoy**
N.Y. Bar No. 3970803
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
334-956-8200
david.dinielli@splcenter.org
scott.mccoy@splcenter.org

Ayesha N. Khan**
D.C. Bar No. 426836
Zachary A. Dietert**
D.C. Bar No. 1003784
Americans United for Separation of Church and State
1901 L Street, N.W., Suite 400
Washington, D.C. 20036
202-466-3234
email: khan@au.org
email: dietert@au.org

Attorneys for Plaintiffs

*Admitted *pro hac vice*

** Motions for admission *pro hac vice* forthcoming