

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

JAMES N. STRAWSER and JOHN E. )  
HUMPHREY, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
LUTHER STRANGE, in his official )  
capacity as Attorney General for )  
the State of Alabama, )  
 )  
Defendant. )

Civil Action No. 14-0424-CG-C

**PLAINTIFFS' EMERGENCY MOTION (1) FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT ADDING ADDITIONAL PLAINTIFFS AND  
DEFENDANTS AND (2) FOR PRELIMINARY INJUNCTION AND/OR TEMPORARY  
RESTRAINING ORDER**

Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiffs James N. Strawser and John E. Humphrey respectfully file this emergency motion seeking leave to amend the complaint to add Robert Povilat and Milton Persinger, Meredith Miller and Anna Lisa Carmichael, and Kristy Simmons and Marshay Safford as Plaintiffs, to add Don Davis, in his official capacity as Probate Judge of Mobile County, as a Defendant, and to clarify Plaintiffs' causes of action now that they are represented by counsel in this matter. A copy of the proposed First Amended Complaint is attached hereto as Exhibit A.

Plaintiffs further move the Court, pursuant to Fed. R. Civ. P. 65, to issue a temporary restraining order and/or preliminary injunction to direct proposed Defendant Davis to issue marriage licenses to Plaintiffs, and to direct all Defendants to refrain from enforcing all Alabama

laws that prohibit same-sex couples from marrying or that deny recognition of the marriages of same-sex couples.

### MEMORANDUM

Plaintiffs move to amend the complaint to add three additional Plaintiff couples to the lawsuit. Plaintiffs also seek to add as a defendant Don Davis, the probate judge of Mobile County, in his official capacity. On January 23, 26, and 28, 2015 in this case and in another marriage case, *Searcy v. Strange*, No. 14-0208-CG-N, this Court entered a series of Orders that declared Alabama's laws excluding same-sex couples from marriage unconstitutional and that made clear that the 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. The Court stayed its Orders until today in order to allow Defendant Luther Strange, Attorney General of Alabama, to seek a further stay from the federal appellate courts. Both the Eleventh Circuit and the Supreme Court of the United States denied Defendant Strange's requests for a further stay.

Today, in reliance on this Court's Orders and on the expiration of this Court's stay, each Plaintiff couple appeared at the offices of proposed Defendant Davis to apply for a marriage license, but were unable to do so despite the clear directive of this Court's Orders. *See* Declaration of James N. Strawser ("Strawser Decl.") ¶ 5; Declaration of Meredith Miller ("Miller Decl.") ¶ 5; Declaration of Kristy Simmons ("Simmons Decl.") ¶ 5; Declaration of Robert Povilat (Povilat Decl.) ¶ 5. Proposed Defendant Davis has stated that he will not issue marriage licenses to either same-sex or opposite-sex couples absent a further order of this Court or the Alabama Supreme Court clarifying his obligations. *See* Declaration of Christopher F. Stoll ("Stoll Decl."), Exhibit A. Accordingly, Plaintiffs respectfully request that the Court grant them leave to file the attached First Amended Complaint and that the Court issue a temporary restraining order and/or preliminary

injunction requiring proposed Defendant Davis to issue marriage licenses to same-sex couples, including all Plaintiffs, and ordering proposed Defendant Davis to refrain from enforcing all Alabama laws that prohibit same-sex couples from marrying or that deny recognition of the marriages of same-sex couples.

As this Court made clear in its January 28, 2015 “Order Clarifying Judgment” in the *Searcy* case, “the Constitution requires the clerk to issue [marriage] licenses” to same-sex couples. *See Searcy* Doc. 65 (citing *Brenner v. Scott*, 2015 WL 44260 at \*1 (N.D. Fla. Jan. 1, 2015)).<sup>1</sup> Despite the Court’s Orders, proposed Defendant Davis has failed to issue marriage licenses to same-sex couples, necessitating his addition as a Defendant in this case and the issuance of an order directing his compliance with the federal Constitution.

**I. The Court Should Grant Leave To Amend the Complaint.**

Rule 15 of the Federal Rules of Civil Procedure provides that leave of the Court to amend a pleading “shall be freely given when justice so requires.” Reasonable requests to amend should be viewed with favor by the Court. *See Wright and Miller, Federal Practice and Procedure*, §1484, p. 417 and cases cited therein. Leave to amend should normally be granted unless the moving party is guilty of undue delay, bad faith, dilatory motive, or the proposed amendment will be futile or cause undue prejudice to the opposing party. *Forman v. Davis*, 371 U.S. 178, 182 (1962). This amendment will not disturb the schedule set by the Court in these cases. At all times in this action Plaintiffs have acted in good faith and without delay. No prejudice will be experienced by any opposing party. Indeed, the amendments are necessary to fully effectuate this Court’s prior orders.

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<sup>1</sup> Judges of Probate are authorized to issue marriage licenses in Alabama, *see Ala. Code* § 30-1-7, in the same way that court clerks are empowered to issue marriage licenses in other states. These duties are ministerial in nature, and not part of any judicial or discretionary function.

**II. The Court Should Issue A Temporary Restraining Order and/or Preliminary Injunction Requiring Proposed Defendant Davis To Issue Marriage Licenses To Plaintiffs And To Refrain From Enforcing Alabama Laws Excluding Same-Sex Couples From Marriage.**

As the accompanying declarations from Plaintiffs Strawser and Humphrey and the additional proposed Plaintiff couples establish, each appeared at the offices of proposed Defendant Davis to apply for a marriage license. Plaintiffs were unable to obtain marriage licenses in Mobile County because proposed Defendant Davis has announced that he will not issue licenses to any couple, whether of the same sex or of opposite sexes, until this Court clarifies his obligations under its Orders. *See* Strawser Decl. ¶ 5; Miller Decl. ¶ 5; Simmons Decl. ¶ 5; Povilat Decl. ¶ 5; Stoll Decl., Ex. A.

In its January 26 Order, this Court found that “the Sanctity of Marriage Amendment and the Alabama Marriage Protection Act [Ala. Const., art. I, § 36.03 and Ala. Code § 30-1-19] restrict the Plaintiffs’ fundamental marriage right and do not serve a compelling state interest,” and therefore violate Plaintiffs’ rights under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by prohibiting same-sex marriage.” Order, Dkt. 29, at 3. The Court also found that a preliminary injunction was warranted because, in addition to establishing that they will prevail on the merits, Plaintiffs have met the other preliminary injunction factors. Among other things, “Plaintiffs’ inability to exercise their fundamental right to marry has caused them irreparable harm which outweighs any injury to defendant.” *Id.* (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Moreover, “it is always in the public interest to protect constitutional rights.” *Id.* (quoting *Phelps–Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008)).

Entry of an additional provisional order against the new proposed Defendant and in favor of the existing Plaintiffs and proposed new Plaintiffs is warranted for the same reasons that this

Court granted an injunction against Defendant Strange in this action. First, all Plaintiffs are likely to prevail on the merits for the same reasons this Court has addressed in its previous Orders. Second, without an injunction, all proposed Plaintiffs would suffer irreparable injury due to the deprivation of constitutional rights, and for additional reasons described in their declarations. *See* Strawser Decl. ¶ 4; Miller Decl. ¶ 4; Simmons Decl. ¶¶ 3-4; Povilat Decl. ¶ 4. Third, proposed Defendant Davis would suffer no harm from an injunction; indeed, an injunction would aid him, as he claims that he is presently uncertain of his obligations and would benefit from the Court's clarification of his duties under the Constitution. In any event, any claimed harm to Defendants is far outweighed by the harm suffered by Plaintiffs from being unable to marry. Fourth, the public interest always favors vindication of constitutional rights. Indeed, with respect to original Plaintiffs Strawser and Humphrey, the Court's analysis of the preliminary is precisely the same as in its January 26 Order. These original Plaintiffs seek only to have the existing injunction applied to an additional public official, proposed Defendant Davis. In sum, there is no relevant difference between the original Plaintiffs and Defendant in this action and the new proposed Plaintiffs and Defendant in with respect to the preliminary injunction factors. Plaintiffs therefore respectfully request that the Court order Defendant Davis to issue marriage licenses to same-sex couples without delay and to refrain from enforcing Alabama laws excluding same-sex couples from marriage or marriage recognition.

### **CONCLUSION**

Accordingly, Plaintiffs respectfully request that the motion for leave to file First Amended Complaint be granted and that the Court issue an a temporary restraining order and/or preliminary injunction (1) directing proposed Defendant Davis to issue marriage licenses to Plaintiffs, and (2)

directing all Defendants to refrain from enforcing all Alabama laws that prohibit same-sex couples from marrying or that deny recognition of the marriages of same-sex couples.

DATED: February 9, 2015

Respectfully submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

By: /s/ Shannon P. Minter

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Attorneys for Plaintiffs

*\*(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 February 9, 2015.

I certify that service will be accomplished by the CM/ECF system to the following parties:

Luther Strange  
*Attorney General*  
Andrew L. Brasher  
*Solicitor General*  
James W. Davis  
Laura Howell  
*Assistant Attorneys General*  
State of Alabama  
Office of Attorney General  
501 Washington Avenue  
Montgomery, Alabama 36130  
Tel: (334) 353-2609

I further certify, that service on proposed Defendant Don Davis was accomplished by e-mail, with the consent of his counsel, with a copy addressed as follows and served by overnight delivery:

Joseph Michael Druhan Jr.  
Satterwhite Druhan Gaillard & Tyler, LLC  
1325 Dauphin St  
Mobile, AL 36604  
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/s/ Shannon P. Minter

**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**

**[PROPOSED] 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 9, 2015

Respectfully submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

By: /s/ Shannon P. Minter

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

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

**JAMES N. STRAWSER and JOHN E.  
HUMPHREY,** )

**Plaintiffs,** )

**v.** )

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

**LUTHER STRANGE, in his official  
capacity as Attorney General for  
the State of Alabama,** )

**Defendant.** )

**DECLARATION OF CHRISTOPHER F. STOLL IN SUPPORT OF PLAINTIFFS’  
EMERGENCY MOTION (1) FOR LEAVE TO FILE FIRST AMENDED COMPLAINT  
ADDING ADDITIONAL PLAINTIFFS AND DEFENDANTS AND (2) FOR  
PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER**

I, Christopher F. Stoll, state the following:

1. I am one of the attorneys for the Plaintiffs in this action.
2. Attached hereto as Exhibit A is a true and correct copy of a news release issued on February 9, 2015, by Don Davis, Probate Judge of Mobile County, Alabama, who is named as a new Defendant in Plaintiffs’ proposed First Amended Complaint.
3. On February 9, 2015, co-counsel for Plaintiffs, Heather Fann, spoke with Joseph Michael Druhan, Jr., counsel for proposed Defendant Davis. Mr. Druhan consented to accept service of Plaintiffs’ motion, the proposed First Amended Complaint, and accompanying

documents by e-mail.

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
February 9, 2015.

A handwritten signature in black ink that reads "Chris F. Stoll". The signature is written in a cursive style with a large initial "C".

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Christopher F. Stoll

**Don Davis**  
*Judge of Probate*

**Joe McEarchern, Jr.**  
*Chief Clerk/Administrator*

**C. Mark Erwin**  
*Chief of Staff*



Judicial Division - (251) 574-6001  
Recording Division - (251) 574-6040  
Records Division - (251) 574-6070  
Elections Division - (251) 574-6080  
Accounts Division - (251) 574-6101  
Facsimile - (251) 574-6003

## PROBATE COURT OF MOBILE COUNTY, ALABAMA PRESS RELEASE

### FOR IMMEDIATE RELEASE

**TO: ALL NEWS MEDIA**

**FROM: DON DAVIS**

**DATE: FEBRUARY 9, 2015**

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In light of the conflicting orders being issued by the U.S. District Court for the Southern District of Alabama and the Chief Justice of the Alabama Supreme Court I have, on advice of counsel, taken the following actions today:

1. ordered that the Marriage License Section of the Court's Recording Division remain closed pending further instructions from the courts cited above; and
2. authorized attorneys for the Court to file an action with the Alabama Supreme Court seeking guidance and clarification as to the application of the "Administrative Order" issued by the Chief Justice both generally speaking and also more specifically in light of the action early this morning by the United States Supreme Court and the Motion for Contempt filed by the plaintiffs in the U.S. District Court action styled Searcy v. Strange. (the Probate Court is not a party to any action currently pending before any court related to these issues)

I remain committed to properly applying the law in all judicial and ministerial actions of the Probate Court, but we are dealing with unprecedented conflicts of law between the federal and state courts and I must be certain that any action I take is fully compliant with the law, both the United States Constitution, as well as the Constitution and statutes of the State of Alabama.

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### E-Filing Confirmation

**Tracking No: P1323184**  
*(New Case Filing - Case Number Pending)*
**Confirmation No: 637650**

Ex parte Administrative Order of February 8, 2015 (Administrative Order of February 8, 2015 v. Administrative Order of February 8, 2015)

Your **In REM Action** was successfully uploaded and e-filed with the Clerk of the Supreme Court of Alabama in the above cause on 02/09/2015 @ 01:23:18 PM.

To view the Transaction Confirmation: [Transaction Confirmation](#) *(Click Here To View)*

To view a "Filed Stamped" copy of the document: [In REM Action](#) *(Click Here To View)*

The Appellate Court E-Filing Rules require that the filing party mail a docket fee, along with nine (9) hard copies of the e-filed document and a copy of the Transaction Confirmation to the Clerk of the Supreme Court of Alabama within 24 hours (for briefs please send the appropriate color code in accordance to Rule 28 ARAP).

**Important Reminder:** It is the filing party's responsibility to serve the opposing attorneys and/or parties with a copy of the document that has been e-filed.

This notice has been delivered for informational purposes only. Please do not attempt to reply to this notice. Should you need to contact the Supreme Court of Alabama regarding this action, you may contact the Clerk's office by telephone at (334) 229-0700.

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<b>Supreme Court of Alabama</b> (334)229-0700	<b>Alabama Court of Civil Appeals</b> (334)229-0733	<b>Alabama Court of Criminal Appeals</b> (334)229-0751
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**Judicial Building · 300 Dexter Avenue · Montgomery, Alabama 36104**

For technical assistance using this online service please contact our Help Desk at (334)229-0600.  
 Hours of operation for Help Desk operators are Monday - Friday from 8:00 AM - 4:00 PM.

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

**JAMES N. STRAWSER and JOHN E.  
HUMPHREY,** )  
 )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**LUTHER STRANGE, in his official** )  
**capacity as Attorney General for the State** )  
**of Alabama,** )  
**Defendant.** )

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

**DECLARATION OF JAMES N. STRAWSER**

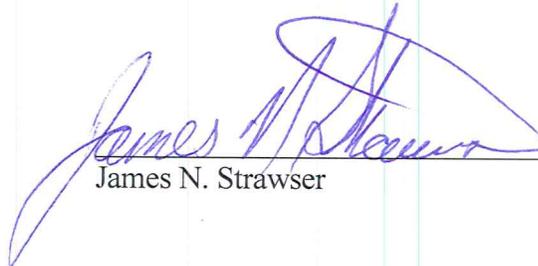
I, James N. Strawser, state the following:

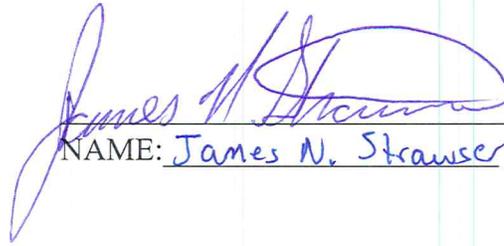
1. I am 51 years of age, and live with my partner, John E. Humphrey, who is 38 years of age, in Mobile County.
2. We have been in a committed, loving relationship for many years.
3. We are not married but want to get married in order to have a legal family relationship. Each day that we are not permitted to be married, we experience uncertainty about whether we will be treated as family members in the event of an emergency. We also experience humiliation each day that we are not permitted to be married; it is demeaning to us that our family is treated unequally under Alabama law.
4. I have serious health issues that require surgery that could put my life at risk. When I have had surgery in the past, I signed a form giving John legal power over my medical decisions in the event that I become incapacitated. The hospital refused to honor that document, however, because John and I are not family members or spouses under Alabama law. It is

extremely stressful and demeaning to not know whether John will be able to visit me in the hospital as a family member and make decisions on my behalf if something goes wrong.

5. John and I went to the office of the Mobile County Judge of Probate this morning to get our marriage license. That office was not issuing marriage licenses and we later learned from the Probate Judge's press release that he plans to keep the office closed until he receives further instruction from this Court and/or the Alabama Supreme Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 9, 2015.

  
James N. Strawser

  
NAME: James N. Strawser

STATE OF ALABAMA )

COUNTY OF MOBILE )

I, the undersigned Notary Public, in and for said State and County, hereby certify that James N. Strawser, whose name is signed to the foregoing and produced identification, acknowledged before me on this day that, being informed of the contents of the foregoing, did state that the facts recorded hereinabove were accurate and true to the best of his/her knowledge and he/she executed the same voluntarily by signing on the day the same bears date.

Given under my hand and seal this 9<sup>th</sup> day of February, 2015.

Kerri D. Hines

NOTARY PUBLIC

My Commission Expires:



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

**JAMES N. STRAWSER and JOHN E.  
HUMPHREY,** )  
 )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**LUTHER STRANGE, in his official** )  
**capacity as Attorney General for the State** )  
**of Alabama,** )  
**Defendant.** )

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

**DECLARATION OF MEREDITH MILLER**

I, Meredith Miller, state the following:

1. I am 32 years old and live with my partner, Anna Lisa Carmichael, who is 33 years old, in Mobile County.
2. We have been in a committed, loving relationship for almost 9 years.
3. We are not married but want to get married in order to be able to protect one another and to have the legal protections and security that only marriage provides. Each day that Alabama excludes us from marriage, we must deal with uncertainty about whether Alabama will treat us as family members if we experience a life crisis or emergency. It is humiliating and demeaning to us that Alabama is excluding us from marriage and denying us equality under the law.
4. I have lived in Alabama my entire life and consider it to be my only home. Anna Lisa has lived in the state for the past 12 years. We hope to have children, but are concerned that if we are not married, our children will get the message that our family is not as worthy of

dignity and respect as other families in Alabama and that our children will be denied important legal protections that come with marriage.

5. Anna Lisa and I went to the office of the Mobile County Judge of Probate this morning to get our marriage license. That office was not issuing marriage licenses, and we later learned from the Probate Judge's press release that he plans to keep the office closed until he receive further instruction from this Court and/or the Alabama Supreme Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 9, 2015.

  
Meredith Miller

Meredith Miller  
NAME: MEREDITH MILLER

STATE OF ALABAMA )

COUNTY OF MOBILE )

I, the undersigned Notary Public, in and for said State and County, hereby certify that Meredith Miller, whose name is signed to the foregoing and produced identification, acknowledged before me on this day that, being informed of the contents of the foregoing, did state that the facts recorded hereinabove were accurate and true to the best of his/her knowledge and he/she executed the same voluntarily by signing on the day the same bears date.

Given under my hand and seal this 9<sup>th</sup> day of February, 2015.

Kerri D. Hines

NOTARY PUBLIC  
My Commission Expires:



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

**JAMES N. STRAWSER and JOHN E.  
HUMPHREY,** )  
 )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**LUTHER STRANGE, in his official** )  
**capacity as Attorney General for the State** )  
**of Alabama,** )  
**Defendant.** )

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

**DECLARATION OF KRISTY SIMMONS**

I, Kristy Simmons, state the following:

1. I am 35 years old live with my partner, Marshay Safford, who is 29 years old, in Irvington, Alabama. Irvington in Mobile County.

2. We have been in a committed, loving relationship for more than 2 years and are raising together three of my children from a prior relationship.

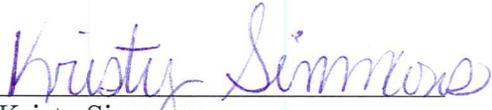
3. We are not married but want to get married in order to have a legal family relationship and to build stability for our children. Each day that we are not permitted to be married, we and our children experience uncertainty about whether we will be treated as family members in the event of an emergency. We also experience humiliation each day that we are not permitted to be married, and we feel demeaned by Alabama’s refusal to treat our family equally. We want to provide our children and our family with the stability and legal protections that marriage provides.

4. I have been diagnosed with Wegener’s Granulomatosis, a rare disorder that causes my blood vessels to become inflamed and that can damage my major organs. In light of my

health condition, it is especially important that Marshay and I marry so that Marshay and our children have legal protections in the event that I become ill or incapacitated.

5. Marshay and I went to the office of the Mobile County Judge of Probate this morning to get our marriage license. That office was not issuing marriage licenses and we later learned from the Probate Judge's press release that he plans to keep the office closed until he receives further instruction from this Court and/or the Alabama Supreme Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 9, 2015.

  
Kristy Simmons

Kristy Simmons  
NAME: Kristy Simmons

STATE OF ALABAMA )

COUNTY OF MOBILE )

I, the undersigned Notary Public, in and for said State and County, hereby certify that Kristy Simmons, whose name is signed to the foregoing and produced identification, acknowledged before me on this day that, being informed of the contents of the foregoing, did state that the facts recorded hereinabove were accurate and true to the best of his/her knowledge and he/she executed the same voluntarily by signing on the day the same bears date.

Given under my hand and seal this 9<sup>th</sup> day of February, 2015.

Kerri D. Hines

NOTARY PUBLIC

My Commission Expires:



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

JAMES N. STRAWSER and JOHN E. )  
HUMPHREY, )  
Plaintiffs, )  
v. )  
LUTHER STRANGE, in his official )  
capacity as Attorney General for the State )  
of Alabama, )  
Defendant. )

Civil Action No. 14-0424-CG-C

DECLARATION OF ROBERT POVILAT

I, Robert Povilat, state the following:

1. I am over 60 years old and live with my partner, Milton Persinger, who is 47 years old, in Mobile County.
2. We have been in a committed, loving relationship for more than 2 years.
3. We are not married but want to get married in order to protect one another and have the legal protections and security that only marriage provides. Every day that we are not allowed to be married, we experience uncertainty about whether we will be treated as family members if we experience a crisis or an emergency. We also are demeaned and humiliated each day that Alabama denies us equality and the dignity that marriage provides.
4. I am a retail sales associate at a home improvement store, and Milton works as an Licensed Professional Nurse at a local nursing home. I have survived two bouts of prostate cancer and fear that I could be diagnosed with cancer again. Given my health issues, it is extremely important to Milton and me that we be permitted to marry in Alabama.

5. Milton and I went to the office of the Mobile County Judge of Probate this morning to get our marriage license. That office was not issuing marriage licenses, and we later learned from the Probate Judge's press release that he plans to keep the office closed until he receives further instruction from this Court and/or the Alabama Supreme Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 9, 2015.

  
Robert Povilat

*Robert L. Povilat*

NAME: ROBERT L. POVILAT

STATE OF ALABAMA )

COUNTY OF MOBILE )

I, the undersigned Notary Public, in and for said State and County, hereby certify that Robert L. Povilat Jr., whose name is signed to the foregoing and produced identification, acknowledged before me on this day that, being informed of the contents of the foregoing, did state that the facts recorded hereinabove were accurate and true to the best of his/her knowledge and he/she executed the same voluntarily by signing on the day the same bears date.

Given under my hand and seal this 9<sup>th</sup> day of February, 2015.

*Kerri D. Hines*

NOTARY PUBLIC

My Commission Expires:

