

IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

RITA JERNIGAN, et al.

PLAINTIFFS-APPELLEES

v.

No. 15-1022

LARRY CRANE

DEFENDANT

DUSTIN McDANIEL, et al.

DEFENDANTS-APPELLANTS

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

THE HONORABLE KRISTINE G. BAKER  
UNITED STATES DISTRICT COURT JUDGE

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SUGGESTION OF MOOTNESS AND MOTION TO  
VACATE THE DISTRICT COURT'S ORDER AND JUDGMENT  
of the Arkansas Attorney General,  
Director of the Arkansas Department of Finance and Administration, and  
Executive Director of the Arkansas Teacher Retirement System

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**SUGGESTION OF MOOTNESS AND MOTION TO  
VACATE THE DISTRICT COURT'S ORDER AND JUDGMENT**

The United States Supreme Court's binding opinion in *Obergefell et al. v. Hodges et al.*, 576 U.S. \_\_\_, 2015 WL 2473451 (June 26, 2015) has mooted this appeal, and there is no longer a case or controversy between the parties. Defendants-Appellants therefore move this Court to vacate the district court's order (App. 124; Add. 1) and judgment (App. 169; Add. 46) and remand with instructions to dismiss the amended complaint (App. 33).

In this case, Plaintiffs-Appellees challenged Arkansas's marriage laws under the United States Constitution, asserting the following claims: (1) deprivation of the fundamental right to marry (App. 44-46); (2) deprivation of Appellees' liberty interest in state recognition of same-sex marriages recognized as valid in other jurisdictions (App. 46-47); (3) deprivation of autonomy, family privacy, and association rights (App. 47-48); (4) deprivation of the fundamental right to travel (App. 48-50); (5) discrimination on the basis of sexual orientation (App. 50-54); and (6) discrimination on the basis of gender (App. 54-56). After considering the parties' papers and oral arguments, the district court entered an Opinion and Order (App. 124; Add. 1) and Judgment (App. 169; Add. 46) granting in part and denying in part both Appellants' motion to dismiss and Appellees' motion for summary judgment. The district court concluded that the Arkansas marriage laws impermissibly restrict the fundamental right to marry and impermissibly

discriminate on the basis of gender. (App. 169-70; Add. 46-47) (Appellees' claims (1) and (6) above). The district court dismissed Appellees' remaining claims, in which Appellees asserted a liberty interest in marriage, autonomy rights, family privacy rights, associational rights, the right to travel, and sexual-orientation discrimination. (Appellees' claims (2), (3), (4), and (5) above). The district court granted Appellees' request for an injunction, but it stayed execution of the injunction pending any appeal. (App. 170; Add. 47).

In *Obergefell*, the Supreme Court held that the Fourteenth Amendment requires states to license same-sex marriages and to recognize lawful same-sex marriages performed in other states. The Supreme Court did not address many of the claims asserted by Appellees and addressed by the district court in this case, and the Supreme Court's reasoning on the claims the Supreme Court did address is not identical to the district court's reasoning in this case. However, *Obergefell* has determined the rights of Appellees, and controls over existing Arkansas laws concerning marriage and Arkansas's recognition of marriages celebrated in other states.

The Arkansas Governor has stated publicly that *Obergefell* "requires the State of Arkansas to recognize same-sex marriage." The Governor stated further: "[A]s Governor I recognize the responsibility of the State to follow the direction of the U.S. Supreme Court. As a result of this ruling, I will direct all state agencies to

comply with the decision.” The Arkansas Attorney General has also stated publicly that Arkansas will comply with the *Obergefell* decision, and has advised Arkansas clerks to issue marriage licenses to same-sex couples: “Arkansas county clerks should issue marriage licenses to same-sex couples upon request, requiring exactly the same procedures, fees and other requirements as required for opposite-sex couples[.]” See “Gays Ecstatic; Governor Says State Will Obey Court Ruling,” *Arkansas Democrat – Gazette*, June 27, 2015, available online at <http://www.arkansasonline.com/news/2015/jun/27/gays-ecstatic-governor-says-state-will-/> (last accessed July 1, 2015). Of course, regardless of what Arkansas officials have said, the Court can take notice of the fact that the State of Arkansas and its officials, including Defendants-Appellants, are bound by *Obergefell*.

No case or controversy exists between the parties and, therefore, this case is moot. “Article III of the United States Constitution limits the jurisdiction of the federal courts to actual, ongoing cases and controversies.” *Ali v. Cangemi*, 419 F.3d 722, 723 (8th Cir. 2005). “[A]n actual controversy must exist at all stages of appellate review, not merely at the time the complaint is filed.” *Honig v. Doe*, 484 U.S. 305, 329 (1988) (Rehnquist, C.J., concurring). This Court has defined a “case or controversy” to require “a definite and concrete controversy involving adverse legal interests at every stage in the litigation.” *McFarlin v. Newport Special Sch. Dist.*, 980 F.2d 1208, 1210 (8th Cir. 1992). “Occasionally, due to the passage of

time or a change in circumstance, the issues presented in a case will no longer be ‘live’ or the parties will no longer have a legally cognizable interest in the outcome of the litigation.” *Arkansas AFL-CIO v. F.C.C.*, 11 F.3d 1430, 1435 (8th Cir. 1993). “When such a change prevents a federal court from granting effective relief, the case becomes moot. Mootness therefore acts as a jurisdictional bar, and must be considered before reaching the merits of the case.” *Id.* (citations omitted). The issues presented in this case are no longer “live” in light of *Obergefell*. The parties are no longer adverse and no longer have a legally cognizable interest in the outcome of this litigation. No live case or controversy exists, and the case is moot.

The district court’s order and judgment should be vacated and this case should be remanded with instructions to dismiss the amended complaint. “The established practice of the [Supreme] Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss.” *U.S. v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). This Court has stated: “If a case becomes moot at any stage of an appeal, we must vacate the district court’s order and judgment and remand the case with instructions to dismiss.” *Beck v. Mo. State High School Activities Ass’n*, 18 F.3d 604, 605 (8th Cir. 1994). *See also Wojewski v. Rapid City Regional Hosp., Inc.*, 450 F.3d 338, 341 (8th Cir. 2006) (“Because the Title III claim has become moot,

we vacate the district court's order and remand with instructions to dismiss the claim as moot."); *Cangemi*, 419 F.3d at 724 ("[W]e reverse and vacate the judgment of the district court, remand the case to the district court, and instruct the district court to dismiss . . . as moot."); *Doe v. LaFleur*, 179 F.3d 613, 615 (8th Cir. 1999) ("[W]e hold that the present constitutional challenge . . . is now a moot issue as applied to Doe. Accordingly, we vacate the district court's judgment and remand the case to the district court with instructions to dismiss the case."); *Longley v. Holahan*, 34 F.3d 1366, 1367 (8th Cir. 1994) ("We have now resolved, on the merits, constitutional challenges . . . in a companion case . . . and we have declared the subdivision to be unconstitutional and unenforceable. Therefore the present case is now moot. Accordingly, we dismiss the appeal, vacate the order of the District Court, and remand with instructions that the case be dismissed."); *Nomi v. Regents for Univ. of Minn.*, 5 F.3d 332, 334 (8th Cir. 1993) ("[W]e hold the case moot, vacate the judgment below, and remand to the district court with directions to dismiss the complaint."); *Epp v. Kerrey*, 964 F.2d 754, 756 (8th Cir. 1992) ("When a civil case becomes moot pending appeal, the appellate court normally vacates the order being appealed and remands to the district court with instructions to dismiss the case as moot."); *Heles v. State of South Dakota*, 682 F.2d 201 (8th Cir. 1982) (dismissing appeal, vacating district court judgment, and ordering district court to dismiss complaint as moot where state appealed district

court declaration that statute was unconstitutional and plaintiff died during pendency of appeal, rendering case moot).

WHEREFORE, the Defendants-Appellants pray that the Court enter an order vacating the district court's order and judgment and remanding with instructions to dismiss the amended complaint as moot.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Colin R. Jorgensen, Assistant Attorney General, do hereby certify that on July 8, 2015, I electronically submitted for filing the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit via the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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