

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

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

Plaintiffs,)

v.)

**STATE OF ALABAMA, LUTHER)
STRANGE, and DON DAVIS,)**

Defendants.)

Case No. 1:14-cv-424-CG-N

SUPPLEMENT TO MOTION TO STAY

COMES NOW defendant **DON DAVIS**, Judge of Probate of Mobile County, Alabama (“Judge Davis”), and would make a motion before this Honorable Court to stay all proceedings in this matter, and in support thereof would state:

1. Subsequent to this Court’s previous denial of a stay in these proceedings, the Alabama Supreme Court on March 3, 2015 issued an order that directed probate judges in the State of Alabama to discontinue issuance of marriage licenses to same-sex couples, and enjoined all Alabama probate judges from issuing any marriage license contrary to Alabama law as explained in the Court’s Opinion. *Ex parte State of Alabama, ex rel., Alabama Policy Institute et al.*, No. 1140460, ___ So.3d ___, 2015 Ala. LEXIS 33 (Ala. March 3, 2015).

2. On March 10, 2015, the Alabama Supreme Court issued an additional order that Judge Davis is a respondent to whom its March 3, 2015 order is directed. 2015 Ala. LEXIS 35.

3. The United States District Court for the Middle District of Alabama, Chief United States District Judge W. Keith Watkins, in *Hard v. Bentley*, Case No. 2:13-CV-922, Document 77 (M.D. Ala. March 10, 2015),¹ granted a stay in a case with facts very similar to the facts of *Searcy v. Hon. Don Davis*, Case No. 1:15-CV-104-CG-N, that is before this Court. In *Hard v. Bentley*, the Middle District Court entered an order staying all proceedings.

4. Attorneys for the plaintiffs in this case also serve as counsel for the plaintiffs in *Hard v. Bentley*, those being Heather Fann and David Dinielli of the Southern Poverty Law Center. The three new proposed plaintiff couples in this case appear to be strategically selected – one from the Southern District, one from the Northern District, and one from the Middle District of Alabama. The four original plaintiffs have all received the relief that they requested and are all now living life as married couples. The proposed new plaintiffs are apparently “forum shopping,” as some at least would potentially be subject to a stay of their proceedings if filed in their home district.

¹ A copy of Judge Watkins’ Stay Order in *Hard v. Bentley* was filed in this case by Attorney General Strange as Doc. 81-2.

5. Permitting plaintiffs who reside within the Middle District of Alabama to join this lawsuit would effectively except them and their counsel from Judge Watkins' stay and set a precedent that would allow litigants in the Middle District simply to go to court in another district to seek the same relief sought in the case stayed by Judge Watkins.

6. Alabama is comprised of 67 counties – 31 counties within the jurisdiction of the United States District Court for the Northern District of Alabama, 23 counties within the United States District Court for the Middle District of Alabama, and 13 of the 67 counties within the United States District Court for the Southern District of Alabama. Therefore, the 23 Alabama counties in the Middle District of Alabama are potentially subject to Judge Watkins' Order to Stay.

7. The probate judges who were elected by the citizens of the State of Alabama have been subjected to tremendous confusion. Of the three new plaintiff couples who ask to join this suit by virtue of the Amendment to the Complaint, one couple alleges they have been together for 22 years, one couple alleges they have been together for 18 years, and one couple states they have been together for one year. It is significant that the issue of same-sex marriage will be resolved conclusively within approximately 90 days by the United States Supreme Court. Given the length of the proposed plaintiffs' relationships, that additional delay is not unreasonable in light of all the circumstances.

8. If this Court grants leave to amend the Complaint, defendant Tim Russell must be served, given the required time to respond, afforded a scheduling conference and issued a scheduling order. As a practical matter, while Judge Davis does not concede that these plaintiffs should be added to this case, if in fact they were, they would not receive relief in this matter prior to the time that the Supreme Court rules on the underlying issue.

9. Lastly, one of the most compelling reasons that Judge Davis asks this Honorable Court to stay this matter is that due to the conflicting orders between state judges and federal judges, orders from Chief Justice Roy Moore, and orders of the Alabama Supreme Court, there is a state of confusion in all 67 Alabama counties. The citizens of Alabama are losing confidence in the judiciary. *Alabama Canons of Judicial Ethics* are those canons which should guide the 68 probate judges. Canon 2(b) states:

A judge should at all times maintain the decorum and temperance befitting his office and should avoid conduct prejudicial to the administration of justice, which brings the judicial office into disrepute.

Canon 1 of the *Alabama Canons of Judicial Ethics* states:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 3(a)(1) states:

A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interest, public clamor, or fear of criticism.

The conflicting orders from the United States District Court for the Southern District of Alabama, the United States District Court for the Middle District of Alabama, the Chief Justice of the Alabama Supreme Court, and the Alabama Supreme Court have created a very difficult, almost insurmountable problem for the probate judges, and for Judge Don Davis in particular. The public is quickly losing faith and confidence in the judiciary which is of paramount importance for the efficient and effective functioning of the courts.

WHEREFORE, PREMISES CONSIDERED, defendant Don Davis asks that this Court grant his *Motion to Stay* these proceedings.

ATTORNEYS FOR DEFENDANT DON DAVIS

s/ Teresa B. Petelos

Teresa B. Petelos (ASB-8716-L66T)
Mark S. Boardman (ASB-8572-B65M)
Clay R. Carr (ASB-5650-C42C)
BOARDMAN, CARR, BENNETT,
WATKINS, HILL & GAMBLE, P.C.
400 Boardman Drive
Chelsea, Alabama 35043-8211

s/ J. Michael Druhan, Jr.

J. Michael Druhan , Jr., Esq.
Harry V. Satterwhite, Esq.
SATTERWHITE, DRUHAN, GAILLAND & TYLER
1325 Dauphin Street
Mobile, Alabama 36604

Along with: Lee L. Hale, Esq.
501 Church Street
Mobile, Alabama 36602

CERTIFICATE OF SERVICE

I do hereby certify that I have on **March 13, 2015** electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all Counsel of record, and I have mailed the same to non-CM/ECF participants via United States Mail properly addressed and first class postage prepaid, to wit:

Shannon P. Minter, Esq.
Christopher F. Stoll, Esq.
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102

Ayesha N. Khan, Esq.
Americans United for Separation of
Church and State
1901 L Street NW, Suite 400
Washington, D.C. 20036

Heather Rene Fann, Esq.
Boyd, Fernambucq, Dunn & Fann, P.C.
3500 Blue Lake Drive, Suite 220
Birmingham, AL 35243

James W. Davis, Esq.
Office of the Attorney General
501 Washington Ave.
Montgomery, AL 36130-0152

Randall C. Marshall, Esq.
ACLU of Alabama Foundation, Inc.
P.O. Box 6179
Montgomery, AL 30106-0179

Laura Elizabeth Howell, Esq.
501 Washington Avenue
Montgomery, AL 36104

David Dinielli, Esq.
Scott D. McCoy, Esq.
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104

Andrew L. Brasher, Esq.
501 Washington Ave.
Montgomery, AL 36103

s/ Teresa B. Petelos

Of Counsel