

IN THE UNITED STATES DISTRICT COURT  
FOR NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISIONAPRIL AARON BRUSH and GINGER  
AARON BRUSH,

Plaintiffs,

vs.

LUTHER STRANGE in his official  
capacity as Attorney General of Alabama;  
et al.,

Defendants.

Civil Action No.  
2:14-cv-01091-RDP**Plaintiffs' Response to Motion to Dismiss (Doc. 30) and  
Notice of Proceedings in Eleventh Circuit**

1. Plaintiffs' Response to Defendants' Notice (Doc. 29) has already briefed most of the mootness issues raised by Defendants.

2. Additional authority has come to the attention of counsel. On July 9, 2015, the United States District Court for the District of Idaho rejected the argument that the entry of final judgment declaring Idaho's marriage ban for same-sex couples unconstitutional rendered moot a subsequent challenge to the marriage ban brought by a different plaintiff. Specifically, the Court held that "notwithstanding the rulings in *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014), *cert. denied sub nom. Otter v. Latta*, 2015 WL 2473531 (U.S. June 30, 2015)] and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)], a future . . . state actor . . . may

come to view his or her role as being responsible for deciding what is/is not constitutional under the law on matters that may impact [plaintiff's rights]." *Taylor v. Brasuell*, No. 1:14-CV-00273-REB, 2015 WL 4139470, at \*7 (D. Idaho July 9, 2015). The same is true here. These Plaintiffs are not parties to the *Searcy* or *Strawser* actions and have no standing to enforce the judgment and injunction in those cases. Only a permanent injunction and final declaratory judgment can give the Plaintiffs the relief to which they are entitled after prevailing on the merits.

3. Defendants have raised a new point in ¶ 6 ("As a general rule, where a law has been declared unconstitutional by a controlling court, pending requests for identical declaratory relief become moot."). No "controlling court" has yet to issue a ruling on Section 36.03 of the Alabama Constitution and Ala. Code § 30-1-19 (referred to collectively in the Complaint as the "Alabama Marriage Prohibitions"). The only controlling courts would be the Eleventh Circuit and the U.S. Supreme Court. The Eleventh Circuit has not yet ruled on the four marriage-equality appeals pending before it (*Searcy v. Attorney General, State of Ala.*, No. 15-10295; *Strawser, et al. v. Strange, Attorney General, State of Ala.*, No. 15-10313;<sup>1</sup> *Strawser, et al. v. Russell*, No. 15-12508; and *Russell v. Strawser*, No. 15-90014). As we argued in our Response (Doc. 29), the U.S. Supreme Court has not considered or ruled on the Alabama Marriage Prohibitions.

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<sup>1</sup> *Searcy*, No. 15-10295, and *Strawser*, No. 15-10313, were *sua sponte* consolidated at the Eleventh Circuit on February 3 when the Court denied the Attorney General's motions for a stay pending appeal.

4. Additionally, none of the other marriage-equality cases pending in Alabama federal courts are against the Governor,<sup>2</sup> the Commissioner of Revenue, or the Director of the Alabama Department of Public Safety. Thus, no other court has granted injunctive or declaratory relief against these defendants.

5. The parties to the appeals in the *Strawser* and *Searcy* cases filed their position statements and motions on July 17. Those pleadings are attached as Exhibits A and B, respectively.

6. The parties to the Florida marriage-equality cases, *Brenner v. Armstrong* and *Grimsley v. Armstrong* appeals, Nos. 14-14061 and 14-14066, have filed their position statements and motions. Those pleadings are attached as Exhibit C.

7. The Eleventh Circuit will be issuing dispositions in the *Strawser*, *Searcy*, *Brenner*, and *Grimsley* cases that may provide more clarity to the path this Court should take.

8. In addition to the actions of various public officials cataloged in Doc. 29, beginning at page 12, we call the Court's attention to the low level of public support for same-sex marriage in Alabama. The Public Religion Research Institute released results of a survey in February finding, "Only about one-third (32 percent) of Alabama residents

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<sup>2</sup> As noted in the Response (Doc. 29) at 9-10, the dismissal of the Governor in this action was in exchange for a promise that the Governor and other agents and employees of the Governor, as well as his successors in office, would be bound by final injunctive relief in this action.

support same-sex marriage, while 59 percent oppose it.”<sup>3</sup> Public opposition to same-sex marriage may induce public officials to take steps to interfere with such unions. As James Madison wrote, “[I]n our [state] Governments the real power lies in the majority of the community. [The real threat to liberty comes] from acts in which the Government is the mere instrument of the major number of the constituents.”<sup>4</sup>

9. The Attorney General has the duty to issue advisory opinions to public officials. Ala. Code § 36-15-1(a). For instance, Colbert County Probate Judge Daniel Rosser has asked for an Attorney General’s opinion on whether he can permanently stop issuing marriage licenses.<sup>5</sup> Other public officials may continue to ask the Attorney General for opinions concerning same-sex marriage and various state laws mentioning “marriage” or “spouse.” As long as the Attorney

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<sup>3</sup> “Support for Same-sex Marriage in Alabama Lowest in Nation,” Feb. 10, 2015, <http://publicreligion.org/2015/02/same-sex-marriage-support-alabama>.

<sup>4</sup> Madison to Thomas Jefferson, Oct. 17, 1788, quoted in J. Ellis, *The Quartet: Orchestrating the Second American Revolution, 1783-1789* (2015) at Kindle Location 3319.

<sup>5</sup> Mary Sell, “Colbert judge seeks attorney general’s opinion on marriage licenses,” July 1, 2015, *TimesDaily*, [http://www.timesdaily.com/news/state-capital/colbert-judge-seeks-attorney-general-s-opinion-on-marriage-licenses/article\\_538175fa-9c88-5917-9f8b-4a040ed3ea0e.html](http://www.timesdaily.com/news/state-capital/colbert-judge-seeks-attorney-general-s-opinion-on-marriage-licenses/article_538175fa-9c88-5917-9f8b-4a040ed3ea0e.html).

General has a legal duty to issue opinions, an injunction against him in his official capacity is necessary.<sup>6</sup>

10. For the foregoing reasons, the Court should deny the Defendants' Motion to Dismiss (Doc. 30).

Submitted by,

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<sup>6</sup> Neither of the Attorney General's opinions against same-sex marriages or civil unions (Nos. 83-206 and 2000-129, cited in the Complaint, Doc. 1, at ¶¶ 21, 24) have been withdrawn as far as Plaintiffs can tell from the index of opinions at <http://www.ago.state.al.us/Opinions.aspx>.

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### CERTIFICATE OF SERVICE

I certify that on 31 July 2015 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys:

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/s/ Edward Still

# Exhibit A





July 17, 2015

**VIA ELECTRONIC FILING**

Douglas J. Mincher, Clerk of the Court  
United States Court of Appeals for the Eleventh Circuit  
56 Forsyth St., N.W.  
Atlanta, GA 30303

**Re: Strawser, et al. v. Strange, Attorney General, State of Ala., No. 15-10313**  
**Strawser, et al. v. Russell, No. 15-12508**  
**Russell v. Strawser, et al., No. 15-90014**

Dear Mr. Mincher:

This letter is submitted on behalf of James N. Strawser and John E. Humphrey, Plaintiffs-Appellees in Appeal No. 15-10313; and on behalf of James N. Strawser, John E. Humphrey, Robert Povilat, Milton Persinger, Meredith Miller, Anna Lisa Carmichael, Kristy Simmons, Marshay Safford, Kristie Ogle, Jennifer Ogle, Keith Ingram, Albert Halloway Pigg III, Gary Wayne Wright II and Brandon Mabrey, Plaintiffs-Appellees in Appeal No. 15-12508 and Plaintiffs-Respondents in Petition for Permission to Appeal No. 15-90014. These parties are collectively referred to herein as the "*Strawser* Plaintiffs." Each of these matters originates from a single case pending in the United States District Court for the Southern District of Alabama, *Strawser, et al. v. Strange, et al.*, No. 1:14-cv-00424-CG-C.

This Court has issued orders holding each of the above matters in abeyance pending the decision of the United States Supreme Court in *Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, 14-574. The Court directed the parties to notify the Court in writing what issues, if any, remain pending in these appeals, within 21 days of the issuance of the opinion in *Obergefell*. The *Strawser* Plaintiffs submit this letter in response to the Court's orders.

On June 26, 2015, the Supreme Court issued its decision in *Obergefell*, 2015 WL 2473451. The Court held that the Due Process and Equal Protection Clauses do not permit states to deny same-sex couples the freedom to marry or to refuse to recognize their marriages lawfully performed elsewhere. *Id.* at \*19, \*23. In light of the *Obergefell* decision, the *Strawser* Plaintiffs contend that binding precedent establishes they should prevail on the merits of their constitutional claims, and that these issues may be resolved by this Court through summary disposition and without further briefing or oral argument. Accordingly, the *Strawser* Plaintiffs ask the Court to dispose of the above matters as follows:

In Appeal Nos. 15-10313 and 14-12508, certain defendants in the action below challenge the District Court's entry of preliminary injunctions declaring Alabama's marriage ban for same-sex

Clerk, U.S. Court of Appeals for the Eleventh Circuit

July 17, 2015

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couples unconstitutional and barring its enforcement. In light of the Supreme Court's decision in *Obergefell*, the *Strawser* Plaintiffs respectfully request that the Court summarily affirm the District Court's orders in Appeal Nos. 15-10313 and 14-12508 and direct the District Court to enter final judgment and a permanent injunction in favor of the *Strawser* Plaintiffs.

In recent weeks, the United States Courts of Appeals for the First and Fifth Circuits have issued similar orders in appeals pending before those courts in cases seeking the freedom to marry in Louisiana, Mississippi, Texas, and Puerto Rico. *See Robicheaux v. Caldwell*, --- F.3d ---, 2015 WL 4032118 (5th Cir. July 1, 2015) (ordering entry of final judgment in favor of plaintiffs); *Campaign for S. Equal. v. Bryant*, --- F.3d ---, 2015 WL 4032186 (5th Cir. July 1, 2015) (same); *DeLeon v. Abbott*, --- F.3d ---, 2015 WL 4032161 (5th Cir. July 1, 2015) (same); *Conde-Vidal v. Rius-Armmendariz*, No. 14-2184 (1st Cir. July 8, 2015). Copies of these decisions are attached to this letter. Notably, like the above matters pending in this Court, the appeal in *DeLeon* was from a district court's entry of a preliminary injunction.

Also pending before this Court is a Petition for Permission to Appeal pursuant to Fed. R. Civ. P. 23(f) filed by Petitioner Baldwin County Probate Judge Tim Russell (No. 15-90014). In this petition, Russell challenges the District Court's entry of an order certifying a plaintiff class that includes all same-sex couples who wish to marry and have their marriages recognized in the State of Alabama but are prevented from doing so by Alabama's marriage ban for same sex couples, and a defendant class that includes all county probate judges in Alabama – the officials who are responsible for issuance of marriage licenses within the state.

The *Strawser* Plaintiffs contend that the criteria this Court has applied in considering whether to permit an interlocutory appeal of a class certification order plainly are not satisfied here, particularly since the District Court is likely to enter final judgment very soon and any issues concerning the class certification order may be addressed in an appeal from that final judgment. *See, e.g., Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1271-77 (11th Cir. 2000). Therefore, the *Strawser* Plaintiffs ask the Court to summarily deny Russell's Petition. In the alternative, should the Court wish the *Strawser* Plaintiffs to file an answer in opposition to the Petition, the *Strawser* Plaintiffs propose that their answer be due no later than August 17, 2015.

Finally, pursuant to 11th Cir. R.39-2(d), the *Strawser* Plaintiffs respectfully request that the issue of attorneys' fees on appeal in the above matters be transferred to the District Court.

Sincerely,



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Clerk, U.S. Court of Appeals for the Eleventh Circuit

July 17, 2015

Page 3 of 3

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## Campaign for Southern Equality v. Bryant, --- F.3d ---- (2015)

2015 WL 4032186

Only the Westlaw citation is currently available.  
United States Court of Appeals,  
Fifth Circuit.

CAMPAIGN FOR SOUTHERN EQUALITY;  
Rebecca Bickett; [Andrea Sanders](#); Jocelyn  
Pritchett; Carla Webb, Plaintiffs–Appellees,

v.

Phil BRYANT, in His Official Capacity as Governor  
of the State of Mississippi; Jim Hood, in His  
Official Capacity as Mississippi Attorney General,  
Defendants–Appellants.

No. 14–60837. | July 1, 2015.

**Synopsis**

**Background:** Same-sex couples, along with advocacy group that worked to promote interests of lesbian, gay, bisexual, and transgender persons, sued for determination of their right to marry in Mississippi or to have their marriage in another state recognized in Mississippi. The United States District Court for the Southern District of Mississippi, [Carlton W. Reeves, J.](#), 64 F.Supp.3d 906, issued a preliminary injunction in favor of plaintiffs, and defendants appealed.

**[Holding:]** The Court of Appeals, [Jerry E. Smith](#), Circuit Judge, held that there is no lawful basis for one state to refuse to recognize a lawful same-sex marriage performed in another state based upon its same-sex character.

Affirmed and remanded.

**Attorneys and Law Firms**

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[Drew Landon Snyder](#), Office of the Governor for the State of Mississippi, Jackson, MS, for

Defendants–Appellants.

Appeal from the United States District Court for the Southern District of Mississippi.

Before [HIGGINBOTHAM](#), [SMITH](#), and [GRAVES](#),  
Circuit Judges.

**Opinion**

[JERRY E. SMITH](#), Circuit Judge:

\*1 The plaintiffs are two same-sex couples and an advocacy group that works to promote the interests of lesbian, gay, bisexual, and transgender persons. The couples seek to marry in Mississippi or to have their marriage in another state recognized in Mississippi. The plaintiffs sued the state defendants pursuant to [42 U.S.C. § 1983](#) seeking an injunction and a declaration that [Article XIV, Section 263A of the Mississippi Constitution](#) and [Section 93–1–1\(2\) of the Mississippi Code](#) violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

On November 25, 2014, the district court issued a preliminary injunction in favor of the plaintiffs. The court stayed its order for fourteen days; this court on December 4, 2014, stayed the district court’s order pending appeal. The state appealed, and after full briefing, including participation by numerous *amici curiae*, this court heard expanded oral argument on January 9, 2015.

<sup>[1]</sup> While this appeal was under submission, the Supreme Court decided *Obergefell v. Hodges*, No. 14–556, 2015 U.S. LEXIS 4250 (U.S. June 26, 2015). In summary, the Court declared that

the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. *Baker v. Nelson* [, 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65 (1972),] must be and now is overruled, and the State laws challenged by petitioners in these

## Campaign for Southern Equality v. Bryant, --- F.3d ---- (2015)

cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

*Id.* at \*41–42. “It follows that the Court must also hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.” *Id.* at \*50.

Having addressed fundamental rights under the Fourteenth Amendment, the Court, importantly, invoked the First Amendment, as well:

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same-sex marriage is proper or indeed essential, whether as a matter of religious conviction or secular belief, may engage those who disagree with their view in an

open and searching debate. The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

\*2 *Id.* at \*48–49.

<sup>[2]</sup> *Obergefell*, in both its Fourteenth and First Amendment iterations, is the law of the land and, consequently, the law of this circuit<sup>1</sup> and should not be taken lightly by actors within the jurisdiction of this court. We express no view on how controversies involving the intersection of these rights should be resolved but instead leave that to the robust operation of our system of laws and the good faith of those who are impacted by them.

This court sought and promptly received letter advisories from plaintiffs and the state, asking their respective positions on the proper disposition in light of *Obergefell*. Because, as both sides now agree, the injunction appealed from is correct in light of *Obergefell*, the preliminary injunction is AFFIRMED. This matter is REMANDED for entry of judgment in favor of the plaintiffs. The court must act expeditiously on remand and should enter final judgment on the merits (exclusive of any collateral matters such as costs and attorney fees) by July 17, 2015, and earlier if reasonably possible. The stay entered by this court is VACATED.<sup>2</sup>

The mandate shall issue forthwith.

#### All Citations

--- F.3d ----, 2015 WL 4032186

#### Footnotes

- 1 If it were suggested that any part of the quoted passages is *obiter dictum*, we need only recall that although “[w]e are not bound by dicta, even of our own court [,][d]icta of the Supreme Court are, of course, another matter.” *United States v. Becton*, 632 F.2d 1294, 1296 n. 3 (5th Cir.1980). “[W]e give serious consideration to this recent and detailed discussion of the law by a majority of the Supreme Court.” *Geralds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir.2013) (Reavley, J.).
- 2 Any pending motions are denied as moot.

Campaign for Southern Equality v. Bryant, --- F.3d ---- (2015)

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# United States Court of Appeals For the First Circuit

No. 14-2184

ADA MERCEDES CONDE-VIDAL; MARITZA LOPEZ-AVILES; IRIS DELIA RIVERA-  
RIVERA; JOSE A. TORRUELLAS-IGLESIAS; THOMAS J. ROBINSON; ZULMA  
OLIVERAS-VEGA; YOLANDA ARROYO-PIZARRO; JOHANNE VELEZ-GARCIA;  
FAVIOLA MELENDEZ-RODRIGUEZ; PUERTO RICO PARA TOD@S;  
IVONNE ALVAREZ-VELEZ,

Plaintiffs, Appellants,

v.

DR. ANA RIUS-ARMENDARIZ, in her official capacity as Secretary of the Health Department  
of the Commonwealth of Puerto Rico; WANDA LLOVET DIAZ, in her official capacity as the  
Director of the Commonwealth of Puerto Rico Registrar of Vital Records; ALEJANDRO J.  
GARCIA-PADILLA, in his official capacity as Governor of the Commonwealth of Puerto Rico;  
JUAN C. ZARAGOSA-GOMEZ, in his official capacity as Director of the Treasury in Puerto  
Rico,

Defendants, Appellees.

Before

Torruella, Thompson and Kayatta,  
Circuit Judges.

## JUDGMENT

Entered: July 8, 2015

Upon consideration of the parties' Joint Response Pursuant to Court Order filed June 26, 2015, we vacate the district court's Judgment in this case and remand the matter for further consideration in light of Obergefell v. Hodges, -- S. Ct. -, 2015 WL 2473451 (Nos. 14-556, 14-562, 14-571, 14-574, June 26, 2015). We agree with the parties' joint position that the ban is unconstitutional. Mandate to issue forthwith.

By the Court:

/s/ Margaret Carter, Clerk

cc: Honorable Juan M. Perez-Gimenez  
Frances Rios de Moran, Clerk of Court  
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James Andrew Campbell  
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De Leon v. Abbott, --- F.3d --- (2015)

2015 WL 4032161

Only the Westlaw citation is currently available.  
United States Court of Appeals,  
Fifth Circuit.

Cleopatra DE LEON; Nicole Dimetman; Victor  
Holmes; Mark Phariss, Plaintiffs–Appellees,  
v.

Greg ABBOTT, in His Official Capacity as  
Governor of the State of Texas; Ken Paxton, in His  
Official Capacity as [Texas Attorney General](#); Kirk  
Cole, in His Official Capacity as Commissioner of  
the Texas Department of State Health Services,  
Defendants–Appellants.

No. 14–50196. | July 1, 2015.

### Synopsis

**Background:** Two homosexual couples, one wishing to marry in Texas and another seeking to have their Massachusetts marriage recognized under Texas law, brought action to challenge prohibition of same-sex marriage under Texas constitutional amendment. The United States District Court for the Western District of Texas, Orlando L. Garcia, [975 F.Supp.2d 632](#), granted couples’ motion for preliminary injunction barring enforcement of the prohibition. Texas officials appealed.

**Holdings:** The Court of Appeals, [Jerry E. Smith](#), Circuit Judge, held that:

<sup>[1]</sup> no lawful basis existed for state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character, and

<sup>[2]</sup> the Constitution did not permit state to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

Affirmed and remanded.

### West Codenotes

#### Held Unconstitutional

[Vernon’s Ann.Texas Const. Art. 1, § 32\(a, b\)](#); [V.T.C.A., Family Code §§ 2.001, 6.204](#).

### Attorneys and Law Firms

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[Scott A. Keller](#), Solicitor, Kyle David Highful, [Beth Ellen Klusmann, Esq.](#), [Michael P. Murphy](#), Office of the Solicitor General for the State of Texas, [James Davis Blacklock](#), Senior Counsel, Office of General Counsel for the Governor of Texas, Austin, TX, for Defendants–Appellants.

Appeal from the United States District Court for the Western District of Texas.

Before [HIGGINBOTHAM](#), [SMITH](#), and [GRAVES](#), Circuit Judges.

### Opinion

[JERRY E. SMITH](#), Circuit Judge:

\*1 The plaintiffs are two same-sex couples who seek to marry in Texas or to have their marriage in another state recognized in Texas. They sued the state defendants seeking (1) a declaration that Texas’s law denying same-sex couples the right to marry, set forth in [Article I, § 32 of the Texas Constitution](#) and, *inter alia*, [Texas Family Code §§ 2.001 and 6.204](#), violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment and [42 U.S.C. § 1983](#) and also seeking (2) a permanent injunction barring enforcement of Texas’s laws prohibiting same-sex couples from marrying. On February 26, 2014, the district court issued a preliminary injunction prohibiting the state from enforcing any laws or regulations prohibiting same-sex couples from marrying or prohibiting the recognition of marriages between same-sex couples lawfully solemnized elsewhere. The court immediately stayed its injunction while the state appealed. After full briefing, including participation by numerous *amici curiae*, this court heard expanded oral argument on January 9, 2015.

<sup>[1]</sup> While this appeal was under submission, the Supreme Court decided [Obergefell v. Hodges](#), No. 14–556, 2015 U.S. LEXIS 4250 (U.S. June 26, 2015). In summary, the Court declared that

De Leon v. Abbott, --- F.3d ---- (2015)

the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. *Baker v. Nelson* [ , 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65 (1972),] must be and now is overruled, and the State laws challenged by petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

*Id.* at \*41–42. “It follows that the Court must also hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.” *Id.* at \*50.

<sup>[2]</sup> Having addressed fundamental rights under the Fourteenth Amendment, the Court, importantly, invoked the First Amendment, as well:

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same-sex marriage is proper or indeed essential, whether as a

matter of religious conviction or secular belief, may engage those who disagree with their view in an open and searching debate. The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

\*2 *Id.* at \*48–49.

<sup>[3]</sup> *Obergefell*, in both its Fourteenth and First Amendment iterations, is the law of the land and, consequently, the law of this circuit<sup>1</sup> and should not be taken lightly by actors within the jurisdiction of this court. We express no view on how controversies involving the intersection of these rights should be resolved but instead leave that to the robust operation of our system of laws and the good faith of those who are impacted by them.

In response to *Obergefell*, the same day it was announced, the district court *a quo* issued a one-paragraph order entitled “Order Granting Plaintiffs’ Emergency Unopposed Motion To Lift the Stay of Injunction,” stating that it “hereby LIFTS the stay of injunction issued on February 26, 2014 ... and enjoins Defendants from enforcing [Article I, Section 32 of the Texas Constitution](#), any related provisions in the Texas Family Code, and any other laws or regulations prohibiting a person from marrying another person of the same sex or recognizing same-sex marriage.” This court sought and promptly received letter advisories from plaintiffs and the state, asking their respective positions on the proper specific disposition in light of *Obergefell*. Because, as both sides now agree, the injunction appealed from is correct in light of *Obergefell*, the preliminary injunction is AFFIRMED. This matter is REMANDED for entry of judgment in favor of the plaintiffs. The court must act expeditiously on remand and should enter final judgment on the merits (exclusive of any collateral matters such as costs and attorney fees) by July 17, 2015, and earlier if reasonably possible.<sup>2</sup>

The mandate shall issue forthwith.

#### All Citations

--- F.3d ----, 2015 WL 4032161

#### Footnotes

De Leon v. Abbott, --- F.3d ---- (2015)

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- 1 If it were suggested that any part of the quoted passages is o *biter dictum*, we need only recall that although “[w]e are not bound by dicta, even of our own court [,][d]icta of the Supreme Court are, of course, another matter.” *United States v. Becton*, 632 F.2d 1294, 1296 n. 3 (5th Cir.1980). “[W]e give serious consideration to this recent and detailed discussion of the law by a majority of the Supreme Court.” *Geralds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir.2013) (Reavley, J.).
- 2 Any pending motions are denied as moot.

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Robicheaux v. Caldwell, Slip Copy (2015)

2015 WL 4090353

2015 WL 4090353  
Only the Westlaw citation is currently available.  
United States District Court,  
E.D. Louisiana.

Jonathan P. ROBICHEAUX, et al.  
v.  
James D. CALDWELL, Louisiana Attorney  
General, et al.

Civil Action Nos. 13-5090 C/W, 14-97, 14-327. |  
Signed July 2, 2015.

#### West Codenotes

#### Held Unconstitutional

LSA-Const. Art. 12, § 15; LSA-C.C. Art. 89, 3520(B).

#### Attorneys and Law Firms

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Stuart Kyle Duncan, Louisiana Department of Justice,  
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Mike Johnson, LLC, Bossier City, LA, for Defendant.

### JUDGMENT

MARTIN L.C. FELDMAN, District Judge.

\*1 IT IS ORDERED that this Court's Order and Reasons  
and the accompanying Judgment dated September 3,  
2014, are hereby recalled and rescinded;

IT IS FURTHER ORDERED that [Article XII, Section 15  
of the Louisiana Constitution, Article 89 of the Louisiana  
Civil Code](#), and laws enacted pursuant thereto, violate the  
Fourteenth Amendment to the United States Constitution  
and may not be enforced against the Plaintiffs or any  
other same-sex couple;

IT IS FURTHER ORDERED that [Article XII, Section 15  
of the Louisiana Constitution, Article 3520\(B\) of the  
Louisiana Civil Code](#), and laws enacted pursuant thereto,  
violate the Fourteenth Amendment to the United States  
Constitution and may not be enforced against the

Plaintiffs or any other same-sex couple;

IT IS FURTHER ORDERED that Defendants Devin  
George and Kathy Kliebert, in their official capacities,  
and their officers, employees, agents, and all other  
individuals under their supervision, direction, or control,  
and all persons acting in concert or participation with any  
of them are permanently enjoined from enforcing [Article  
XII, Section 15 of the Louisiana Constitution, Article 89  
of the Louisiana Civil Code](#), and laws enacted pursuant  
thereto;

IT IS FURTHER ORDERED that Defendants Devin  
George, Tim Barfield, and Kathy Kliebert in their official  
capacities and their officers, employees, agents, and all  
other individuals under Defendants' supervision,  
direction, or control, and all persons acting in concert or  
participation with any Defendants are permanently  
enjoined from enforcing [Article XII, Section 15 of the  
Louisiana Constitution, Article 3520\(B\) of the Louisiana  
Civil Code](#), and laws enacted pursuant thereto;

IT IS FURTHER ORDERED that Defendants Devin  
George and Kathy Kliebert in their official capacities and  
their officers, employees, agents, and all other individuals  
under Defendants' supervision, direction, or control, and  
all persons acting in concert or participation with any  
Defendant must provide marriage licenses to Plaintiffs  
Robert Welles and Garth Beauregard and other same-sex  
couples who provide a complete application for a  
marriage license that complies with all relevant provisions  
of Louisiana law, except those purporting to prohibit  
same-sex couples from marrying;

IT IS FURTHER ORDERED that Defendants Devin  
George, Tim Barfield, and Kathy Kliebert in their official  
capacities and their officers, employees, agents, and all  
other individuals under Defendants' supervision,  
direction, or control, and all persons acting in concert or  
participation with any Defendant must recognize the  
marriages of Plaintiffs Jonathan P. Robicheaux and Derek  
Penton; Courtney Blanchard and Nadine Blanchard;  
Jacqueline M. Brettner and M. Lauren Brettner; Nicholas  
J. Van Sickels and Andrew Bond; Henry Lambert and R.  
Carey Bond; L. Havard Scott, III and Sergio March  
Prieto; and other same-sex couples who have validly  
married under the law of another jurisdiction as valid and  
enforceable under Louisiana law;

\*2 IT IS FURTHER ORDERED that Defendant Devin  
George, in his official capacity as Louisiana State  
Registrar, must issue forthwith a birth certificate for the  
child of Plaintiff M. Lauren Brettner identifying

**Robicheaux v. Caldwell, Slip Copy (2015)**

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2015 WL 4090353

Jacqueline M. Brettner as one of the child's parents;

IT IS FURTHER ORDERED that Defendant Tim Barfield, in his official capacity as Secretary of the Louisiana Department of Revenue, is permanently enjoined from enforcing Louisiana Revenue Information Bulletin 13-024 or otherwise requiring married same-sex spouses to choose a filing status of "single" rather than "married."

IT IS FURTHER ORDERED that Plaintiffs in each of these consolidated cases are awarded their costs,

**Footnotes**

- <sup>1</sup> [Obergefell v. Hodges](#), Nos. 14-556, 14-562, 14-571, 14-574, 2015 WL 2473451 (U.S. June 26, 2015).

expenses, and reasonable attorneys' fees according to [42 U.S.C. § 1988](#) and any other applicable laws. The question of quantum is referred to the magistrate judge.<sup>1</sup>

**All Citations**

Slip Copy, 2015 WL 4090353

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**Nos. 15-10295-C, 15-10313-AA**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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Luther Strange, Attorney General,  
*Defendant-Appellant,*

v.

Cari D. Searcy, et al.,  
*Plaintiffs-Appellees.*

---

Luther Strange, Attorney General,  
*Defendant-Appellant,*

v.

James N. Strawser, et al.,  
*Plaintiffs-Appellees.*

---

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**ATTORNEY GENERAL LUTHER STRANGE'S RESPONSE  
TO THIS COURT'S ORDER OF FEBRUARY 4, 2015**

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Luther Strange  
*Attorney General*

Andrew L. Brasher\*  
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July 17, 2015

## CERTIFICATE OF INTERESTED PERSONS

Appellant Luther Strange, Attorney General, pursuant to 11th Cir. R.

26.1-1, certifies that the following persons have an interest in the outcome of this case and/or appeal:

1. Boardman, Mark S., attorney for Probate Judge Don Davis
2. Brasher, Andrew L., Solicitor General
3. Carr, Clay, Attorney for Probate Judge Don Davis
4. Davis, Don, Probate Judge of Mobile County, Alabama
5. Davis, James W., Assistant Attorney General
6. Dietert, Zachary, attorney for the plaintiffs in *Strawser*
7. Dinelli, David, attorney for the plaintiffs in *Strawser*
8. Druhan, J. Michael, attorney for Probate Judge Don Davis
9. Fann, Heather Rene, attorney for the plaintiffs in *Strawser*
10. Granade, Hon. Callie V. S., United States District Judge
11. Hernandez, Christine C., attorney for plaintiffs in *Searcy*
12. Howell, Laura E., Assistant Attorney General
13. Humphrey, John E., plaintiff
14. Kennedy, David G., attorney for plaintiffs in *Searcy*
15. Khan, Ayesha, attorney for the plaintiffs in *Strawser*



16. Kidd, Jamie Helen, attorney for Probate Judge Tim Russell
17. Marshall, Randall C. , attorney for the plaintiffs in *Strawser*
18. McCoy, Scott D. , attorney for the plaintiffs in *Strawser*
19. McKeand, Kimberly, plaintiff
20. Mintner, Shannon P. , attorney for the plaintiffs in *Strawser*
21. Petelos, Teresa, attorney for Probate Judge Don Davis
22. Russell, Tim, Probate Judge of Baldwin County, Alabama
23. Satterwhite, Harry V., attorney for Probate Judge Don Davis
24. Searcy, Cari D., plaintiff
25. Stoll, Christopher F., attorney for the plaintiffs in *Strawser*
26. Strange, Luther, Attorney General
27. Strawser, James N., plaintiff
28. Webb, Kendrick E., attorney for Probate Judge Tim Russell
29. Whetstone, John David, attorney for Probate Judge Tim Russell

s/ Andrew L. Brasher  
Andrew L. Brasher  
*Solicitor General*  
Counsel for the Appellant

**Attorney General Luther Strange's Response  
to this Court's Order of February 4, 2015**

This is a consolidated appeal of two cases originating in the Southern District of Alabama in which the Plaintiffs filed substantially identical challenges to the marriage laws of Alabama. In each case, the Plaintiffs argued that Alabama's marriage laws violated the Equal Protection and Due Process Clauses of the United States Constitution to the extent Alabama's laws prohibited recognition of a "same-sex marriage."

In *Strange v. Searcy*, Attorney General Strange appealed the District Court's entry of a final judgment and permanent injunction against him entered on January 23, 2015. (*Searcy* doc. 53). In *Strange v. Strawser*, Attorney General Strange appealed the entry of a preliminary injunction issued against him on January 26, 2015. (*Strawser* doc. 29). By an order dated February 3, 2015, this Court *sua sponte* consolidated the two appeals.

On February 4, 2015, this Court entered an order noting that the United States Supreme Court would hear a case involving the same questions presented in these appeals. This Court ordered that "[w]ithin twenty-one (21) days of the date the Supreme Court issues its opinion in *DeBoer v. Snyder*, the parties are directed to notify this Court in writing what issues, if any, remain pending in these appeals."

On June 26, 2015, the Supreme Court issued its opinion in *Obergefell v. Hodges*, 576 U.S. \_\_\_, 2015 WL 2473451 (June 26, 2015), one of the cases in which certiorari was granted along with *DeBoer*. The Supreme Court held that the Fourteenth Amendment requires States to issue marriage licenses to same-sex couples on the same basis as opposite couples and to recognize “same-sex marriages” performed in other States. The Court thus resolved the legal questions presented in these appeals.

Attorney General Strange thus requests as follows:

1. In *Searcy*, where the District Court entered a final judgment before the Supreme Court’s ruling, this Court should affirm the District Court’s judgment on the basis of *Obergefell*.

2. In *Strawser*, where there is no final judgment and the appeal is from a preliminary injunction, Attorney General Strange suggests that the matter is moot and should be remanded with instructions for the District Court to dismiss the claims against Attorney General Strange.

The *Strawser* case is moot because the legal issues are resolved and Attorney General Strange is already under the permanent injunction entered in the *Searcy* case. Plaintiffs can receive no further relief from the Attorney General. There being nothing more for any court to do, other than to dismiss the action, the *Strawser* action is moot:

The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy. [A] case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome. As this Court has explained, put another way, a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief. If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed. Indeed, dismissal is required because mootness is jurisdictional. Any decision on the merits of a moot case or issue would be an impermissible advisory opinion.

*Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335–36 (11th Cir. 2001) (per curiam) (citations and internal quotation marks omitted). *See also Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128, 1135 (11th Cir. 1990) (“If, after the complaint is filed, the defendant comes into compliance . . . , then traditional principles of mootness will prevent maintenance of the suit for injunctive relief as long as there is no reasonable likelihood that the wrongful behavior will recur.”); *Reich v. Occupational Safety & Health Review Comm’n*, 102 F.3d 1200, 1201 (11th Cir. 1997) (“A claim for injunctive relief may become moot if: ‘(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.’”) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 1383 (1979)).

As a general rule, where a law has been declared unconstitutional by a controlling court, pending requests for identical declaratory relief become moot. *Longley v. Holahan*, 34 F.3d 1366, 1367 (8th Cir. 1994) (claim moot where challenged statute was declared unconstitutional in companion case); *Thayer v. Chiczewski*, 705 F.3d 237, 256–57 (7th Cir. 2012) (claim for declaratory and injunctive relief moot in light of Seventh Circuit's invalidation of challenged law in another case); *Eagle Books, Inc. v. Difanis*, 873 F.2d 1040, 1042 (7th Cir. 1989) (claim moot where state supreme court had declared challenged statute unconstitutional).

In light of the Supreme Court's controlling decision and the District Court's final judgment and permanent injunction in *Searcy*, the *Strawser* action is moot and should be remanded with instructions to dismiss.

### CONCLUSION

For the foregoing reasons, the Attorney General respectfully provides notice that the Supreme Court's decision resolves the legal issues presented in these appeals, and suggests that the Court should affirm the District Court's final judgment in *Searcy*, and should remand the case in *Strawser* with instructions to dismiss the case as moot.

Respectfully submitted,

LUTHER STRANGE (ASB-0036-G42L)  
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BY:

s/ Andrew L. Brasher

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**USCA NOS. 15-12508; 15-90014**

---

**TIM RUSSELL**

**Defendant/Petitioner**

**v.**

**JAMES N. STRAWSER, et al.**

**Plaintiff/Appellee**

---

**NOTICE TO THE COURT**

COMES NOW Appellant/Petitioner Tim Russell, Judge of Probate in Baldwin County, Alabama, pursuant to the Court's direction, to notify this Court what issues, if any, remain pending in this appeal and petition. Appellant/Petitioner Tim Russell hereby notifies the Court that all issues raised in the appeal and the petition remain pending. Appellant/Petitioner Russell further states as follows:

1. Appellant/Petitioner Russell has never taken a legal position as to the constitutionality of Alabama's Marriage Sanctity Laws, of which the Supreme Court of the United States' opinion in Obergefell v. Hodges, 576 U.S. \_\_\_\_, No.

14-556, 2015 WL 2473451 (June 26, 2015) is dispositive.<sup>1</sup> The Attorney General for the State of Alabama is the public official charged with the responsibility for defending these laws. Probate judges in Alabama were merely caught in the middle between contrary rulings between the Alabama Supreme Court and the court below. Judge Russell is not aware of any probate judge currently violating any constitutional right recognized by the Supreme Court in Obergefell.

2. With respect to the interlocutory appeal, Appeal No. 15-12508, issues still remain to be decided by this Court including the denial of quasi-judicial immunity to Judge Russell based on actions taken pursuant to an order issued against him by the Alabama Supreme Court in response to an original Petition for Writ of Mandamus filed in that Court by a third party. Further, issues remain with respect to the issuance of a preliminary injunction against Judge Russell based on a motion for preliminary injunction filed prior to the time Judge Russell was added to the case, and thus, never served on Judge Russell, and without giving Judge Russell an opportunity to respond or be heard. Other important issues listed in the Civil Appeals Statement are also not affected by the Supreme Court's ruling in Obergefell.

---

<sup>1</sup>Judge Russell agrees with statements made by the Alabama Attorney General and Governor Bentley that Obergefell definitively holds that all laws, including Alabama's laws, restricting the rights of same-sex couples to marry are unconstitutional. Judge Russell is currently issuing marriage licenses to same-sex couples in the same manner as they are issued to couples of the opposite sex

3. With respect to the Petition for Permissive Appeal, Appeal No. 15-90014E, filed pursuant to Rule 23(f) of the Federal Rules of Civil Procedure, important issues remain regarding whether the district court erred in certifying a defendant class of all probate judges and naming Judge Russell as a class representative when Judge Russell was never given an opportunity to respond or be heard as to a motion for class certification filed before the filing of the Second Amended Complaint asserting the class claims and adding Judge Russell as a defendant and which was never served on Judge Russell. A second issue is whether the district court erred in certifying a defendant class of all probate judges and naming Judge Russell as a class representative when there are important, potentially conflicting factual and legal issues among the members of the defendant class including the inclusion of certain probate judges who were not in violation of the preliminary injunction at the time the motion for class certification was filed. A third issue is whether the district court erred in certifying a defendant class of all probate judges under Rule 23(b)(1)(A) and Rule 23(b)(2) of the Federal Rules of Civil Procedure without concurrence with the class representatives when an inconsistent order had already been entered against class members and the plain language of Rule 23(b)(2) do not provide for a defendant class.

4. Therefore, the Appellant/Petitioner Tim Russell notifies the Court that issues raised in the appeal and petition are unaffected by the Supreme Court's ruling in Obergefell v. Hodges and are therefore not moot.

Respectfully submitted this the 17<sup>th</sup> day of July, 2015.



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JAMIE HELEN KIDD (HIL060)

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on this the 17th day of July, 2015.

  
\_\_\_\_\_  
OF COUNSEL

# Exhibit B

No. 15-10295-C

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

**Luther Strange, Attorney General,  
Defendant/Appellant,  
v.  
Cari D. Searcy, et al.,  
Plaintiffs/Appellees.**

---

**APPELLEES' REPORT OF OUTSTANDING ISSUES**

---

DAVID G. KENNEDY  
THE KENNEDY LAW FIRM  
359 Saint Francis Street  
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251-338-9805  
[david@kennedylawyers.com](mailto:david@kennedylawyers.com)

CHRISTINE HERNANDEZ  
THE HERNANDEZ FIRM, LLC  
2037 Airport Boulevard  
Mobile, Alabama 36606  
251-479-1477  
christine@hernandezlaw.comcastbiz.net



**APPELLEE’S RESPONSE TO APPELLANT’S MOTION TO STAY**

COME NOW the Appellees, CARI SEARCY, KIMBERLY MCKEAND, and their minor child, K.S., by and through undersigned counsel, David G. Kennedy and Christine C. Hernandez, and files this their REPORT OF OUTSTANDING ISSUES as follows:

1. On February 4, 2015, this Court entered a stay in this appeal pending the Supreme Court of the United States’s ruling in DeBoer v. Snyder, 772 F.3d 388 (6th Cir. 2014), cert. granted, — S. Ct. —, Nos. 14-556, 14-562, 14-571, 14-574, 2015 WL 213650 (Jan. 16, 2015).
2. The Supreme Court entered judgment in that matter on June 26, 2015, and effectively declared same-sex marriage bans and out-of-state same-sex marriage recognition bans to be unconstitutional.
3. As such, Appellees respectfully submit that they are due judgment as a matter of law in this matter.
4. Appellees also submit that the District Court’s orders in this matter are due to be affirmed.
5. The only remaining issue in this matter concerns costs and attorneys’ fees, and Appellees will address that issue by separate motion.

Respectfully submitted,

/s/ David G. Kennedy/s/  
DAVID G. KENNEDY  
(ASB # 1238-I72K)  
Co-Counsel for the Appellees  
The Kennedy Law Firm  
359 Saint Francis Street  
Mobile, Alabama 36602

251-338-9805

david@kennedylawyers.com

OF COUNSEL:

Christine C. Hernandez  
The Hernandez Firm  
2037 Airport Boulevard  
Mobile, Alabama 36606

251-479-1477

christine@hernandezlaw.comcastbiz.net

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July, 2015, I served a copy of the foregoing to all counsel of record by electronic filing and U.S. Mail.

/s/ David G. Kennedy

David G. Kennedy  
Co-Counsel for Appellees

**CERTIFICATE OF INTERESTED PERSONS**

Appellees, Cari D. Searcy and Kimberly McKeand, pursuant to 11<sup>th</sup> Circ. R. 26.1-1, certifies that the CIP filed by Appellant is correct and accurate.

/s/ David G. Kennedy

David G. Kennedy

Co-Counsel for Appellees

# Exhibit C

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**JAMES D. BRENNER, et al.,**

**Plaintiffs-Appellees,**

**vs.**

**Appeal Docket Nos.: 14-14061-AA**

**JOHN H. ARMSTRONG, et al.,**

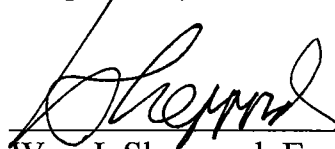
**Defendants-Appellants**

---

**PLAINTIFFS'-APPELLEES' NOTICE TO COURT**

Come now the Plaintiffs-Appellees, by and through undersigned counsel and pursuant to this Court's letter order of February 4, 2015, and hereby advise the Court that all open issues have been concluded and disposed of by the United States Supreme Court in *Obergefell, et al. v. Hodges*, 576 U.S. \_\_\_\_ (2015), and therefore, no issues remain to be decided in this appeal except the award of attorney's fees and costs.

Respectfully submitted,



---

Wm. J. Sheppard, Esquire  
Florida Bar No.: 109154  
Elizabeth L. White, Esquire  
Florida Bar No.: 314560  
Matthew R. Kachergus, Esquire  
Florida Bar No.: 503282  
Bryan E. DeMaggio, Esquire  
Florida Bar No.: 055712  
Amanda J. Woods, Esquire  
Florida Bar No.: 112296  
Sheppard, White, Kachergus & DeMaggio, P.A.  
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Jacksonville, Florida 32202  
Telephone: (904) 356-9661  
Facsimile: (904) 356-9667  
Email: [sheplaw@att.net](mailto:sheplaw@att.net)  
COUNSEL FOR PLAINTIFFS-APPELLEES

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Florida Bar No.: 39090  
Bledsoe, Jacobson, Schmidt, Wright, Lang &  
Wilkinson  
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Jacksonville, Florida 32207  
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Facsimile: (904) 398-7073  
Email: [sam@jacobsonwright.com](mailto:sam@jacobsonwright.com)  
CO-COUNSEL FOR APPELLEES

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 15<sup>th</sup>, 2015, I electronically filed the foregoing with the Clerk of the Court by using PACER/ECF System which will send a notice of electronic filing to the following:

**Allen C. Winsor Esquire  
Adams S. Tanenbaum, Esquire  
Florida Attorney General  
The Capitol PL-01  
Tallahassee, FL 32399**

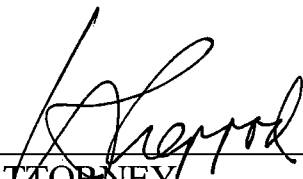
**Daniel Boaz Tilley, Esquire  
Maria Kayanan, Esquire  
ACLU Foundation of Florida, Inc.  
4500 Biscayne Boulevard, Suite 340  
Miami, Florida 33137**

**Stephen F. Rosenthal, Esquire  
Podhurst Orseck, P.A.  
25 West Flagler Street, Suite 800  
Miami, Florida 33130**

**James Jeffrey Goodman, Jr., Esquire  
Jeff Goodman, P.A.  
935 Main Street  
Chipley, Florida 32428**

**Horatio G. Mihet, Esquire  
Liberty Counsel  
Post Office Box 540774  
Orlando, Florida 32854**

**Stephen C. Emmanuel, Esquire  
Ausley & McMillen  
123 South Calhoun Street  
Tallahassee, Florida 32301**

  
\_\_\_\_\_  
ATTORNEY

[brenner.james.notification]



**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH, et al.,**

**Appellants,**

**vs.**

**Docket No.: 14-14061-A**

**JAMES D. BRENNER, et al.,**

**Appellees.**

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Appellees hereby furnish the following list of those who have an interest in the  
outcome of this appeal:

American Civil Liberties Union of Florida, Inc., The

American Civil Liberties Union Foundation, Inc.

American Civil Liberties Union Foundation of Florida, Inc., The

Albu, Joyce

Andrade, Carlos

Armstrong, Dr. John H.

Ausley & McMullen, P.A.

Bazzell, Harold

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH, et al.,**

**Appellants,**

**vs.**

**Docket No.: 14-14061-A**

**JAMES D. BRENNER, et al.,**

**Appellees.**

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (Continued)**

Bledsoe, Schmidt & Wilkinson, P.A.

Bondi, Pamela Jo

Brenner, James Domer

Collier, Bob

Cooper, Leslie

Crampton, Stephen M.

Del Hierro, Juan

DeMaggio, Bryan E.

Emmanuel, Stephen C.

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH, et al.,**

**Appellants,**

**vs.**

**Docket No.: 14-14061-A**

**JAMES D. BRENNER, et al.,**

**Appellees.**

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (Continued)**

Fitzgerald, John

Florida Conference of Catholic Bishops, Inc.

Florida Family Action, Inc.

Gantt, Thomas, Jr.

Goldberg, Arlene

Goldwasser, Carol (Deceased)

Goodman, James J., Jr.

Graessle, Jonathan W.

Grimsley, Sloan

Hankin, Eric

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH, et al.,**

**Appellants,**

**vs.**

**Docket No.: 14-14061-A**

**JAMES D. BRENNER, et al.,**

**Appellees.**

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (Continued)**

Hinkle, Hon. Robert L.

Hueso, Denise

Humlie, Sarah

Hunziker, Chuck

Jacobson, Samuel

Jacobson Wright & Sussman, P.A.

Jones, Charles Dean

Kachergus, Matthew R.

Kayanan, Maria

Liberty Counsel, Inc.

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH, et al.,**

**Appellants,**

**vs.**

**Docket No.: 14-14061-A**

**JAMES D. BRENNER, et al.,**

**Appellees.**

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (Continued)**

Liberty Counsel Action, Inc.

Loupo, Robert

Mihet, Horatio G.

Milstein, Richard

Myers, Lindsay

Newson, Sandra

Nichols, Craig J.

Podhurst Orseck, P.A.

Rosenthal, Stephen F.

Russ, Ozzie

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH, et al.,**

**Appellants,**

**vs.**

**Docket No.: 14-14061-A**

**JAMES D. BRENNER, et al.,**

**Appellees.**

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (Continued)**

Save Foundation, Inc.

Schlairet, Stephen

Scott, Rick

Sevier, Chris

Sheppard, White, Kachergus and DeMaggio, P.A.

Sheppard, William J.

Stampelos, Hon. Charles A.

Staver, Anita L.

Staver, Mathew D.

Stevenson, Benjamin James

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**SECRETARY, FLORIDA DEPARTMENT  
OF HEALTH, et al.,**

**Appellants,**

**vs.**

**Docket No.: 14-14061-A**

**JAMES D. BRENNER, et al.,**

**Appellees.**

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (Continued)**

Tanenbaum, Adam S.

Tilley, Daniel B.

Ulvert, Christian

White, Elizabeth L.

Winsor, Allen C.

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

Case Nos. 14-14061-AA, 14-14066-AA

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JAMES DOMER BRENNER, et al.,

SLOAN GRIMSLEY, et al.,

*Plaintiffs-Appellees,*

*Plaintiffs-Appellees,*

v.

v.

JOHN ARMSTRONG, et al.,

JOHN ARMSTRONG, et al.,

*Defendants-Appellants.*

*Defendants-Appellants.*

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Appeals from the United States District Court for the Northern District of Florida

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**GRIMSLEY APPELLEES' NOTICE REGARDING PENDING ISSUES**

---

---

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Florida Bar No. 102882

**Nancy Abudu**

Florida Bar No. 111881

ACLU Foundation of Florida

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DTilley@aclufl.org

NAbudu@aclufl.org

*Attorneys for the Grimsley Plaintiffs-  
Appellees*

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**Leslie Cooper**

**James D. Esseks**

ACLU Foundation

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New York, New York 10004

(212) 549-2627

LCooper@aclu.org

JEsseks@aclu.org



The *Grimsley* Plaintiffs-Appellees (the “*Grimsley* Appellees”)<sup>1</sup> respond to this Court’s February 4, 2015, “Memorandum to Counsel or Parties” in these consolidated cases. In that Memorandum, the Court held these appeals in abeyance and stated that “Within twenty-one (21) days of the date the Supreme Court issues its opinion in DeBoer v. Snyder, the parties are directed to notify this Court in writing what issues, if any, remain pending in these appeals.” On June 26, 2015, the Supreme Court issued its decision in the marriage cases pending before it, including the case referenced by this Court in its Memorandum. *Obergefell v. Hodges*, --- S.Ct. ----, Nos. 14-556, 14-562, 14-571, 14-574, 2015 WL 2473451 (June 26, 2015).

In *Obergefell*, the Supreme Court held that, consistent with the Due Process and Equal Protection Clauses, states may not deny same-sex couples the freedom to marry or refuse to recognize their marriages lawfully performed elsewhere. *Id.* at \*19, \*23. Because this is the same conclusion reached in the District Court’s decision below, the *Grimsley* Appellees contend that there are no remaining issues in these appeals. The *Grimsley* Appellees therefore request that this Court affirm—without oral argument—the District Court’s grant of preliminary injunctions.

---

<sup>1</sup> The *Grimsley* Appellees are Sloan Grimsley, Joyce Albu, Bob Collier, Chuck Hunziker, Lindsay Myers, Sarah Humlie, Robert Loupo, John Fitzgerald, Denise Hueso, Sandra Newson, Juan del Hierro, Thomas Gantt, Jr., Christian Ulvert, Carlos Andrade, Richard Milstein, Eric Hankin, Arlene Goldberg, and SAVE Foundation, Inc.

Date: Tuesday, July 1, 2015

Respectfully submitted,

/s/ Daniel B. Tilley

**Daniel B. Tilley**

Florida Bar No. 102882

**Nancy Abudu**

Florida Bar No. 111881

ACLU Foundation of Florida

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*Attorneys for the Grimsley Plaintiffs-  
Appellees*

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Miami, FL 33130

(305) 358-2800

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**Leslie Cooper**

**James D. Esseks**

ACLU Foundation

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New York, New York 10004

(212) 549-2627

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JEsseks@aclu.org

**Certificate of Service**

Today, I electronically filed this document with the Clerk of Court using CM/ECF, which automatically serves all counsel of record via electronic transmission of Notices of Docket Activity generated by CM/ECF.

/s/ Daniel B. Tilley

Daniel B. Tilley

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

**CERTIFICATE OF INTERESTED PERSONS**

16 Scholars of Federalism and Judicial Restraint

ACLU Foundation of Florida, Inc.

Affirmation

Aguila, Raul

Alachua County, Florida

Albu, Joyce

Alliance Defending Freedom

Alvare, Helen M.

American Academy of Pediatrics

American Association for Marriage and Family Therapy

American College of Pediatricians

American Military Partner Association

American Psychiatric Association

American Psychological Association

American Sociological Association

Anderson, Ryan T.

Andrade, Carlos

Armstrong, John H.

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

Ausley & McMullen, P.A.

Babione, Byron Jeffords

Ball, Carlos A.

Bartel, Sara

Bazzell, Harold

Boccuzzi, Carmine D.

Boyle, David C.

Boyle Law Office

Bradley, Gerard Vincent

Brenner, James Domer

Broward County, Florida

Citro, Anthony

City of Coconut Creek, Florida

City of Gainesville, Florida

City of Hallandale Beach, Florida

City of Key West, Florida

City of Miami Beach, Florida

City of Orlando, Florida

City of South Miami, Florida

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

City of St. Petersburg, Florida

City of Tampa, Florida

City of West Palm Beach, Florida

City of Wilton Manors, Florida

Clark & Sauer, LLC

Clerk of Court and Comptroller for Washington County, Florida

Cohen & Grisby, PC

COLAGE

Collier, Bob

Columbia Law School Sexuality and Gender Law Clinic

Commonwealth of Massachusetts

Concerned Women for America

Cooper, Leslie

Covenant Network of Presbyterians

Davis, Andrew J.

Del Hierro, Juan

DeMaggio, Bryan E.

Dewart, Deborah Jane

Dowd, Nancy

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

Duncan, William

Emmanuel, Stephen C.

Episcopal Diocese of Southeast Florida

Family Equality Council

Fitschen, Steven W.

Fitzgerald, John

Florida Association for Marriage and Family Therapy

Florida Conference of Catholic Bishops, Inc.

Florida Department of Management Services

Florida Family Action, Inc.

Florida Office of the Attorney General

Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns

Gantt, Jr., Thomas

Gates, Gary J.

Gay & Lesbian Advocates & Defenders

General Synod of the United Church of Christ

George, Robert P.

Gibbs, III, David C.

Goldberg, Arlene

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

Goldberg, Suzanne B.

Goldwasser, Carol

Goodman, Jr., James J.

Grimsley, Sloan

Hamid, Jyotin

Hankin, Eric

Hinkle, Hon. Robert L.

Historians of Anti-Gay Discrimination

Hollberg & Weaver, LLP

Hollinger, Joan Heifetz

Howard University School of Law Civil Rights Clinic

Hueso, Denise

Humlie, Sarah

Hunziker, Chuck

Jacobson, Samuel S.

Jeff Goodman, PA

Jones, Charles Dean

Joslin, Courtney

Kallergis, Nicholas

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

Kayanan, Maria

Kramer Levin Naftalis & Frankel LLP

Law Offices of Gene Schaerr

Leadership Conference on Civil and Human Rights

Liberty Counsel, Inc.

Lopez, Robert Oscar

Loukonen, Rachel Spring

Loupo, Robert

Lutherans for Full Participation

Man, Christopher Dowden

Manatt, Phelps & Phillips, LLP

Marriage Law Foundation

Martin, Emily

McAlister, Mary Elizabeth

McHugh, Paul

Methodist Federation for Social Action

Mihet, Horatio G.

Milstein, Richard

Minter, Shannon Price



***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

More Light Presbyterians

Mormons for Equality

Muslims for Progressive Values

Myers, Lindsay

National Association of Social Workers

National Association of Social Workers Florida Chapter

National Legal Foundation

National Women’s Law Center

New York Civil Liberties Union

Newson, Sandra

Nichols, Craig J.

North Carolina Voters Coalition

Notre Dame Law School

Oh, Helen

Orange County, Florida

Outserve-SLDN

Pacific Justice Institute

Parents, Families and Friends of Lesbians and Gays, Inc.

Palm Beach County, Florida

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

Parity

Picarello, Jr., Anthony R.

Podhurst Orseck, P.A.

Reconciling Ministries Network

Reconciling Works

Reconstructionist Rabbinical Association

Reconstructionist Rabbinical College and Jewish Reconstructionist Communities

Reetz, C. Ryan

Religious Institute, Inc.

Rome, Joseph B.

Rosenthal, Stephen F.

Rosenwald, Robert F.

Russ, Ozzie

Sauer, Dean John

Schaerr, Gene C.

Schlairet, Stephen

Schoenfeld, Alan E.

Scholars of the Institution of Marriage

Shatz, Benjamin Gross

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

Sheppard, William J.

Smith, Hannah C.

Smith, Michael Francis

Smith, Paul M.

Snider, Kevin Trent

Stampelos, Charles A.

State of Florida

Stephan, John M.

Stetson, Catherine Emily

Stoll, Christopher F.

Tanenbaum, Adam Scott

The Beckett Fund for Religious Liberty

The Lighted Candle Society

The Smith Appellate Law Firm

Tilley, Daniel Boaz

Trachtman, Jeffrey

Trent, Edward Howard

U.S. Conference of Catholic Bishops

Ulvert, Christian

***Appeal Nos. 14-14061-AA, 14-14066-AA***

***Brenner v. Sec'y, Fla. Dep't of Health***  
***Grimsley v. Sec'y, Fla. Dep't of Health***

Union for Reform Judaism

Unitarian Universalist Association

Village of Biscayne Park, Florida

Watts, Gordon Wayne

Weaver, George Marvin

White, Elizabeth Louise

Wimberly Lawson Wright Daves & Jones, PLLC

Winsor, Allen C.

Wolfson, Paul R. Q.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

JAMES D. BRENNER, *et al.*,

*Plaintiffs-Appellees,*

**CONSOLIDATED**

v.

Appeal No. 14-14061-AA

SECRETARY, FLORIDA DEP'T OF  
HEALTH, *et al.*,

*Defendants-Appellants.*

\_\_\_\_\_ /

SLOAN GRIMSLEY, *et al.*,

*Plaintiffs-Appellees,*

v.

Appeal No. 14-14066-AA

SECRETARY, FLORIDA DEP'T OF  
HEALTH and SECRETARY, FLORIDA  
DEP'T OF MGMT. SERVS.,

*Defendants-Appellants.*

\_\_\_\_\_ /

**APPELLANTS' MOTION TO DISMISS  
AND RESPONSE TO MEMORANDUM TO COUNSEL OR PARTIES**

Appellants—the Secretary of the Florida Department of Health (“DOH”); the Secretary of the Florida Department of Management Services (“DMS”); and the Clerk of Court and Comptroller for Washington County, Florida (“Washington County Clerk”)—respond to the Court’s February 4, 2015 Memorandum to Counsel or Parties. Appellants respectfully state in response to the Court’s inquiry

***Brenner v. Sec’y, Fla. Dep’t of Health***  
***Grimsley v. Sec’y, Fla. Dep’t of Health***

that no issues remain pending in these appeals.

Therefore, Appellants move for a voluntary dismissal, pursuant to Rule 42(b). *See Beckwith Electric Co., Inc. v. Burwell*, No. 13-13879-AA (11th Cir. Sept. 4, 2014) (order granting government’s Rule 42(b) motion to dismiss preliminary injunction appeal after Supreme Court’s decision in *Burwell v. Hobby Lobby*, 134 S. Ct. 2751 (2014)).

Respectfully submitted:

PAMELA JO BONDI  
ATTORNEY GENERAL

/s/ James J. Goodman, Jr.  
JAMES J. GOODMAN, JR.  
(FBN 71877)  
**JEFF GOODMAN, P.A.**  
946 Main Street  
Chipley, Florida 32428  
Phone: (850) 638-9722  
Fax: (850) 638-9724  
office@jeffgoodmanlaw.com

/s/ Allen Winsor  
ALLEN WINSOR (FBN 16295)  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
The Capitol – PL01  
Tallahassee, FL 32399-1050  
Phone: (850) 414-3688  
Fax: (850) 410-2672  
allen.winsor@myfloridalegal.com

*Counsel for Washington County  
Clerk of Court*

*Counsel for the Secretary of the Florida  
Department of Health and for the Secretary  
of the Florida Department of Management  
Services*

### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 17th day of July, 2015, a true copy of the foregoing motion was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by e-mail a notice of docketing activity to the registered Attorney Filers listed on the attached electronic service list.

*/s/ Allen Winsor*  
ALLEN WINSOR  
Florida Bar No. 16295

**ELECTRONIC SERVICE LIST**

WILLIAM J. SHEPPARD

sheplaw@att.net

ELIZABETH L. WHITE

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BRYAN E. DEMAGGIO

sheplaw@att.net

**SHEPPARD, WHITE &  
KACHERGUS, P.A.**

215 Washington Street

Jacksonville, Florida 32202

*Counsel for Plaintiffs-Appellees  
in Appeal No. 14-14061*

SAMUEL S. JACOBSEN

sam@jacobsonwright.com

**BLED SOE, JACOBSEN, SCHMIDT,  
WRIGHT, LANG & WILKINSON**

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Jacksonville, FL 32207

*Counsel for Plaintiffs-Appellees in  
Appeal No. 14-14061*

DANIEL B. TILLEY

DTilley@aclufl.org

NANCY ABUDU

NAbudu@aclufl.org

**ACLU FOUNDATION OF  
FLORIDA, INC.**

4500 Biscayne Blvd Ste 340

Miami, Florida 33137-3227

*Counsel for Plaintiffs-Appellees  
in Case No. 14-14066*

STEPHEN F. ROSENTHAL

srosenthal@podhurst.com

**PODHURST ORSECK, P.A.**

25 West Flagler Street, Suite 800

Miami, Florida 33130

*Counsel for Plaintiffs-Appellees in  
Appeal No. 14-14066*

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JAMES D. ESSEKS

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**ACLU FOUNDATION**

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New York, NY 10004

*Counsel for Plaintiffs-Appellees in  
Appeal No. 14-14066*